AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

3–5–03 Wednesday
Vol. 68 No. 43 Mar. 5, 2003
Pages 10345–10650

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

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

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

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

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

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

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

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

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

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

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

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 43

Wednesday, March 5, 2003

Agricultural Marketing Service
RULES
Limes grown in Florida, and imported, 10345–10347
Walnuts grown in—
California, 10347–10349

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
Cattle and other property disposed of because of bovine tuberculosis; payments, 10361–10362
NOTICES
Environmental statements; availability, etc.:
Tropical soda apple control, 10435–10436

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings:
Access Board, 10438

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10481–10482

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare and medicaid:
Acute care hospital inpatient prospective payment system; payment methodology for extraordinarily high-cost cases, 10420–10429

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Ohio, 10438
Washington, 10438

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10438–10439
Overseas trade missions:
2003 trade missions—
Belfast, Northern Ireland, and Dublin, Ireland; Undersecretariat Business Development Mission, 10439–10440

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Live cattle; correction, 10583

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10447–10448

Customs Service
NOTICES
Trade name recordation applications:
REVOLUTIONARY PRODUCTS, INC., 10576

Defense Department
See Navy Department
NOTICES
Meetings:
Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities Domestic Advisory Panel, 10448
Military Personnel Testing Advisory Committee, 10448
Nuclear Weapons Surety Joint Advisory Committee, 10448–10449

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Energy efficiency in industrial facilities; plant-wide assessments, 10450
Meetings:
Advanced Scientific Computing Advisory Committee, 10450
Environmental Management Site-Specific Advisory Board—
Idaho National Engineering and Environmental Laboratory, ID, 10451–10452
Paducah Gaseous Diffusion Plant, KY, 10450–10451

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Prohibitions; CFR correction, 10370
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Folpet, 10377–10388
Hexythiazox, 10370–10377
NOTICES
Air pollution control:
Citizens suits; proposed settlements—
Louisiana Environmental Action Network et al., 10454
Meetings:
Exposure Modeling Work Group, 10455
Pesticide, food, and feed additive petitions:
Bayer Corp., 10458–10464
Bayer CropScience, 10464–10469
Interregional Research Project (No. 4) et al., 10469–10473
Siemer & Associates, Inc., 10474–10477

Pesticide programs:
Norflurazon; tolerance reassessment decision, 10455–10456
Pesticide registration, cancellation, etc.:
Benomyl, 10456–10458
Reports and guidance documents; availability, etc.:
Pesticide registrants; pesticide products labeling under National Organic Program, 10477–10478

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing; correction, 10583
Airworthiness standards:
Special conditions—
Learjet Model 24/25 Series airplanes, 10365–10367
Class D and Class E airspace, 10367–10369
Class E airspace, 10369–10370
PROPOSED RULES
Airworthiness directives:
Boeing, 10412–10415
Empresa Brasileira de Aeronautica S.A. (EMBRAER), 10415–10417
NOTICES
Reports and guidance documents; availability, etc.:
ATC Transponder Operation; policy statement, 10574

Federal Communications Commission
RULES
Radio stations; table of assignments:
Texas
CFR correction, 10388
PROPOSED RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
High-cost universal service support and eligible telecommunications carrier designation process, 10429–10434
NOTICES
Meetings:
North American Numbering Council, 10478–10479

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Aquila Merchant Services, Inc., 10452
Colorado Interstate Gas Co., 10452–10453
Flying Cloud Power Partners, LLC, 10453
North Hartland LLC, 10453–10454
Public Service Co. of New Mexico, 10454

Federal Maritime Commission
NOTICES
Agreements filed, etc., 10479

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Driver qualifications—
Parker, Jerry; vision requirement exemption, etc.; correction, 10583

Federal Reserve System
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10479–10481
Banks and bank holding companies:
Permissible nonbanking activities, 10481

Fish and Wildlife Service
RULES
Endangered and threatened species:
Pygmy rabbit; Columbia Basin distinct population segment, 10388–10409
NOTICES
Endangered and threatened species:
Recovery plans—
Southwestern willow flycatcher, 10485

Food and Drug Administration
PROPOSED RULES
Food for human consumpiton:
Dietary supplements containing ephedrine alkaloids, 10417–10420
NOTICES
Meetings:
Dermatologic and Ophthalmic Drugs Advisory Committee, 10482–10483
Food Advisory Committee, 10483
Vaccines and Related Biological Products Advisory Committee, 10483–10484

Food and Nutrition Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10436–10437

Forest Service
PROPOSED RULES
National Forest System land and resource management planning, 10420

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Environmental statements; notice of intent:
Tacoma, WA; Salishan revitalization project, 10484–10485

Indian Affairs Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10486
Land acquisitions into trust:
Ponca Tribe of Nebraska, 10486–10487

Industry and Security Bureau
RULES
Export administration regulations:
Commerce Control List—
Wassenaar Arrangement List of Dual-Use Items; implementation; Categories 2-9 revisions for national security reasons, etc., 10585–10608

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10576–10581
Meetings:
Taxpayer Advocacy Panels, 10581–10582

International Trade Administration
NOTICES
Antidumping:
Frozen fish fillets from—
Vietnam, 10440–10444
Solid urea from—
Estonia, 10445
Lithuania, 10444–10445
Countervailing duties:
Pasta from—
Italy, 10446

Justice Department
RULES
Organization, functions, and authority delegations:
Immigration and Naturalization Service; transfer to Homeland Security Department; reorganization of regulations, 10349–10361
NOTICES
Grants and cooperative agreements; availability, etc.:
Immigration related employment discrimination; public education programs, 10487–10489
Pollution control; consent judgments:
Chicago Specialties, L.L.C., 10489–10490

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 10549

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Shannon, Scott M.; petition denied, 10574–10575

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 10446–10447

National Science Foundation
NOTICES
Meetings; Sunshine Act, 10549–10550

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public Telecommunications Facilities Program, 10609–10615

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Indiana, 10437–10438

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 10449–10450

Nuclear Regulatory Commission
RULES
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements, 10362–10365
PROPOSED RULES
Source material; domestic licensing:
Source material holdings; reporting requirements under international agreements, 10410–10412
NOTICES
Environmental statements; availability, etc.:
Schlumberger Technology Corp., 10550–10552
Meetings:
Nuclear Waste Advisory Committee, 10552
Reactor Safeguards Advisory Committee, 10552
Regulatory guides; issuance, availability, and withdrawal, 10552–10553

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10447

Presidential Documents
PROCLAMATIONS
Special observances:
American Red Cross Month (Proc. 7648), 10639–10642
Irish-American Heritage Month (Proc. 7649), 10643–10644
National Colorectal Cancer Awareness Month (Proc. 7650), 10645–10646
Save Your Vision Week (Proc. 7652), 10649–10650
Women's History Month (Proc. 7651), 10647–10648
EXECUTIVE ORDERS
Government agencies and employees:
Federally owned historic properties, preservation and management, 10635–10638
Homeland Security, Department of; amendment of executive orders and other actions in connection with the transfer of certain functions to, 10617–10633

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 10553

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Rydex ETF Trust et al., 10553–10557
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 10557–10558
Depository Trust Co., 10558–10559
Municipal Securities Rulemaking Board, 10559–10560
New York Stock Exchange, Inc., 10560–10562
Philadelphia Stock Exchange, Inc., 10562–10563
Applications, hearings, determinations, etc.:
Island Futures Exchange, LLC, 10553

State Department
NOTICES
Art objects; importation for exhibition:
Renoir, Pierre-Auguste (1841-1919), 10563

Surface Transportation Board
NOTICES
Railroad services abandonment:
Burlington Northern & Santa Fe Railway Co., 10575–10576

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Grants and cooperative agreements; availability, etc.:
Small and Disadvantaged Business Enterprise Program, 10563–10574

Treasury Department
See Customs Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Professional Certification and Licensure Advisory Committee, 10582

Veterans Employment and Training Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless Veterans' Reintegration Program, 10490–10509
Non-Urban Homeless Veterans' Reintegration Program, 10509–10529
Urban Homeless Veterans' Reintegration Program, 10529–10549

Separate Parts In This Issue

Part II
Commerce Department, Industry and Security Bureau, 10585–10608

Part III
Commerce Department, National Telecommunications and Information Administration, 10609–10615

Part IV
Executive Office of the President, Presidential Documents, 10617–10633, 10635–10638

Part V
Executive Office of the President, Presidential Documents, 10639–10650

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7648 10641
7649 10643
7650 10645
7651 10647
7652 10649

Executive Orders:

4601 (Amended by: 13286) 10619
10113 (Amended by: 13286) 10619
10163 (Amended by: 13286) 10619
10179 (Amended by: 13286) 10619
10271 (Amended by: 13286) 10619
10448 (Amended by: 13286) 10619
10499 (Amended by: 13286) 10619
10554 (Amended by: 13286) 10619
10631 (Amended by: 13286) 10619
10637 (Amended by: 13286) 10619
10694 (Amended by: 13286) 10619
10789 (Amended by: 13286) 10619
10977 (Amended by: 13286) 10619
11016 (Amended by: 13286) 10619
11046 (Amended by: 13286) 10619
11079 (Amended by: 13286) 10619
11139 (Amended by: 13286) 10619
11190 (Amended by: 13286) 10619
11231 (Amended by: 13286) 10619
11239 (Amended by: 13286) 10619
11366 (Amended by: 13286) 10619
11438 (Amended by: 13286) 10619
11446 (Amended by: 13286) 10619
11448 (Amended by: 13286) 10619
11623 (Amended by: 13286) 10619
11645 (Amended by: 13286) 10619
11800 (Amended by: 13286) 10619
11858 (Amended by: 13286) 10619
11926 (Amended by: 13286) 10619
11965 (Amended by: 13286) 10619
12002 (Amended by: 13286) 10619
12146 (Amended by: 13286) 10619
12148 (Amended by: 13286) 10619
12160 (Amended by: 13286) 10619
12188 (Amended by: 13286) 10619
12208 (Amended by: 13286) 10619
12341 (Amended by: 13286) 10619
12382 (Amended by: 13286) 10619
12472 (Amended by: 13286) 10619
12501 (Amended by: 13286) 10619
12555 (Amended by: 13286) 10619
12580 (Amended by: 13286) 10619
12656 (Amended by: 13286) 10619
12657 (Amended by: 13286) 10619
12699 (Amended by: 13286) 10619
12727 (Amended by: 13286) 10619
12728 (Amended by: 13286) 10619
12733 (Amended by: 13286) 10619
12742 (Amended by: 13286) 10619
12743 (Amended by: 13286) 10619
12777 (Amended by: 13286) 10619
12788 (Amended by: 13286) 10619
12789 (Amended by: 13286) 10619
12793 (Amended by: 13286) 10619
12807 (Amended by: 13286) 10619
12824 (Amended by: 13286) 10619
12830 (Amended by: 13286) 10619
12835 (Amended by: 13286) 10619
12870 (Amended by: 13286) 10619
12906 (Amended by: 13286) 10619
12919 (Amended by: 13286) 10619
12977 (Amended by: 13286) 10619
12978 (Amended by: 13286) 10619
12982 (Amended by: 13286) 10619
12985 (Amended by: 13286) 10619
12989 (Amended by: 13286) 10619
13011 (Amended by: 13286) 10619
13076 (Amended by: 13286) 10619
13100 (Amended by: 13286) 10619
13112 (Amended by: 13286) 10619
13120 (Amended by: 13286) 10619
13130 (See: 13286) 10619
13133 (Amended by: 13286) 10619
13154 (Amended by: 13286) 10619
13165 (Amended by: 13286) 10619
13212 (Amended by: 13286) 10619
13223 (Amended by: 13286) 10619
13228 (Amended by: 13286) 10619
13231 (Amended by: 13286) 10619
13254 (Amended by: 13286) 10619
13257 (Amended by: 13286) 10619
13260 (Amended by: 13286; Revoked by: 13268, eff. 3/31/03) 10619
13271 (Amended by: 13286) 10619
13274 (Amended by: 13286) 10619
13276 (Amended by: 13286) 10619
13284 (See: 13286) 10619
13286 10619
13287 10619

7 CFR

911 10345
944 10345
984 10347

8 CFR

1001 10349
1003 10349
1101 10349
1103 10349
1205 10349
1208 10349
1209 10349
1212 10349
1216 10349
1235 10349
1236 10349
1238 10349
1239 10349
1240 10349
1241 10349
1244 10349
1245 10349
1246 10349
1249 10349
1270 10349
1274a 10349
1292 10349
1337 10349

9 CFR

50 10361

10 CFR

40 10362
150 10362

Proposed Rules:

40 10411
150 10411

14 CFR

25 10365
39 10583
71 (2 documents) 10367, 10369

Proposed Rules:

39 (2 documents) 10413, 10416

15 CFR

740 10586
743 10586
772 10586
774 10586

21 CFR

Proposed Rules:

111 10418

36 CFR

Proposed Rules:

219 10421

40 CFR

82 10370
180 (2 documents) 10370, 10377

42 CFR

Proposed Rules:

412 10421

47 CFR

73 10388

Proposed Rules:

54 10430

50 CFR

17 10388

Rules and Regulations

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV03–911–1 FR]

Limes Grown in Florida and Imported Limes; Termination of Marketing Order and Implementing Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This final rule terminates the marketing order covering limes grown in Florida, the rules and regulations established under the order, and the requirements for limes imported into the United States that are shipped to the fresh market. The Department of Agriculture (USDA) has determined the order should be terminated due to the results of a recent referendum where growers indicated they did not support the continuance of the program. The termination of the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324–3375, Fax (863) 325–8793; or Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This action is being taken under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and §§ 911.49(b) and 911.64(d) of Marketing Order No. 911, regulating the handling of limes grown in Florida, hereinafter referred to as the ''order.''

This final rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including limes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule terminates the marketing order covering Florida limes and the rules and regulations established under the order.

The order has been in effect since 1955. It authorizes the establishment of grade, size, quality, pack, and container requirements, although such requirements have not been in effect since February 2002. The order also authorizes production and marketing research and development. The program is funded by assessments imposed on lime handlers.

Section 911.64(d) of the order specifies that continuance referenda must be conducted among lime producers every sixth year before March 31. Therefore, during the period from September 9 to September 28, 2002, USDA conducted a referendum among lime growers to determine if they favored continuation of their program. The referendum order provided that USDA would consider terminating the provisions of the order if less than two-thirds of the number of growers voting and growers of less than two-thirds of the lime volume represented in the referendum favored continuance.

Ballots were mailed to 54 known lime growers in Florida. By the close of the voting period, 11 valid votes had been cast. The results show that 18.2 percent of the growers voting, who produced 57.73 percent of the volume represented in the referendum, favored continuation of the program. The order failed to pass either criteria for continuance, demonstrating a lack of producer support needed to carry out the objectives of the Act. In addition, effective February 19, 2002 (67 FR 6837), grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements prescribed under the order as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 were suspended. Thus, it has been determined that the provisions of the order no longer tend to effectuate the declared policy of the Act.

Therefore, pursuant to section 8c(16)(A) of the Act and § 911.64 of the order, it has been found that the order provisions should be terminated.

Section 8c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress was so notified on November 6, 2002.

Pursuant to § 911.65 of the order, the members of the Lime Administrative Committee shall serve as trustees to conclude and liquidate the affairs of the committee.

Section 8e of the Act provides that whenever certain specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities. Since this rule terminates the lime marketing order for domestically produced limes and the resultant rules and regulations, a corresponding change to the import regulations must also be made.

In addition, effective February 19, 2002 (67 FR 6837), grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements prescribed under the order as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 were suspended.

Consequently, this rule removes § 944.209.

Final Regulatory Flexibility Analysis

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

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

There are approximately 54 producers of limes in the production area and approximately 6 handlers subject to regulation under the marketing order. In addition, approximately 240 importers of limes are subject to import regulations and will be impacted by this termination. Small agricultural producers are defined as those having annual receipts of less than $750,000, and small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000.

The average f.o.b. price for fresh limes during the 2000–01 season was around $14.75 per bushel and total shipments were 344,032 bushels for the season. Using this price and total volume for the season, all lime handlers could be considered small businesses under the SBA definition. The majority of Florida lime producers may also be classified as small entities.

In calendar year 2000, imports of limes totaled 9.7 million bushels. Assuming the same average f.o.b. price as for Florida limes, the average importer receives gross receipts of about $600,000. Thus, the majority of lime importers can be classified as small entities.

This final rule terminates the marketing order covering limes grown in Florida, the rules and regulations established under the order, and the requirements for limes imported into the United States that are shipped to the fresh market. USDA has determined the order should be terminated. In a recent referendum, growers indicated that they did not support the continuance of the program.

This action eliminates program requirements imposed on lime handlers and importers. Minimum grade, size, maturity and quality requirements for limes imported into the United States are effective under § 944.209 (7 CFR 944.209). As this rule terminates the marketing order for limes and the corresponding regulations, the import regulations for limes imported into the United States are also terminated. All regulations were previously suspended effective February 19, 2002.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being terminated by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Termination of the order is expected to reduce the total annual reporting burden on Florida lime handlers by a total of 73.98 burden hours.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, including the results of a recently held producer referendum, it is hereby found that the lime marketing order and the rules and regulations in effect under the order do not tend to effectuate the declared policy of the Act and, therefore, are terminated.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This action relieves restrictions on handlers and importers by terminating the requirements of the lime marketing order and the lime import regulations; (2) handlers were given notice of this action in a widely distributed press release issued on November 5, 2002; (3) a final rule was published in the **Federal Register** on February 14, 2002, suspending all regulations from February 19, 2002 through February 24, 2003; and (4) no useful purpose would be served by delaying the effective date.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR Parts 911 and 944 are amended as follows:

PART 911—[REMOVED]

1. Part 911 is removed.

PART 944—FRUITS; IMPORT REGULATION

§ 944.209 [Removed]

2. Section 944.209 is removed.

§ 944.350 [Amended]

3. In § 944.350, the word ''limes,'' is removed in the section heading and each place it appears in the section.

§ 944.400 [Amended]

4. In § 944.400, the word ''limes,'' is removed in the section heading and each place it appears in the section.

Dated: February 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–5080 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV02–984–1 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses of $2,970,000. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 4, 2003.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended, (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to decrease the assessment rate established for the Board for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts.

The California Walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0124 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 13, 2002, and unanimously recommended 2002–03 expenditures of $2,970,000 and an assessment rate of $0.0120 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $3,124,800. The assessment rate is $0.0004 lower than the $0.0124 rate previously in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 275,000 tons (247,500,000 kernelweight pounds merchantable), and the budget is about 5 percent less than last year's budget. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for the 2002–03 year include $2,438,403 for program expenses, including marketing and production research projects, $333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, $80,500 for office expenses, $79,500 for other operating expenses, and $38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001–02 were $2,566,569 for program expenses including marketing and production research projects, $313,200 for employee expenses, $130,600 for office expenses, $76,000 for other operating expenses, and $38,431 as a reserve for a contingency.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 247,500,000 kernelweight pounds which should provide $2,970,000 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2002–03 budget has been reviewed and approved by USDA. Those for subsequent marketing years will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over $5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under $5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual income over $750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Board and collected from handlers for the 2002–03 and subsequent marketing years from $0.0124 to $0.0120 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2002–03 expenditures of $2,970,000. The assessment rate should generate sufficient income to meet the Board's 2002–03 anticipated expenses. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget.

Major categories in the budget recommended by the Board for the 2002–03 year include $2,438,403 for program expenses, including marketing and production research projects, $333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, $80,500 for office expenses, $79,500 for other operating expenses, and $38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001–02 were $2,566,569 for program expenses including marketing and production research projects, $313,200 for employee expenses, $130,600 for office expenses, $76,000 for other operating expenses, and $38,431 as a reserve for a contingency.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended $0.0120 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 247,500,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2002–03 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2002–03 year as a percentage of total grower revenue could range between 1.7 and 2.5 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 13, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on November 21, 2002 (67 FR 70146). Copies of that rule were also mailed or sent via facsimile to all walnut handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 21, 2003, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 984—WALNUTS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 984 which was published at 67 FR 70146 on November 21, 2002, is adopted as a final rule without change.

Dated: February 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–5081 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 1001, 1003, 1101, 1103, 1205, 1208, 1209, 1212, 1216, 1235, 1236, 1238, 1239, 1240, 1241, 1244, 1245, 1246, 1249, 1270, 1274a, 1292, 1337

[EOIR No. 137F1; OLC Order No. 2]

RIN 1125—AA42

Aliens and Nationality; Homeland Security; Reorganization of Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002, as amended, transfers the functions of the Immigration and Naturalization Service to the Department of Homeland Security. In a rule published in the **Federal Register** on February 28, 2003, the Department of Justice reorganized title 8 of the Code of Federal Regulations to reflect the transfer of functions of the Immigration and Naturalization Service through the division of jurisdiction over regulations currently codified in 8 CFR chapter I, by establishing a new chapter V in 8 CFR, by transferring or duplicating certain parts and sections to the new chapter V and to 28 CFR chapter I, and by making other amendments as necessary to continue existing authorities after the transfer of functions to the Department of Homeland Security on March 1, 2003. This rule effects technical amendments to internal citations in chapter V.

DATES: This rule is effective on February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470; Civil Division: Thomas W. Hussey, Director, Office of Immigration Litigation, United States Department of Justice, 950 Pennsylvania Ave. NW., Washington, DC 20530, telephone (202) 616–4852.

SUPPLEMENTARY INFORMATION: The Homeland Security Act of 2002, as amended, (''HSA'') transfers the functions of the Immigration and Naturalization Service (''Service'' or ''INS'') to the Department of Homeland Security (''DHS''). Public Law 107–296, title IV, subtitles D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended (''HSA''). The HSA retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review (''EOIR'') and other law determination and litigation functions. HSA, 116 Stat. at 2273. This rule reflects technical amendments to citations in 8 CFR chapter V.

Changes to section citations to sections within the same part of chapter V have already been accomplished in the rule published February 28, 2003. This rule sets out the tables of citation changes for citations to sections in other parts of both chapters I and V. Where appropriate, the changes are made to the conformed sections of chapter V, but there are instances where the conformed section and specific paragraph cite to authority that does not related to functions that will remain in the Department of Justice. Accordingly, these citations are changed to refer to the appropriate section of chapter I of this part as it is being transferred to the Department of Homeland Security. For example, authority of the Service that is contained in chapter I often requires a change in chapter V to eliminate ''in this chapter'' language and refer directly to the Service's authority ''in chapter I.'' This is consistent with the Department of Justice long range plan in eliminating unnecessary duplication of provisions between chapter I and chapter V.

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule and without public notice and comment under 5 U.S.C. 553 because this rule only makes technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the regulations of the Department of Justice and reflects the transfer of functions contemplated by the Homeland Security Act of 2002. Similarly, because this final rule makes only technical changes in cross-references in existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure and Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1101

Immigration.

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1205

Administrative practice and procedure and Immigration.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1209

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 1211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1216

Administrative practice and procedure, and Aliens.

8 CFR Part 1235

Administrative practice and procedure, Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1239

Administrative practice and procedure, Aliens and Immigration .

8 CFR Part 1240

Administrative practice and procedure and Aliens.

8 CFR Part 1241

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1244

Administrative practice and procedure and Immigration.

8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1246

Administrative practice and procedure, Aliens and immigration.

8 CFR Part 1249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers and Reporting and recordkeeping requirements.

8 CFR Part 1337

Citizenship and naturalization and Courts.

Authority and Issuance

For the reasons set forth in the preamble, the Department of Justice amends titles 8 and 28 of the Code of Federal Regulations as follows:

Title 8—Aliens and Nationality

Chapter V—Executive Office for Immigration Review, Department of Justice

PART 1001—DEFINITIONS

1. The authority citation for part 1001 continues to read as follows:

Authority: 8 U.S.C. 1101; 8 CFR part 2.

2. Amend part 1001 as follows:

AMENDMENT TABLE FOR PART 1001

Amend:	By removing the reference to:	And adding in its place:
1001.1(j)	292.1(a)(2), (3), (4), (5), (6), and 292.1(b)	1292.1(a)(2), (3), (4), (5), (6), and 1292.1(b).
1001.1(r)	242.1 of this chapter	242.1 of 8 CFR chapter I.

Chapter V, Subchapter A

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

4. Amend part 1003 as follows:

AMENDMENT TABLE FOR PART 1003

Amend:	By removing the reference to:	And adding in its place:
1003.1(b)(2)	Part 240	Part 1240.
1003.1(b)(3)	Part 240	Part 1240.
1003.1(b)(5)	Parts 204 and 205, respectively, of this chapter.	Parts 204 and 205, respectively, of 8 CFR chapter I or parts 1204 and 1205, respectively, of this chapter.
1003.1(b)(6)	Part 212	Part 1212.
1003.1(b)(7)	Part 236	Part 1236.
1003.1(b)(8)	Part 246	Part 1246.
1003.1(b)(9)	208.2(b)	1208.2(b).
1003.1(b)(10)	Part 244	Part 1244.
1003.1(b)(12)	245.13(n)(2) and 245.15(n)(3)	1245.13(n)(2) and 1245.15(n)(3).
1003.1(b)(12)	245.13(d)(2) and 245.15(e)(2)	1245.13(d)(2) and 1245.15(e)(2)
1003.1(b)(14)	241.14	1241.14.
1003.1(d)(2)(D)(iii)	292.2(d)	1292.2(d).
1003.1(d)(5)	292.2(d)	1292.2(d).
1003.2(c)(1)	1.1(p)	1001(p).
1003.2(c)(3)(iv)	208.22(f)	1208.22(f).
1003.4	1.1(q)	1001(q).
1003.6(b)	242.22 of this chapter	242.22 of 8 CFR chapter I.
1003.8(a)	103.7(b)(1)	1103.7(b)(1).
1003.8(b)	103.7(b)	1103.7(b).
1003.14(a)	3.19, 236.1(d) and 240.2(b)	1003.19, 1236.1(d) and 1240.2(b).
1003.14(c)	337.2(b)	1337.2(b).
1003.15(b)(5)	292.1	1292.1.
1003.16(b)	Part 292	Part 1292.
1003.19(a) (two times)	Part 236	Part 1236.
1003.19(h)(1)(i)(D)	236.1(c)(2)	1236.1(c)(2).
1003.19(h)(1)(i)(E)	236.1(c)	1236.1(c).
1003.19(h)(1)(ii)	Part 235 or 236	Part 1235 or 1236.
1003.19(h)(2)(ii)	Part 235 or 236	Part 1235 or 1236.
1003.23(b)(1)	208.22	1208.22.
1003.24	103.7	1103.7.
1003.30	240.10(b)	1240.10(b).
1003.31(b)	240.11(f)	1240.11(f).
1003.31(b)	103.7(a)	1103.7(a).
1003.61(a)(1)	292.2	1292.2.
1003.61(a)(2)	292.2	1292.2.
1003.61(a)(4)	1.1(f)	1001.1(f).
1003.62	292. (in each place it appears)	1292.
1003.62	1.1(f) (in each place it appears)	1001.1(f).
1003.64	103.3(a)(1)(ii)	1103.3(a)(1)(ii).
1003.65	103.3(a)(1)(ii)	1103.3(a)(1)(ii).
1003.101	1.1 (in each place it appears)	1001.1.
1003.102	292 (in each place it appears)	1292.
1003.105(a)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1003.106(a)(1)(ii)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1003.106(a)(1)(v)	240.9	1240.9.
1003.106(c)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1003.107	1.1 (in each place it appears)	1001.1.

Chapter V, Subchapter B

PART 1101—PRESUMPTION OF LAWFUL ADMISSION

5. The authority citation for part 1101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

6. Amend part 1101 as follows:

AMENDMENT TABLE FOR PART 1101

Amend:	By removing the reference to:	And adding in its place:
1101.4	264.2 of this chapter	264.2 of 8 CFR chapter I.

PART 1103—APPEALS, RECORDS, AND FEES

7. The authority citation for part 1103 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

8. Amend part 1101 as follows:

AMENDMENT TABLE FOR PART 1103

Amend:	By removing the reference to:	And adding in its place:
1103.3(a)(1)(ii)	3.1(b)	1003.1(b).
1103.3(a)(1)(ii)	1103.1(f)(2)	103.1(f)(2).
1103.3(a)(1)(iii)(B)	1103.4 and 1103.5 of this part	1103.4 of this part and 103.5 of 8 CFR chapter I.
1103.3(a)(1)(iii)(B)	Part 292	Part 1292.
1103.3(a)(1)(v) (three times)	292	1292.
1103.3(a)(2)(iii)	1103.5(a)(5)(i) of this part	103.5(a)(5)(i) of 8 CFR chapter I.
1103.3(a)(2)(v)(A)(2)(ii)	1103.5(a)(5)(i) of this part	103.5(a)(5)(i) of 8 CFR chapter I.
1103.3(a)(2)(v)(B)(2)(ii)	1103.5(a)(5)(i) of this part	103.5(a)(5)(i) of 8 CFR chapter I.
103.4(a)(6)	3.1(b)	1003.1(b).
103.7(c)(1)	3.3(b)	1003.3(b).
103.7(c)(4)	240.20	1240.20.

Chapter V, Subchapter B

PART 1205—REVOCATION OF APPROVAL OF PETITIONS

9. The authority citation for part 1205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

10. Amend part 1205 as follows:

AMENDMENT TABLE FOR PART 1205

Amend:	By removing the reference to:	And adding in its place:
1205.1(a)	Part 204 of this chapter	Part 204 of 8 CFR chapter I.
1205.2(d)	Part 3	Part 1003.
1205.2(d)	Part 103 of this chapter	Part 103 of 8 CFR chapter I.

Chapter V, Subchapter B

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

11. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

12. Amend part 1208 as follows:

AMENDMENT TABLE FOR PART 1208

Amend:	By removing the reference to:	And adding in its place:
1208.1(a)	Parts 3 and 103	Parts 1003 and 1103.
1208.2(c)(3)(i)	Part 240	Part 1240.
1208.4(a)(2)(ii)	103.2(a)(7) of this chapter	103.2(a)(7) of 8 CFR chapter I.
1208.4(a)(2)(ii)	3.13	1003.13.
1208.4(b)(3)(ii)	Part 3	Part 1003.
1208.4(b)(4)	3.2 and 3.8	1003.2 and 1003.8.
1208.4(b)(4)	Part 3	Part 1003.
1208.4(b)(5)	Part 1103	Part 103.
1208.5(b)(2)	212.5	1212.5.
1208.7(a)(1)	274a.12(c)(8) and 274a.13(a)	1274a.12(c)(8) and 1274a.13(a).
1208.7(a)(2)	103.2(b)(8) of this chapter	103.2(b)(8) of 8 CFR chapter I.
1208.7(a)(4)	274a.12(c)(8)	1274a.12(c)(8).
1208.8(b)	212.5(f)	1212.5(f).
1208.12	8 CFR part 103	28 CFR part 16.
1208.14(c)(4)(i)	212.5(d)(2)(i)	1212.5(d)(2)(i).
1208.14(c)(4)(ii)	235.3(b)	1235(b).
1208.14(c)(4)(ii)(A)	235.3(b)	1235.3(b).
1208.17(d)(1)	3.11	1003.11.
1208.17(e)(1)	3.11	1003.11.
1208.18(b)(2)	3.23 and 3.2	1003.23 and 1003.2.
1208.18(b)(3)(ii)(A)	3.2 and 3.23	1003.2 and 1003.23.
1208.22(f)	(d)(5) of this chapter	(d)(5) of 8 CFR chapter I.
1208.23(f)	3.2 and 3.23	1003.2 and 1003.23.
1208.30(f)	212.5	1212.5.
1208.30(g)(2)(iii)	3.27	1003.27.

AMENDMENT TABLE FOR PART 1208—Continued

Amend:	By removing the reference to:	And adding in its place:
1208.31	241.8(b)	1241.8(b).

Chapter V, Subchapter B

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

13. The authority citation for part 1209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

14. Amend part 1209 as follows:

AMENDMENT TABLE FOR PART 1209

Amend:	By removing the reference to:	And adding in its place:
1209(c)	207.2(c)	207.2(c) of chapter I.

Chapter V, Subchapter B

PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

15. The authority citation for part 1212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

16. Amend part 1212 as follows:

AMENDMENT TABLE FOR PART 1212

Amend:	By removing the reference to:	And adding in its place:
1212.1(g)(3) (two times)	of this chapter	of 8 CFR chapter I
1212.3(e)(3)	3.36	1003.36.
1212.4(b)	Part 3	part 1003.
1212.5(b)	235.3(b)	1235.3(b).
1212.5(b)(3) (two times)	236.3(a)	1236.3(a).
1212.5(c) (three times)	235.3(b)	1235.3(b).
1212.6(a)(2)	235.1(f)	1235.1(f).
1212.6(d)(1)	292.2	1292.2.
1212.6(e)	103.7(b)(1)	1103.7(b)(1).
1212.7(a)(1)(iii) (two times)	245.15(t)	1245.15(t).
1212.7(a)(1)(iv) (two times)	245.13(k)(2)	1245.13(k)(2).
1212.7(b)(2)(iv)	245.15(t)(2)	1245.15(t)(2).
1212.7(b)(2)(v)	245.13(k)(2)	1245.13(k)(2).
1212.7(b)(5)	Part 103 of this chapter	part 103 of 8 CFR chapter I.
1212.7(c)(7)	Part 204 of this chapter	part 204 of 8 CFR chapter I.
1212.7(c)(9)(ii)(B)	8 CFR part 103	8 CFR part 1103.
1212.7(c)(9)(vi)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.7(c)(9)(vi)(A)	214.2(h)(2)(i)(E) of this chapter	214.2(h)(2)(i)(E) of 8 CFR chapter I.
1212.7(c)(9)(vi)(B)	214.2(h)(2)(i)(D) and (E) of this chapter	214.2(h)(2)(i)(D) and (E) of 8 CFR chapter I.
1212.7(c)(9)(vi)(B)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.7(c)(9)(vi)(C)(2)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.7(c)(9)(vi)(D)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1212.8(b)	204.2(j) of this chapter	204.2(j) of 8 CFR chapter I.
1212.10	part 236	Part 1236.
1212.14(a)(1)(vi)	235.3	1235.3.

Chapter V, Subchapter B

PART 1216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

17. The authority citation for part 1216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

18. Amend part 1216 as follows:

AMENDMENT TABLE FOR PART 1216

Amend:	By removing the reference to:	And adding in its place:
216.3(a)	103.2(b)(2) of this chapter	103.2(b)(2) of 8 CFR chapter I.
216.3(a)	Part 239	Part 1239.
1216.4(a)(1)	103.7(b) of this chapter	103.7(b) of 8 CFR chapter I.
1216.4(a)(4)	211.1(b)(1)	1211.(b)(1).
1216.4(a)(4)	235.11	1235.11.
1216.4(a)(6)	239.2	1239.2.
1216.4(d)(2)	Part 239	Part 1239.
1216.5(b)	103.7(b) of this chapter	103.7(b) of 8 CFR chapter I.
1216.6(a)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1216.6(a)(1)	211.1(b)(1)	1211.1(b)(1).
1216.6(a)(1)	235.11	1235.11.
1216.6(a)(5)	242.7 of this chapter	242.7 of 8 CFR chapter I.
1216.6(b)(3) (two times)	242.7 of this chapter	1216.6(a)(5).

Chapter V, Subchapter B

PART 1235—INSPECTION OF PERSONS APPLYING FOR PERMISSION

19. The authority citation for part 1235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

20. Amend part 1235 as follows:

AMENDMENT TABLE FOR PART 1235

Amend:	By removing the reference to:	And adding in its place:
1235.1(d)(1)	211.11	211.1.
1235.1(d)(4)	208.30	1208.30.
1235.1(d)(4)	208.2(b)(2)	1208.2(b)(2).
1235.1(e)(1)(iii)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1235.1(e)(1)(v)	217.2(a) of this chapter	217.2(a) of 8 CFR chapter I.
1235.1(e)(2)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1235.1(e)(5)(ii)	217.2(a) of this chapter	217.2(a) of 8 CFR chapter I.
1235.1(f)(1)(i)	212.1(a)	1212.1(a).
1235.1(f)(1)(iii)	212.1(c)(1)	1212.1(c)(1).
1235.1(f)(1)(iv)	212.1(c)(1)	1212.1(c)(1).
1235.1(f)(1)(v)	212.1(c)(1)	1212.1(c)(1).
1235.3(b)(1)(i)	1.1(q)	1001.1(q).
1235.3(b)(2)(i)	211.1(b)(3) or § 212.1 of this chapter	1211.1(b)(3) or § 1212.1 of this chapter.
1235.3(b)(4)	208.30	1208.30.
1235.3(b)(5)(ii)	211.1 (b)(3)	1211.1(b)(3).
1235.3(b)(5)(iii)	223.2(b)(2)(ii) of this chapter	223.2(b)(2)(ii) of 8 CFR chapter I.
1235.3(b)(5)(iii)	223.2(b)(2)(i) of this chapter	223.2(b)(2)(i) of 8 CFR chapter I.
1235.3(b)(8)	Part 241	Part 1241.
1235.3(c)	212.5	1212.5.
1235.3(f)	236.1(e)	1236.1(e).
1235.4	212.5(b)	1212.5(b).
1235.5(a)	and 240	and 1240.
1235.5(a)	Part 240	Part 1240.
1235.6(a)(2)(iii)	208.2(b)(1)	1208.2(b)(1).
1235.8(b)(4)	Part 208	Part 1208.
1235.8(e)	1.1(q)	1001.1(q).
1235.11(c)	211.1(b)(1)	1211.1(b)(1).

Chapter V, Subchapter B

PART 1236—APPREHENSION AND DETENTION OF INADMISSABLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

21. The authority citation for part 1236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

22. Amend part 1236 as follows:

AMENDMENT TABLE FOR PART 1236

Amend:	By removing the reference to:	And adding in its place:
1236.1(a)	287.7 of this chapter	287.7 of 8 CFR chapter I.

AMENDMENT TABLE FOR PART 1236—Continued

Amend:	By removing the reference to:	And adding in its place:
1236.1(b)	287.5(e)(2) of this chapter	287.5(e)(2) of 8 CFR chapter I.
1236.1(b)	287.5(e)(3) of this chapter	287.5(e)(3) of 8 CFR chapter I.
1236.1(c)(10)	103.6 of this chapter	103.6 of 8 CFR chapter I.
1236.1(c)(10)	3.19	1003.19.
1236.1(c)(11)	3.19(h)	1003.19(h).
1236.1(d)(1)	Part 240	Part 1240.
1236.1(d)(1)	3.19	1003.19.
1236.1(d)(3)(i)	3.38	1003.38.
1236.1(d)(4)	3.19(i)	1003.19(i).
1236.1(f)	3.19(g)	1003.19(g).
1236.2(a)	239.1	1239.1.
1236.2(a)	103.5a(c) of this chapter	103.5a(c) of 8 CFR chapter I.
1236.5(d)	208.2 and 208.16	1208.2 and 1208.16.

Chapter V, Subchapter B

PART 1238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

23. The authority citation for part 1238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

24. Amend part 1238 as follows:

AMENDMENT TABLE FOR PART 1238

Amend:	By removing the reference to:	And adding in its place:
1238.1(a)	239.1	1239.1
1238.1(b)(1)(iii)	3.41	1003.41.
1238.1(b)(2)(i)	103.5a(c)(2) of this chapter	103.5a(c)(2) of 8 CFR chapter I.
1238.1(b)(2)(iv)	Part 3	Part 1003.
1238.1(b)(2)(iv)	Part 292	Part 1292.
1238.1(c)(1)	208.16	1208.16.
1238.1(f)(1)	241.2	1241.2.
1238.1(f)(3)	208.16	1208.16.
1238.1(f)(3)	208.31	1208.31.
1238.1(g)	287.5(e)(2) of this chapter	287.5(e)(2) of 8 CFR chapter I.

Chapter V, Subchapter B

PART 1239—INITIATION OF REMOVAL PROCEEDINGS

25. The authority citation for part 1239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

26. Amend part 1239 as follows:

AMENDMENT TABLE FOR PART 1239

Amend:	By removing the reference to:	And adding in its place:
1239.2(a)	3.14	1003.14.
1239.2(c)	3.14	1003.14.

Chapter V, Subchapter B

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

27. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

28. Amend part 1240 as follows:

AMENDMENT TABLE FOR PART 1240

Amend:	By removing the reference to:	And adding in its place:
1240.2(a)	3.38	1003.38.
1240.2(a)	3.23	1003.23.
1240.3	Part 292	Part 1292.

AMENDMENT TABLE FOR PART 1240—Continued

Amend:	By removing the reference to:	And adding in its place:
1240.7	3.35	1003.35.
1240.10(a)(2)	Part 3	Part 1003.
1240.10(a)(2)	292.2	1292.2.
1240.10(b)	3.27	1003.27.
1240.11(a)(1)	Parts 245 and 249	Parts 1245 and 1249.
1240.11(a)(1)	Part 216	Part 1216.
1240.11(c)(1)	208.14	1208.14.
1240.11(c)(2)	208.4(c)	1208.4(c).
1240.11(c)(2)	208.111	208.11.
1240.11(c)(3)	Part 208	Part 1208.
1240.11(c)(3)	208.14 or 208.16	1208.14 or 1208.16.
1240.11(c)(3)(iii)	208.13	1208.13.
1240.11(e)	208.14(b)	1208.14(b).
1240.11(f)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1240.13(a)	3.3	1003.3.
1240.14	3.39	1003.39.
1240.15	Part 3	Part 1003.
1240.15	3.3, 3.31, and 3.38	1003.3, 1003.31, and 1003.38.
1240.15	3.3	1003.3.
1240.15	3.1(d)(2)	1003.1(d)(2).
1240.20(a)	103.7(b) of this chapter	103.7(b) of 8 CFR chapter I.
1240.20(b)	3.14	1003.14.
1240.21(b)(2)(iii)	245.13(e)	1245.13(e).
1240.21(b)(5)(ii)	212.5	1212.5.
1240.21(c)	3.1(d)(3) and 3.39	1003.1(d)(3) and 1003.39.
1240.26	1240.25	240.25.
1240.32(a)	Part 235	Part 1235.
1240.32(a)	Part 3	Part 1003.
1240.32(a)	292.2	1292.2.
1240.33(a)	208.14(b)	1208.14(b).
1240.33(b)	208.4(c)	1208.4(c).
1240.33(b)	208.11	1208.11.
1240.33(c)	Part 208	Part 1208.
1240.33(c)	208.13(c)	1208.13(c).
1240.33(c)(1)	236.3	1236.3.
1240.33(c)(3)	208.13	1208.13.
1240.35	3.37	1003.37.
1240.36	3.37	1003.37.
1240.37	3.38	1003.38.
1240.40	Part 240	Part 1240.
1240.42	Part 292	Part 1292.
1240.46	3.35	1003.35.
1240.48(a)	Part 3	Part 1003.
1240.48(a)	292.2	1292.2.
1240.49(a)	Parts 240, 245, and 249	Parts 1240, 1245, and 1249.
1240.49(a)	Part 216	Part 1216.
1240.49(c)(2)	208.14(b)	1208.14(b).
1240.49(c)(3)	208.4(b)	1208.4(b).
1240.49(c)(3)	208.11	1208.11.
1240.49(c)(4)	Part 208	Part 1208.
1240.49(c)(4)	208.13 or 208.16	1208.13 or 1208.16.
1240.49(c)(4)(iii)	208.13	1208.13.
1240.49(e)	208.2	1208.2.
1240.49(e)	208.14(b)	1208.14(b).
1240.51(a)	3.3	1003.3.
1240.52	3.39	1003.39.
1240.53	Part 3	Part 1003.
1240.53(a)	3.3, 3.31, and 3.38	1003.3, 1003.31, and 1003.38.
1240.53(a)	3.3(b)	1003.3(b).
1240.53(a)	3.1(d)(2)	1003.1(d)(2.)
1240.55	Part 240	Part 1240.
1240.56	Part 240	Part 1240.
1240.62	3.43	1003.43.
1240.63(a)	103.7(b)(1)	1103.7(b)(1).
1240.63(a)	103.7(c)	1103.7(c).
1240.63(b)	1260.62(b)	1240.62(b).
1240.67(a)	103.2(e) of this subchapter	103.2(e) of 8 CFR chapter I.
1240.67(b)(1)	208.9	1208.9.
1240.69	208.12	1208.12.

Chapter V, Subchapter B

PART 1241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

29. The authority citation for part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

30. Amend part 1241 as follows:

AMENDMENT TABLE FOR PART 1241

Amend:	By removing the reference to:	And adding in its place:
1241.2	287.5(e) of this chapter	287.5(e) of 8 CFR chapter I
1241.3(b)(1)	208.16 or 208.17	1208.16 or 1208.17.
1241.3(b)(1)	236.1	1236.1.
1241.3(b)(2)	212.12	1212.12.
1241.3(b)(3)	Part 241	Part 1241.
1241.3(b)(3)	208.17(d)	1208.17(d)..
1241.3(b)(4) (two times)	241.13	1241.13.
1241.4(j)	212.5(c)	1212.5(c).
1241.6(a)	212.5	1212.5.
1241.6(b)	Part 3	Part 1003.
1241.8(e)	208.31	1208.31.
1241.11(d)	208.5(b)	1208.5(b).
1241.11(d)	208.30	1208.30.
1241.11(d)	208.30	1208.30.
1241.11(d)	212.5	1212.5.
1241.13(b)(1)	Section 241.4	Section 1214.4.
1241.13(b)(3)(i)	212.12	1212.12.
1241.13(g)(1)	214.14	1241.14.
1241.13(g)(2)	214.14	1241.14.
1241.14(d)(3)(ii)	Part 292	Part 1292.
1241.14(g)(3)(i)	Part 292	Part 1292.
1241.14(h)(4)	3.38	1003.38.
1241.14(i)(3)	240.13(a) or (b)	1240.13(a) or (b).
1241.14(i)(4)(ii)	3.1(d)(3)	1003.1(d)(3).
1241.14(k)(6)(ii)	3.23 or 3.2	1003.23 or 1003.2.
1241.14(k)(6)(iii)	3.38	1003.38.
1241.15	236.6	1236.6.
1241.22	Part 240	Part 1240.
1241.30	Part 241	Part 1241.
1241.31	Part 240	Part 1240.
1241.33	212.5(b)	1212.5(b).

Chapter V, Subchapter B

PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

31. The authority citation for part 1244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

32. Amend part 1244 as follows:

AMENDMENT TABLE FOR PART 1244

Amend:	By removing the reference to:	And adding in its place:
1244.8	292.1	1292.1.
1244.10(b)	244.3, and 244.4	1244.3, and 1244.4.
1244.10(c)(2)	240.11 and 244.18	1240.11 and 1244.18.
1244.10(d)(1)	240.18(b)	1240.18(b).
1244.11	3.3	1003.3.
1244.13	240.14(a)(3)	1244.14(a)(3).
1244.18(d)	240.3(c) and 240.4	1244.3(c) and 1244.4.

Chapter V, Subchapter B

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

33. The authority citation for part 1245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

34. Amend part 1245 as follows:

AMENDMENT TABLE FOR PART 1245

Amend:	By removing the reference to:	And adding in its place:
1245.1(b)(7)	212.1(e)	1212.1(e).
1245.1(b)(8)	Part 217 of this chapter	Part 217 of 8 CFR chapter I.
1245.1(b)(10)	274a.12(c)(9)	1274a.12(c)(9).
1245.1(c)(1)	212.8(b)	1212.8(b).
1245.1(c)(2)	212.7(c)(9)	1212.7(c)(9).
1245.1(c)(3)	Part 247 of this chapter	Part 247 of 8 CFR chapter I.
1245.1(c)(4)	Part 204 of this chapter	Part 204 of 8 CFR chapter I.
1245.1(c)(6)(i)	214.2(k) of this chapter	214.2(k) of 8 CFR chapter I.
1245.1(c)(6)(ii)	214.2(k) of this chapter	214.2(k) of 8 CFR chapter I.
1245.1(c)(7)	245.11	1245.11.
1245.1(d)(1)(ii)	Part 214 of this chapter	Part 214 of 8 CFR chapter I.
1245.1(d)(2)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1245.1(d)(2)	214.2(j) of this chapter	214.2(j) of 8 CFR chapter I.
1245.1(f)	Parts 235 and 249	Parts 1235 and 1249.
1245.2(a)	Part 245	Part 1245.
1245.2(a)	Part 240	Part 1240.
1245.2(a)(2)(i)(B)	Parts 103 and 245	Parts 103 of 8 CFR chapter I and 1245 of this chapter.
1245.2(a)(5)(ii) (two times)	Part 240	Part 1240.
1245.2(a)(5)(iii) (two times)	Part 240	Part 1240.
1245.4	Part 211	Part 1211.
1245.5	214.2(k) of this chapter	214.2(k) of 8 CFR chapter I.
1245.5	Part 235	Part 1235.
1245.9(k)(1)	Part 245	Part 1245.
1245.10(a)(2)(i)	103.2(a)(1) and (a)(2) of this chapter	103.2(a)(1) and (a)(2) of 8 CFR chapter I.
1245.10(a)(4)	205.1(a)(3)(i) or (a)(3)(ii) of this chapter	1205.1(a)(3)(i) or (a)(3)(ii) of this chapter.
1245.10(d) (two times)	103.2 of this chapter	103.2 of 8 CFR chapter I.
1245.10(f)(1)	103.5 of this chapter	103.5 of 8 CFR chapter I.
1245.11(d)(1)	245.2	1245.2.
1245.12(a)(2)	232.1 of this chapter	232.1 8 of CFR chapter I.
1245.13(c)(1)	212.7	1212.7.
1245.13(e)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(e)(2)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(g)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(g)	103.7 of this chapter	103.7 of 8 CFR chapter I.
1245.13(g)	240.11(f)	1240.11(f).
1245.13(g)	103.2(e) of this chapter	103.2(c) of 8 CFR chapter I.
1245.13(j)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(j)(2)	274a.13(d)	1274a.13(d).
1245.13(k)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.13(k)(3)	212.2	1212.2.
1245.13(m)(1)(i)	239.1	1239.1.
1245.13(n)(1)	3.10	1003.10.
1245.13(n)(1)	Part 240	Part 1240.
1245.13(n)(2)	3.3 and 3.8	1003.3 and 1003.8.
1245.14	212.15	1212.15.
1245.15(a)	204.3(b) of this chapter (each time that it appears).	204.3(b) of 8 CFR chapter I.
1245.15(c)(2)(iv) B)	103.7(c) of this chapter	103.7(c) of 8 CFR chapter I.
1245.15(c)(2)(iv)(B)	240.11(f)	1240.11(f).
1245.15(d)(4)	(d)(5) of this chapter	(d)(5) of 8 CFR chapter I.
1245.15(e)(2)	212.7	1212.7.
1245.15(g)(3)(iii)	241.6	1241.6.
1245.15(h)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(h)(2)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(n)(1)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(n)(2)	274a.13(d)	1274a.13(d).
1245.15(p)(1)	3.11 and 3.31	1003.11 and 1003.31.
1245.15(r)(2)(i)	239.1	1239.1.
1245.15(s)(3)	3.3 and 3.8	1003.3 and 1003.8.
1245.15(t)	103.7(b)(1) of this chapter	103.7(b)(1) of 8 CFR chapter I.
1245.15(t)(3)	212.2	1212.2.
1245.18	this chapter (each time it appears)	8 CFR chapter I.
1245.20	this chapter (each time it appears)	8 CFR chapter I.
1245.20(k)	Part 240	Part 1240.

Chapter V, Subchapter B

PART 1246—RESCISSION OF ADJUSTMENT OF STATUS

35. The authority citation for part 1246 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

36. Amend part 1246 as follows:

AMENDMENT TABLE FOR PART 1246

Amend:	By removing the reference to:	And adding in its place:
1246.1	240.70	1240.70.
1246.3	240.3, 240.4, 240.5, 240.6, 240.7, and 240.9	1240.3, 1240.4, 1240.5, 1240.6, 1240.7, and 1240.9.
1246.5(a)	3.23	1003.23.
1246.5(a)	Part 292	Part 1292
1246.6	240.13(a) and (b) and 240.14	1240.13(a) and (b) and 1240.14.
246.7	Part 3	Part 1003.

Chapter V, Subchapter B

PART 1249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

37. The authority citation for part 1249 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

38. Amend part 1249 as follows:

AMENDMENT TABLE FOR PART 1249

Amend:	By removing the reference to:	And adding in its place:
1249.2 (two times)	Part 240	Part 1240.
1249.3	103.5 of this chapter	103.5 of 8 CFR chapter I.

Chapter V, Subchapter B

PART 1270—PENALTIES FOR DOCUMENT FRAUD

39. The authority citation for part 1270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

40. Amend part 1270 as follows:

AMENDMENT TABLE FOR PART 1270

Amend:	By removing the reference to:	And adding in its place:
1270.1(c)	287.4	1287.4.
1270.1(d)	103.5a(a)(2) of this chapter	103.5a(a)(2) of 8 CFR chapter I.
1270.1(h)	242.1 of this chapter	242.1 of 8 CFR chapter I.
1270.1(i)	103.5a(a)(2) of this chapter (each time it appears).	103.5a(a)(2) of 8 CFR chapter I.

Chapter V, Subchapter B

PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS

41. The authority citation for part 1274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

42. Amend part 1274a as follows:

AMENDMENT TABLE FOR PART 1274A

Amend:	By removing the reference to:	And adding in its place:
1274a.10	Part 103 of this chapter	Part 103 of 8 CFR chapter I.
1274a.10	242.1 of this chapter	242.1 of 8 CFR chapter I.
1274a.12(b)(1)	214.2(a) of this chapter	214.2(a) of 8 CFR chapter I.
1274a.12(b)(2)	214.2(a) of this chapter	214.2(a) of 8 CFR chapter I.
1274a.12(b)(3)	214.2(c) of this chapter	214.2(c) of 8 CFR chapter I.
1274a.12(b)(5)	214.2(e) of this chapter	214.2(e) of 8 CFR chapter I.
1274a.12(b)(6)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1274a.12(b)(6)(ii)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1274a.12(b)(7)	214.2(g) of this chapter	214.2(g) of 8 CFR chapter I.
1274a.12(b)(8)	214.2(g) of this chapter	214.2(g) of 8 CFR chapter I.
1274a.12(b)(9)	214.2(h) of this chapter	214.2(h) of 8 CFR chapter I.
1274a.12(b)(10)	214.2(i) of this chapter	214.2(i) of 8 CFR chapter I.

AMENDMENT TABLE FOR PART 1274A—Continued

Amend:	By removing the reference to:	And adding in its place:
1274a.12(b)(11)	214.2(j) of this chapter	214.2(j) of 8 CFR chapter I.
1274a.12(b)(12)	214.2(l) of this chapter	214.2(l) of 8 CFR chapter I.
1274a.12(b)(13)	214.2(o) of this chapter	214.2(o) of 8 CFR chapter I.
1274a.12(b)(14)	214.2(p) of this chapter	214.2(p) of 8 CFR chapter I.
1274a.12(b)(15)	214.2(q)(1) of this chapter	214.2(q)(1) 8 CFR of chapter I.
1274a.12(b)(16)	214.2(r) of this chapter	214.2(r) of 8 CFR chapter I.
1274a.12(b)(17)	214.2(o) of this chapter	214.2(o) of 8 CFR chapter I.
1274a.12(b)(18)	214.2(o) of this chapter	214.2(o) of 8 CFR chapter I.
1274a.12(b)(19)	214.2(e) of this chapter	214.2(e) of 8 CFR chapter I.
1274a.12(b)(20)	214.2 or 214.6 of this chapter	214.2 or 216 of 8 CFR chapter I.
1274a.12(c)(1)	214.2(a)(2) of this chapter	214.2(a)(2) of 8 CFR chapter I.
1274a.12(c)(2)	214.2(e) of this chapter	214.2(e) of 8 CFR chapter I.
1274a.12(c)(3)(i)	214.2(f) of this chapter	214.2(f) of 8 CFR chapter I.
1274a.12(c)(4)	214.2(g) of this chapter	214.2(g) of 8 CFR chapter I.
1274a.12(c)(5)	214.2(j) of this chapter	214.2(j) of 8 CFR chapter I.
1274a.12(c)(6)	214.2(m) of this chapter	214.2(m) of 8 CFR chapter I.
1274a.12(c)(7)	214.2(n) of this chapter	214.2(ng) of 8 CFR chapter I.
1274a.12(c)(8)	Part 208	Part 1208.
1274a.12(c)(8)(i) (two times)	208.7	1208.7.
1274a.12(c)(9)	245.13(j) and 245.15(n)	1245.13(j) and 1245.15(n).
1274a.12(c)(16)	Part 249	Part 1249.
1274a.12(c)(20)	Part 210 of this chapter	Part 210 of 8 CFR chapter I.
1274a.12(c)(22)	Part 245a of this chapter	Part 245a of 8 CFR chapter I.
1274a.12(c)(23)	215.2(q)(15) of this chapter	215.2(q)(15) of 8 CFR chapter I.
1274a.14(a)(2)	208.3 and 208.4	1208.3 and 1208.4

Chapter V, Subchapter B

PART 1292—REPRESENTATION AND APPEARANCES

43. The authority citation for part 1292 continues to read as follows:

Authority: Secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

44. Amend part 1292 as follows:

AMENDMENT TABLE FOR PART 1292

Amend:	By removing the reference to:	And adding in its place:
1292.1(a)(1)	1.1(f)	1001(f).
1292.1(a)(6)	1.1(f)	1001(f).
1292.3(a)(1)	3.102	1003.102.
1292.3(a)(1)	Part 3	Part 1003.
1292.3(a)(2)	1.1(f)	1001(f).
1292.3(a)(2)	1.1(j)	1001(j).
1292.3(b)(1) (two times)	3.102	1003.102.
1292.3(c)(1)	3.102(h)	1003.102(h).
1292.3(c)(3)	3.105 and 3.106	1003.105 and 1003.106.
1292.3(c)(4)	3.102(h)	1003.102(h).
1292.3(d)(1)(ii)	3.104(a)	1003.104(a).
1292.3(e)(1)	3.102	1003.102.
1292.3(e)(1)	103.5a of this chapter	103.5a of 8 CFR chapter I.
1292.3(e)(3)	3.105(c)	1003.105(c).
1292.3(f)(1)	3.106(a)	1003.106(a).
1292.4(a)	3.16 and 3.36	1003.16 and 1003.36.
1292.4(b)	this chapter (each place that it appears)	8 CFR chapter I.
1292.6	Part 3	Part 1003.

Chapter V, Subchapter C

PART 1337—OATH OF ALLEGIANCE

45. The authority citation for part 1337 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

46. Amend part 1292 as follows:

AMENDMENT TABLE FOR PART 1337

Amend:	By removing the reference to:	And adding in its place:
All sections	this chapter (each place that it appears)	8 CFR chapter I.

Dated: February 28, 2003.

Joan L. Larsen,

Deputy Assistant Attorney General.

[FR Doc. 03–5154 Filed 2–28–03; 3:10 pm]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 00–105–2]

RIN 0579–AB36

Payments for Cattle and Other Property Because of Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the regulations regarding payments made in connection with animals and other property disposed of because of bovine tuberculosis. The interim rule provided that the Animal and Plant Health Inspection Service will make payments to owners of dairy cattle and other property used in connection with a dairy business and a dairy processing plant in the area of El Paso, TX, provided the owners agreed to dispose of their herds within 2 years, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. As amended by this document, we will allow owners 3 years to dispose of their herds. The interim rule was necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (tuberculosis) is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis.* It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, ''Tuberculosis'' and in the ''Uniform Methods and Rules—Bovine Tuberculosis Eradication,'' January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. Additionally, the regulations in 9 CFR part 50 (referred to below as the regulations) provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis, in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease.

In an interim rule effective and published in the **Federal Register** on July 26, 2002 (57 FR 48745–48752, Docket No. 00–105–1), we amended the regulations in part 50 by providing that APHIS will make payments to owners of dairy cattle and other property used in connection with a dairy business and a dairy processing plant in the area of El Paso, TX, provided the owners agreed to dispose of their herds, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. The interim rule was necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

Comments on the interim rule were required to be received on or before September 24, 2002. We did not receive any comments by that date. However, we are making one change to the interim rule. One condition of eligibility for payment for dairy cattle was that each owner agree to cease operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 2 years after eligible owners signed their respective agreements. We have learned from representatives of dairy cattle owners affected by the interim rule that 2 years is an insufficient amount of time to dispose of all of their cattle through market channels. Therefore, we are amending the regulations to provide that owners of dairy cattle and other property in the described area must cease all dairy cattle operations and dispose of all sexually intact cattle on the dairy operations premises no later than 3 years after all eligible owners sign their respective agreements.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

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

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, the interim rule amending 9 CFR part 50 that was published at 67 FR 48745–48752 on July 26, 2002, is adopted as a final rule with the following changes:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. In § 50.17, paragraphs (b)(1) and (d) are revised to read as follows:

§ 50.17 Payment.

* * * * *

(b) * * *

(1) Cease all dairy cattle operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 3 years after all eligible owners have signed their respective agreements;

* * * * *

(d) Any dairy cattle added to a premises after the date an owner has signed the agreement required under paragraph (b) of this section will not be included in the rate calculation in paragraph (c) of this section and must be disposed of within 3 years after all eligible owners have signed their respective agreements.

* * * * *

Done in Washington, DC, this 28th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–5133 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150–AH10

Source Material Reporting Under International Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations which require licensees to report their holdings of source material (uranium and thorium) to the agency. Currently, licensees are required to file a report with the NRC whenever they receive or transfer uranium or thorium mined outside the United States (U.S.). The amended regulations require licensees to report the receipt or transfer of source material controlled under any of the various international Agreements for Peaceful Nuclear Cooperation. This change will enable the U.S. Government to maintain the comprehensive national inventory of nuclear materials required under these agreements. This rule also allows licensees additional flexibility in submitting their annual source material inventory statements. The amended regulations permit licensees to submit these statements along with their material status reports for special nuclear material.

DATES: The final rule is effective October 1, 2003, unless significant adverse comments are received by April 4, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet 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 to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126; e-mail *mlh1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Current regulations in 10 CFR Part 40 and 10 CFR part 150 require each NRC and Agreement State materials licensee to maintain an updated inventory of its holdings of source material of foreign origin (*e.g.*, thorium, depleted uranium, and natural uranium mined outside the U.S.). Licensees are required to submit a report to the NRC whenever they receive or transfer source material of foreign origin. Some licensees are also required to submit an annual statement detailing their inventory of such material. Information in these reports is entered into a national nuclear materials database called the Nuclear Materials Management and Safeguards System (NMMSS). The NMMSS, managed jointly by the NRC and the Department of Energy (DOE), is the U.S. Government's official computerized accounting system for the possession, use, and shipment of nuclear materials (primarily special nuclear material and source material) in the U.S., whether of foreign or domestic origin.

The U.S. Government uses data in the NMMSS to meet its source material reporting requirements under a number of international agreements promoting global cooperation in the peaceful uses of nuclear energy. U.S. participation in international Agreements for Peaceful Nuclear Cooperation is provided for in Section 123 of the Atomic Energy Act, and approximately 24 such Agreements are in place and active at this time. Under these Agreements, the U.S. Government is obliged to impose controls on the use of certain nuclear materials, ensure that such materials are used only for peaceful ends, and enforce other conditions placed on the import, export, or transfer of specific equipment and nuclear material. As part of an information exchange required by the Agreements, the U.S. Government periodically provides to the governments of cooperating countries an updated inventory of certain nuclear material held in the U.S. To enable the U.S. Government to meet this obligation, the NRC must ensure that licensees document movement within the U.S. of nuclear material subject to these Agreements, and track any additional nuclear material produced through the use of that material.

As noted, existing NRC regulations require licensees to track and report their holdings of source material of foreign origin, *i.e.*, source material mined outside the U.S. However, under the Agreements for Peaceful Nuclear Cooperation to which it is a party, the U.S. Government is required to report a different range of source material. The NRC's current reporting requirements, which focus on the national origin of source material, no longer adequately serve this purpose. The aim of this rulemaking is to align the NRC's source material reporting requirements for licensees with international reporting requirements agreed to by the U.S. Government. The new requirements will require licensees to track and report source material which the U.S. Government is obliged to report under existing international agreements.

The amended regulation will replace requirements that licensee holdings of foreign-origin source material be reported to the NRC with requirements that licensees track and report source material with foreign obligations. Source material with foreign obligations (or foreign-obligated source material) is nuclear material that the U.S. is obliged to track, control, and report to foreign governments under existing international agreements. Requiring NRC licensees to track and report foreign-obligated source material will result in a database that is more robust and that will better satisfy the U.S. Government's need for specific information on source materials with foreign obligations. Part 110 was revised in 2000 to require importers and

exporters to report on license applications the foreign obligations associated with nuclear material being imported or exported (65 FR 70287; November 22, 2000).

A change has also been made to the timing of the yearly statement required for source material with a foreign obligation, providing licensees with increased flexibility. Licensees are given a choice of submitting their annual inventory statements either at the same time as they submit the material status reports on special nuclear material that are required under Parts 72 and 74, or within 30 days after September 30th of each year, as is currently required.

In addition, a change is made to require reporting for any Agreement State licensee who exports one kilogram or more of uranium or thorium source material. The current regulations only require licensees that import such material to report. This information is needed because the U.S. Government is required to report all exports of source material of 1 kg or more to the International Atomic Energy Agency (IAEA). Part 40 already contains this requirement.

Finally, to clarify the scope of this amendment, parts 40 and 150 will define the term ''foreign obligations'' for use in those parts to mean ''the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.'' This definition is consistent with the definition of ''obligations'' in part 110.

Section-by-Section Analysis

Section 40.4—Definitions

This section is revised to add a definition of ''foreign obligations.''

Section 40.64—Reports

This section is revised to reflect a change from a requirement to report source material of foreign origin to reporting source material with foreign obligations. This section is also revised to allow licensees to submit their yearly inventory statement of source material with foreign obligations with their material status reports on special nuclear material, providing more flexibility to licensees.

Section 150.3—Definitions

This section is revised to add a definition of ''foreign obligations.'' In addition, the format of this section is updated to conform to current Office of the Federal Register standards for the listing of definitions in 10 CFR Chapter 1. The paragraph designations are removed and the definitions in the section are presented in alphabetical order.

Section 150.17—Submission to Commission of Source Material Reports

This section is revised to reflect a change from a requirement to report source material of foreign origin to reporting source material with foreign obligations. This section is also revised to require the reporting of exports of 1 kilogram or more of source material. This amendment makes Part 150 consistent with Part 40, which already requires the reporting of such exports. In addition, this section is revised to allow licensees to submit their yearly inventory statement of source material with foreign obligations with the licensee's material status reports on special nuclear material, providing more flexibility to licensees.

Procedural Background

Because the NRC considers this action to be noncontroversial and because it is necessary in order to support the U.S. Government's obligations in this area, the NRC is using the direct final rule process for this rule. The amendments to the rule will become effective on October 1, 2003. However, if the NRC receives significant adverse comments on this direct final rule by April 4, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

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. The NRC requests comments on this direct final 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.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is revising the reporting requirements for source material, using as the basis of the requirement whether the material has

foreign obligations rather than the foreign origin of the material. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1), (c)(2), and (c)(3); therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule decreases the burden on licensees to report the transfer, import, or export of foreign origin source material (NRC Form 741, OMB Approval Number 3150–0003) by reducing the number of responses by 855 for an annual burden reduction of 641 hours (855 responses × 0.75 hrs per response). Because the burden for this direct final rule is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0020, –0032, and –003.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection request unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. The information reported is necessary to satisfy U.S. Government obligations under nuclear agreements for cooperation. Because not all foreign origin source material has associated foreign obligations, the rule may result in an insignificant decrease in regulatory burden on licensees. DOE/NRC Form-741 is used for the Nuclear Material Transaction Reports required by Parts 40 and 150. Approximately 36,500 DOE/NRC Form-741s are filed each year. Two NRC licensees submit the majority of the reports documenting the transfer, import, or export of foreign origin source material. These licensees have indicated that approximately 855 fewer reports will be required if the reporting requirement is changed to report only foreign obligation source material. The burden associated with each report is 0.75 hours for a total burden reduction of 641 hours.

The U.S. Government is required to report to IAEA the export of 1 kg or more of source material. The inclusion of Agreement State licensee reporting requirements for exports of 1 kg or more of source material should result in an insignificant increase in regulatory burden to licensees. Based on current information for the last 6 years, only 1 Agreement State licensee has exported source material of 1 kg or more. This licensee actually submitted a DOE/NRC Form-741 for its exports.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is necessary to reflect the nuclear non-proliferation policies of the Executive branch and U.S. Government obligations under nuclear agreements for cooperation.

Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR chapter I. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, 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. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 40 and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 40.4, the definition of *Foreign obligations* is added to read as follows:

§ 40.4 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

3. In § 40.64, paragraphs (a) and (b) are revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory, in any manner, of uranium or thorium source material with foreign obligations by 1 kilogram or more or who imports or exports 1

kilogram of uranium or thorium source material shall complete a Nuclear Material Transaction Report in computer-readable format in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees''). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Safety, Washington, DC 20555–0001. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee authorized to possess at any one time and location more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under part 72 or 74, a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

4. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97—425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

5. In § 150.3, the paragraph designations are removed, the definitions are arranged in alphabetical order, and the definition of *Foreign obligations* is added to read as follows:

§ 150.3 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

6. In § 150.17, paragraphs (a) and (b) are revised to read as follows:

§ 150.17 Submission to Commission of source material reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, each person who, pursuant to an Agreement State specific license, transfers or receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material with foreign obligations or who imports or exports 1 kilogram or more of uranium or thorium source material shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees''). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001. Each person who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each person who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person authorized to possess at any one time and location, under an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under part 74, a statement of the licensee's source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

Dated at Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–5168 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM244, Special Conditions No. 25–228–SC]

Special Conditions: Learjet Model 24/25 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Learjet Model 24/25 Series airplanes, modified by Avcon Industries, Inc. These modified airplanes will have novel and unusual design features when compared to the

state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions and Support, Inc., Air Data Display Units, and a single Innovative Solutions and Support, Inc., Analog Interface Unit that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 20, 2003. Comments must be received on or before April 4, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM244, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM244.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 10, 2002, Avcon Industries, Inc., P.O. Box 748, Newton, Kansas 67144, applied for a supplemental type certificate (STC) to modify Learjet Model 24/25 series airplanes. These models are currently approved under Type Certificate No. A10CE. The Learjet model 24 series airplanes have two aft-mounted General Electric Turbojet engines, a maximum operating altitude of 45,000 feet, and carries a crew of two with a maximum of six passengers. The Learjet model 25 series airplanes have two aft-mounted General Electric Turbojet engines, a maximum operating altitude of 51,000 feet, and carries a crew of two with a maximum of eight passengers. The modification incorporates the installation of dual Innovative Solutions and Support, Inc. (IS&S) Air Data Display Units (ADDU) and a single IS&S Analog Interface Unit (AIU) that are replacements for the existing altimetry system. The dual IS&S ADDU and a single IS&S AIU system use electronics to a far greater extent than the original altimetry system and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of these signals could result in loss of altitude, or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1992, Avcon Industries, Inc., must show that the Learjet Model 24/25 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the Learjet Model 24/25 Series airplanes includes § 21.29; 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25–2 and 25–4. Other applicable amendments, regulations, and special conditions are noted in Type Certificate Data Sheet (TCDS) A10CE.

If the Administrator finds that the applicable airworthiness regulations (that is, part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 24/25 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Learjet Model 24/25 series airplanes must comply with the fuel vent and exhaust emission requirement of 14 CFR part 34 and the noise certification requirement of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Avcon Industries, Inc., apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate Data Sheet (TCDS) A10CE to incorporate the same or similar novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Learjet Model 24/25 Series airplanes modified by Avcon Industries, Inc., will incorporate installation of dual IS&S Air Data Display Units (ADDU), and a single IS&S Analog Interface Unit (AIU) that will perform critical functions. These advanced systems use electronics to a far greater extent than the original altimetry system and may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of

part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 24/25 series airplanes, modified by Avcon Industries, Inc. These special conditions require that new sensitive avionics/electronics and electrical systems that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Learjet Model 24/25 series airplanes modified by Avcon Industries, Inc. Should Avcon Industries, Inc., apply at a later date for a supplemental type certificate to modify any other model already included on Type Certificate A10CE to incorporate the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on Learjet Model 24/25 series airplanes modified by Avcon Industries, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Model 24/25 series airplanes modified by Avcon Industries, Inc.

1. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on February 20, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–5129 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14463; Airspace Docket No. 03–ACE–16]

Modification of Class D Airspace; and Modification of Class E; Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class D and Class E airspace at Dubuque, IA. An examination of controlled airspace for Dubuque, IA revealed discrepancies in the Dubuque Regional Airport, IA, airport reference point used in the legal descriptions for the Dubuque, IA Class D and Class E airspace areas. This action corrects the discrepancies by modifying the Dubuque, IA Class D, Class E4 and Class E5 airspace areas. It also incorporates the revised Dubuque Regional Airport, IA airport reference point in the Class D, Class E4 and Class E5 airspace legal descriptions.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14463/ Airspace Docket No. 03–ACE–16, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class D airspace, the Class E airspace designated as an extension to a Class D or Class E surface area and the Class E airspace area extending upward from 700 feet or more above the surface of the earth at Dubuque, IA. An examination of controlled airspace for Dubuque, IA revealed discrepancies in the Dubuque Regional Airport, IA airport reference point used in the legal descriptions for these airspace areas. This amendment incorporates the revised Dubuque Regional Airport, IA airport reference point and brings the legal descriptions of these airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace designated as an extension to a Class D or Class E surface area and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6004 and 6005, respectively, of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14463/Airspace Docket No. 03–ACE–16.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ACE IA D Dubuque, IA

Dubuque Regional Airport, IA
(Lat. 42°24′07″N., long. 90°42′34″W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of Dubuque Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE IA E4 Dubuque, IA

Dubuque Regional Airport, IA
(Lat. 42°24′07″N., long. 90°42′34″W.
Dubuque VORTAC
(Lat. 42°24′05″N., long. 90°42′33″W.)

That airspace extending upward from the surface within 2.6 miles each side of the 321° radial of the Dubuque VORTAC extending from the 4.2-mile radius of Dubuque Regional Airport to 7 miles northwest of the VORTAC and within 2.6 miles each side of the 132° radial of the Dubuque VORTAC extending from the 4.2-mile radius of Dubuque Regional Airport to 7 miles southeast of the VORTAC and within 2.6 miles each side of the 189° radial of the Dubuque VORTAC extending from the 4.2-mile radius of Dubuque Regional Airport to 7 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Dir4ectory.

* * * * *

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

* * * * *

ACE IA E5 Dubuque, IA

Dubuque Regional Airport, IA
(Lat. 42°24′07″N., long. 90°42′34″W.)
Dubuque VORTAC
(Lat. 42°24′05″N., long. 90′42′33″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Dubuque Regional Airport and within 2.6 miles each side of the 321° radial of the Dubuque VORTAC extending from the VORTAC to 7 miles northwest of the airport and within 3 miles each side of the 133° radial of the Dubuque VORTAC extending from the VORTAC to 13.5 miles southeast of the airport and within 3 miles each side of the 189° radial to the Dubuque VORTAC extending from the VORTAC to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO on February 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–5132 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–12]

Establishment of Class E Airspace; Moundridge, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Moundridge, KS. An Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17 ORIGINAL Standard Instrument Approach Procedure (SIAP) and an RNAV (GPS) RWY 35 ORIGINAL SIAP have been developed to serve Moundridge Municipal Airport, Moundridge, KS. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing these approaches.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

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

SUPPLEMENTARY INFORMATION:

History

On Monday, December 2, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Moundridge, KS. The proposal was to establish controlled airspace extending upward from 700 feet AGL to protect aircraft executing instrument approaches to Moundridge Municipal Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Moundridge, KS. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures at Moundridge Municipal Airport. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE KS E5 Moundridge, KS

Moundridge Municipal Airport, KS
(Lat. 38°12′25″ N., Long. 97°30′11″ W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5-mile radius of Moundridge Municipal Airport.

* * * * *

Issued in Kansas City, MO on February 19, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–5130 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

Protection of Stratospheric Ozone

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 81 to 85, revised as of July 1, 2002, on page 342, in § 82.4, remove Table I at the end of paragraph (t)(4).

[FR Doc. 03–55508 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0036; FRL–7292–8]

Hexythiazox; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of hexythiazox in or on date, dried fruit. The Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0036, must be received on or before May 5, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of March 14, 2002 (67 FR 11480) (FRL–6826–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (1E6325) by the Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. That notice included a summary of the petition prepared by Gowan Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.448 be amended by establishing a tolerance for combined residues of the miticide, hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the 4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety in or on date, dried fruit at 1.0 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including

all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of hexythiazox on date, dried fruit at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile and Endpoints

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by hexythiazox and the endpoints use in risk assessment are discussed in Unit III. A. and B. of the final rule on hexythiazox pesticide tolerances published in the **Federal Register** of April 18, 2001 (66 FR 19879) (FRL–6778–8). Please refer to this document should you desire detailed toxicological information on hexythiazox.

The Agency has identified an acute dietary endpoint for females 13 years and older. The acute population adjusted dose (aPAD) for females is 2.4 milligrams/kilograms/day (mg/kg/day). No acute dietary endpoint was identified for the general population including infants and children; a dose and endpoint attributable to a single exposure were not identified from the available oral toxicity studies, including maternal toxicity in the developmental toxicity studies. The chronic population adjusted dose (cPAD) for all populations is 0.025 mg/kg/day. Hexythiazox has been classified as a category C, possible human carcinogen, for cancer. The calculated Q* for hexythiazox is 2.22 x 10^{-2}.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.448) for the combined residues of hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the 4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety in or on a variety of raw agricultural commodities (RAC) including tolerances for milk, fat, and meat byproducts of cattle, goat, horse, sheep, and swine. Risk assessments were conducted by EPA to assess dietary exposures from hexythiazox in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The dietary exposure evaluation model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the Department of Agriculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Default processing factors were used, and 100 percent crop treated (PCT) information for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A partially-refined dietary analysis was performed using anticipated residue levels for most crops (calculated from field trial data) and PCT or anticipated market-share information for all crops.

iii. *Cancer.* A partially-refined dietary-exposure analysis was performed using anticipated residue (AR) levels for most crops, processing factors where applicable, and PCT or anticipated market share information for all crops.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group, and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The following Table 1 provides a summary of the anticipated residue (AR) and PCT information used for the chronic and cancer exposure assessments. The Agency has issued emergency exemptions to the state of California for use of hexythiazox on dates since 1998. The PCT information for dates is based on applications made under these emergency exemptions. The majority of dates grown in the United States are grown in California.

TABLE 1.—SUMMARY OF HEXYTHIAZOX ANTICIPATED RESIDUES (AR) FOR CHRONIC AND CANCER DIETARY EXPOSURE ASSESSMENT BASED ON FIELD-TRIAL DATA

Commodity	Established or HED Recommended Tolerances (ppm)	AR (ppm)	CT/Anticipated Market Share (%)
Almond hulls	10	2.7	2
Almond nutmeat	0.30	0.046	2
Apples	0.50	0.12	4
Apple juice	0.50	0.12	4
Apricots	1.0	0.20	2
Caneberry crop subgroup	1.0	0.34	15
Cherries	1.0	0.20	<1
Cottonseed meal	0.20	0.059	1
Dates	1.0	0.24	45
Fat	0.02	0.0000076	
Hog Fat	0.02	6.3×10^{-10}	
Hog Liver	0.02	4.8×10^{-9}	
Hog Meat by-products (except liver)	0.02	2.0×10^{-9}	
Hops	2.0	2.0	45
Liver	0.02	0.000058	
Meat by-products (except liver)	0.02	0.000024	
Milk	0.02	0.0000053	
Nectarines	1.0	0.054	2
Other nutmeat	0.30	0.046	<1
Peaches	1.0	0.14	1
Pears	0.30	0.30	3
Pecans	0.30	0.01	<1
Peppermint, tops	2.0	0.77	5
Plum	0.10	0.050	1
Plum, prune, dried	0.40	0.050	<1
Plum, prune, fresh	0.10	0.050	<1
Refined cottonseed oil	0.20	0.059	1
Spearmint, tops	2.0	0.77	5
Strawberries	3.0	0.75	14
Undelinted cottonseed	0.20	0.059	1
Wet apple pomace	0.80	0.12	4

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally)

tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which hexythiazox may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for hexythiazox in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of hexythiazox.

The Agency uses the generic estimated environmental concentration (GENEEC) or the pesticide root zone/exposure analysis modeling system (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to hexythiazox they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the EECs of hexythiazox for acute exposures are estimated to be 1.81 parts per billion (ppb) for surface water and 0.009 ppb for ground water. The EECs for chronic exposures are estimated to be 0.91 ppb for surface water and 0.009 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Hexythiazox is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether hexythiazox has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that hexythiazox has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors (UF) in calculating a dose level that poses no appreciable risk to humans.

The prenatal and postnatal toxicology data base for hexythiazox is complete with respect to FQPA considerations. The nature of the toxic effects caused by hexythiazox are discussed in Unit III. D. of the final rule on hexythiazox pesticide tolerances published in the **Federal Register** of April 18, 2001 (66 FR 19879) (FRL–6778–8). Please refer to this document should you desire detailed toxicological information on hexythiazox regarding FQPA considerations.

The results of the prenatal and postnatal toxicology studies indicated no increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to hexythiazox. There is a complete toxicity data base for hexythiazox and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed and reduced to 1X. The FQPA factor is removed because an additional safety factor is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a

point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = chronic (cPAD) − (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the U.S. EPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An acute dietary endpoint has only been identified for females (13 years and older). Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to hexythiazox will occupy less than 1% of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to hexythiazox in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO HEXYTHIAZOX

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females 13 years and older	2.4	<1%	1.81	0.009	72,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to hexythiazox from food will utilize less than 1% of the cPAD for the U.S. population and all infants and children subpopulations. There are no residential uses for hexythiazox. There is potential for chronic dietary exposure to hexythiazox in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HEXYTHIAZOX

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.025	<1%	0.91	0.009	870
Children	0.025	<1%	0.91	0.009	250
Infants	0.025	<1%	0.91	0.009	250

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Hexythiazox is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Hexythiazox has been classified as a Category C possible human carcinogen ($Q_1^* = 2.22 \times 10^{-2}$). Using the exposure assumptions discussed in this unit for cancer, the carcinogenic risk estimate from food for the general U.S. population is 2.5×10^{-7}. There is potential for chronic dietary exposure to hexythiazox in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the estimated cancer risk for aggregate exposure to exceed 1×10^{-6} as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO HEXYTHIAZOX

Population Subgroup	Q_1^*	Estimated Carcinogenic Risk (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Cancer DWLOC (ppb)
U.S. population	2.22×10^{-2}	2.5×10^{-7}	0.91	0.009	1.2

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to hexythiazox residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The high-performance liquid chromatography/ultraviolet (HPLC/UV) analytical method used for determining the combined residues of hexythiazox and its metabolites in dates is adequate for data collection purposes. Adequate method validation data were submitted. This method is based on Method AMR-985–87, which has been deemed acceptable as a tolerance enforcement method in conjunction with a petition for use on apples. The method has been validated for use on various crop commodities, and has been forwarded to the Food and Drug Administration (FDA) for inclusion in Pesticide Analytical Method Volume II (PAM II). This earlier method is considered sufficient to enforce the proposed permanent tolerances for residues in or on dates.

B. International Residue Limits

There are no Mexican, Canadian or Codex maximum residue limits (MRLs) established for hexythiazox in or on dates.

C. Magnitude of Residues

An adequate number of residue field trials reflecting the proposed use directions were submitted to EPA to demonstrate that the tolerance for date, dried fruits at 1.0 ppm will not be exceeded when hexythiazox products labeled for this use are used as directed.

D. Rotational Crop Restrictions

As dates are a perennial crop, confined and field rotational crop studies are not required to support the subject petitions.

V. Conclusion

Therefore, the tolerance is established for combined residues of hexythiazox, trans-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxothiazolidine-3-carboxamide and its metabolites containing the 4-chlorophenyl-4-methyl-2-oxo-3-thiazolidine moiety, in or on date, dried fruit at 1.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0036 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 5, 2003.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov,* or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its

inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0036, to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.448 is amended by alphabetically adding the commodity ''date, dried fruit'' to the table in

paragraph (a), and by removing and reserving paragraph (b) as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

Commodity	Parts per million
Date, dried fruit	1.0

(b) [Reserved]

* * * * *

[FR Doc. 03–5194 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0075; FRL–7296–2]

Folpet; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of folpet (N-(trichloromethylthio)phthalimide) in or on hop, dried cones. Makhteshim-Agan of North America Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective March 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0075, must be received on or before May 5, 2003.

ADDRESSES: Written objections and hearing requests– may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard P. Keigwin, Jr., Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–7618; e-mail address: *keigwin.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111), Crop production.
- Industry (NAICS 112), Animal production.
- Industry (NAICS 311), Food manufacturing.
- Industry (NAICS 32532), Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0075. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_(_00.html,* a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of January 9, 2003 (68 FR 1182) (FRL–7287–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 2E6512) by Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100 New York, NY 10176. That notice included a summary of the petition prepared by Makhteshim-Agan of North America Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.191 be amended by establishing a tolerance for residues of the fungicide folpet, (N–(trichloromethylthio)phthalimide), in or on hop at 120 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to

exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of folpet on hop, dried cones at 100 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by folpet are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	NOAEL = 160 milligrams/kilogram/day (mg/kg/day) LOAEL = 500 mg/kg/day based on 5 percent decrease in body weight
870.3150	90–Day oral toxicity in nonrodents	NOAEL = <790 mg/kg/day (lowest dose tested)(LDT) LOAEL = 790 mg/kg/day based on decreased weight gain in males and females, testicular atrophy in males
870.3200	28–Day dermal toxicity	NOAEL = 1 mg/kg/day LOAEL = 10 mg/kg/day based on dermal irritation;systemic toxicity as reduced body weight gain occurred only at doses greater than 10 mg/kg/day
870.3700	Prenatal developmental in rodents Crl: COBS-CD-(SD) BR strain.	Maternal NOAEL = 10 mg/kg/day LOAEL = 60 mg/kg/day based on reduced body weight Developmental NOAEL = 60 mg/kg/day LOAEL = 360 mg/kg/day based on possible incomplete ossification of one or both pubes and/or eschia
870.3700	Prenatal developmental in rodents CD Rats	Maternal NOAEL = 150 mg/kg/day LOAEL = 550 mg/kg/day based on decreased body weight gain, soft feces Developmental NOAEL = <150 mg/kg/day (LDT) LOAEL = 550 mg/kg/day based on small fetuses, reduced ossification of interparietal bone as well as increase in angulated ribs
870.3700	Prenatal developmental in nonrodents HY/CR Albino Rabbits	Maternal NOAEL = 40 mg/kg/day LOAEL = 160 mg/kg/day based on decrease in body weight gain and food consumption Developmental NOAEL = 10 mg/kg/day LOAEL = 40 mg/kg/day based on delayed ossification of sternebrae and lack of ossification of caudal vertebrae distal to caudal vertebra 15.
870.3700	Prenatal developmental in nonrodents NZW Rabbits	Maternal NOAEL = 10 mg/kg/day LOAEL = 20 mg/kg/day based on decreased food consumption & body weight gain during gestation. At 60 mg/kg/day, decreased food consumption & body weight gain, hydrocephalus and related skull malformations. Developmental NOAEL = 10 mg/kg/day LOAEL = 20 mg/kg/day based on Increased incidence of hydrocephalus & domed skull & irregularly shaped fontanelles
870.3800	Reproduction and fertility effects Charles River Rat	Parental/Systemic NOAEL = 19.1 mg/kg/day in males; 22.5 mg/kg/day in females LOAEL = 112 mg/kg/day in males and 134 mg/kg/day in females based on diffuse hyperkeratosis of the non-glandular epithelium of in both sexes of both generations. Reproductive NOAEL = 370 mg/kg/day in males; 436 mg/kg/day in females highest dose tested (HDT) Offspring NOAEL = 112 mg/kg/day in males and 134 mg/kg/day in females LOAEL = 370 mg/kg/day in males and 565 mg/kg/day in females based on lower pup body weights primarily in the F1 litter generation

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects Sprague-Dawley Rat	Parental/Systemic NOAEL = 35 mg/kg/day LOAEL = 160 mg/kg/day based on decreased weight gain in F1 offspring. Reproductive NOAEL = 35 mg/kg/day LOAEL = 160 mg/kg/day based on decreased fertility in males
870.4100	Chronic toxicity rodents Crl:CD(SD)BR albino rats	NOAEL = 10 mg/kg/day LOAEL = 40 mg/kg/day based on ulceration/erosion, hyperkeratosis of stomach in males and females
870.4100	Chronic toxicity rodents Fischer 344 Rat	NOAEL = 25 mg/kg/day LOAEL = 50 mg/kg/day based on hyperkeratosis of nonglandular epithelium of stomach in both sexes.
870.4100	Chronic toxicity rodents	NOAEL = 12 mg/kg/day in males; 15 mg/kg/day in females LOAEL = 81 mg/kg/day in males and 100 mg/kg/day in females based on an increase in incidence and severity of hyperkeratosis of the esophagus and nonglandular epithelium of the stomach.
870.4100	Chronic toxicity dogs	NOAEL = 10 mg/kg/day LOAEL = 60 mg/kg/day based on decreased food consumption & body weight gain; decreased serum cholesterol and serum proteins
870.4200	Carcinogenicity rats Crl:CD(SD)BR albino rats	NOAEL = Not achieved. LOAEL = 10 mg/kg/day on increased incidence of C-cell adenoma & carcinoma of thyroid in males & intrietical cell tumors of testes
870.4200	Carcino-genicity rats Fischer 344 Rat	NOAEL =50 mg/kg/day LOAEL = 100 mg/kg/day on increased benign fibroepithelial tumor of the mammary glands & C-cell adenoma of the thyroid No evidence of carcinogenicity
870.4200	Carcinogenicity mice B6C3F1 Strain	NOAEL = Not achieved. LOAEL = 150 mg/kg/day based on duodenal carcinoma and stomach papilloma both sexes; malignant lymphoma in high dose females only Evidence of carcinogenicity
870.4200	Carcinogenicity mice CD-1 Mice	NOAEL = Not achieved. LOAEL = 150 mg/kg/day based on a dose related increase in incidence of intestinal adenomas and adenocarcinomas in both sexes Evidence of carcinogenicity
870.5195	Mutagenic-Lymphoma Mutation in L5178Y/TK mouse lymphoma cells	Positive for forward mutations in L5178Y/TK mouse lymphoma cells. Higher concentration necessary in the presence of S-9 fraction
870.5275	Mutagenic-Sex Link Recessive in Drosophilia	Positive for sex linked recessive lethals
870.5300	Mutagenic-*In vivo* Cytogenetic toxicity in Mouse	No effect on the incidence of coat color spots - negative for mutations. Significant pup mortality at all doses levels. Decreased survival of pups during lactation. Increased melanocyte toxicity in pups at 4310 ppm, decreased weight gain in dams at 4310.
870.5300	Mutagenic-*In Vivo* Cytogenetic in Mouse	Decreases in the number and percentage of live born pups; maternal weight gain
870.5375	Mutagenic-Chromosome Aberration in Rats	Not a clastogen at the HDT. No measure of cytotoxicity in bone marrow. Dose used not supported by evidence that the HDT was a maximum tolerated dose.
870.5380	Cytogenetics Chromosome Aberration in Chinese hamster ovary cells	Folpet was tested up to toxicity in non-activated (2.5 µg/mL) & activated Chinese hamster ovary cells (CHO) (25.7 & 75.0 µg/mL) in 10 & 20 hour assays. Results: There was a 10-30 fold difference in toxicity sensitivity. The test article induced chromosomal aberrations at marginally cytotoxic concentrations of 0.75 µg/mL in the non-activated system, and 0.26 µg/mL in the 10 hour activ. assay, but required 25.0 µg/mL in the 20 hour activation assay.
870.5395	Mutagenic Micronucleus Assay in the Mouse (CD-1)	No evidence of mutagenicity.
870.5450	Mutagenic-Dominant Lethal Test in the Mouse	Negative for mutation

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5500	Mutagenic-Reverse Mutation	Positive direct acting mutagen. Both batches tested were equally mutagenic. Effect of metabolic activation not assessed.
870.5500	Mutagenic-DNA Repair Test	Positive for DNA damage without metabolic activation.
870.5550	Unscheduled DNA Synthesis in WI 38 Fibroblasts:	Positive in the presence of metabolic activation only.
870.5500	Reverse Mutation	Positive for reverse mutations in *Salmonella* TA100, TA1535 & TA1538, & in *E. coli* WP2. Rat liver S-9 had no effect on mutagenicity
870.5575	Mutagenic-Recomb/ Convers Assay	Positive for recombinants with/without metabolic activity.
870.6200	Acute neurotoxicity screening battery	Not available.
870.6200	Subchronic neurotoxicity screening battery	Not available.
870.6300	Developmental neurotoxicity	Not available.
870.7485	Metabolism and pharmacokinetics	Doses: 50 and 5,000 ppm. Results: The 5,000 ppm level had been shown to cause the tumors in mice but not in rats. The studies suggested that folpet was tumorigenic in the mouse and not in the rat because: Greater intake in the mouse and greater target tissue exposure to active metabolites that the mouse could not detoxify; greater local effects on mouse upper gastrointestinal tract; and greater reliance by the mouse on glutathione for detoxification of folpet.
870.7485	Metabolism and pharmacokinetics	C^{14}-Folpet was administered orally to Sprague-Dawley rats in 3 studies: 1. Single dose of 10 mg/kg; 2. Single dose of 500 mg/kg; and 3. On day 15, 10 mg/kg of C^{14}-Folpet after 14 consecutive days of unlabeled folpet at 10 mg/kg. Samples were examined for radioactivity for up to 120 hours post C^{14}-dosing. Results: 1. Single C^{14}-Folpet at 10 mg/kg was absorbed > 90% of the dose, there was rapid urinary excretion and by 120 hours, there was little detactable radioactivity. 2. Single C^{14}-Folpet at 500 mg/kg was about 60% absorbed with the urinary excretion rate being slower that after the 10 mg/kg dose (possibly due to rate-limiting absorption). 3. Single C^{14}-Folpet at 10 mg/kg following 14 daily non-labeled doses of 10 mg/kg yielded results similar to those observed after a single c^{14} dose. 4. No accumulation of folpet was detected during the 5 days after dosing; concentrations of radioactivity in measured tissues were generally below the limit of detection at 10 mg/kg or were detected at very low levels at 500 mg/kg. 5. Phthalamic acid was determined to be the single active metabolite found in urine & it was suggested that its formation from Folpet may have been by trichloromethylthio groups loss and hydrolytic cleavage of the maleimide ring. At 10 mg/kg,the major fecal metabolite was phthalamic acid and at 500 mg/kg, the radioactivity was primarily associated with unchanged C^{14}-folpet (assumed to be unabsorbed test article).
870.7600	Dermal penetration	Doses: C^{14}-Folpet was administered dermally to male doses of 10, 1, 0.1, and 0.01 mg/rat (200 uL volume of test suspension to 18.9 cm2 of clipped skin) for up to 24 hours. Blood, urine, feces, carcass and skin radioactivity was measured (up to 24 hrs). Results: 1. Rapid absorption into the skin and carcass; 2. Low blood levels; 3. Primary excretion by urine with rate apparently inversely related to quantity applied; and 4. Minor bile involvement in excretion as little in feces.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for folpet used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FOLPET FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.1 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.1 mg/kg/day	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Chronic Dietary (All populations)	NOAEL = 9 mg/kg/day UF = 100 Chronic RfD = 0.09 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.09 mg/kg/day	Chronic Toxicity Study in Rat LOAEL = 35 mg/kg/day based on hyperkeratosis/acanthosis and ulceration/erosion of non-glandular stomach epithelium in both sexes
Short-Term Dermal (1 to 7 days) (Residential)	oral study NOAEL= 10 mg/kg/day (dermal absorption rate = 2.7%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Intermediate-Term Dermal (1 week to several months) (Residential)	oral study NOAEL = 10 mg/kg/day (dermal absorption rate = 2.7%	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Short-Term Inhalation (1 to 7 days) (Residential)	oral study NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Intermediate-Term Inhalation (1 week to several months) (Residential)	oral study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	Developmental Toxicity Study in Rabbits LOAEL = 20 mg/kg/day based on an increased number of fetuses and litters with hydrocephaly and related skull malformations
Cancer (oral, dermal, inhalation)	Cancer potency factor (Q1*) is 1.86×10^{-3}.		Based on increased incidences of adenomas and carcinomas in the duodenum of male and female mice in two strains

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.191) for the residues of folpet, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from folpet in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM-FCID™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Anticipated residues for most commodities and percent crop treated for many commodities. For hop, the dietary exposure analysis assumed tolerance level residues and 100 percent crop treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model Food Commodity Intake Database (DEEM FCID) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998] nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residues for most commodities and percent crop treated for many commodities. For hop, the dietary exposure analysis assumed tolerance level residues and 100 percent crop treated.

iii. *Cancer.* In conducting this cancer dietary risk assessment the Dietary Exposure Evaluation Model Food Commodity Intake Database (DEEM-FCID™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Anticipated residues for most commodities and percent crop treated for many commodities. For hop, the dietary exposure analysis assumed tolerance level residues and 100 percent crop treated.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

The Agency did use anticipated residue calculations in conducting its risk assessment. These calculations are based upon submitted field trial data and could be further refined through the use of monitoring data.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows. The only registered food use of folpet in the United States is avocados grown in Florida. According to data available from the United States Department of Agriculture's National Agricultural Statistics Service, California accounted for 89 percent of avocado production in the United States, followed by Florida at nearly 11 percent and Hawaii at approximately 0.1 percent. Therefore, the Agency has assumed that only 11 percent of the U.S. avocado crop is treated with folpet. As stated earlier, for the hop use, the Agency assumed 100 percent crop treated even though imports of hop accounted for less than 50 percent of the crop consumed in the United States, based upon data available from the Hop Growers of American 2001 Statistical Report. For all other commodities (except hops and avocados), the Agency assumed a maximum percent crop treated value of 1% for each commodity (i.e., apple, cranberry, cucumber, grape, lettuce, melon, onion, strawberry, and tomato) based upon information derived through an analysis of import and domestic production data available from the United States Department of Agriculture for the years 1995 through 1999 and adjusted for the countries in which folpet is registered.

The Agency believes that the three conditions listed in Unit III. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. In using these data, the Agency also took into account the specific countries where folpet is registered. In the case of avocados, the Agency based its PCT estimate on the volume of the avocado crop grown in the United States, utilizing data from the U.S. Department of Agriculture. For all potentially-treated commodities, EPA used estimated maximum PCT assumptions in conducting both the acute and chronic dietary exposure assessments. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which

folpet may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for folpet in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of folpet.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to folpet they are further discussed in the aggregate risk sections in Unit III.E..

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of folpet for acute exposures are estimated to be 309 parts per billion (ppb) for surface water and 0.83 ppb for ground water. The EECs for chronic exposures are estimated to be 0.62 ppb for surface water and 0.83 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Folpet is currently registered for use as an additive in paints and stains for use both occupationally and by the homeowner. Four major exposure scenarios for homeowner handlers using folpet containing paints and stains labeled for pesticidal use and three major scenarios for homeowners using folpet containing products not labeled for pesticidal use were evaluated. The highest exposure level for combined inhalation and dermal exposures were based upon a homeowner applying a ready-to-use stain formulation with an airless sprayer. This exposure level was used to estimate the short- and intermediate-term risks for folpet.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether folpet has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, folpet does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that folpet has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

Captan and folpet share a common metabolite, thiophosgene, which the Agency believes to be responsible for the carcinogenic effects of these compounds. Thiophosgene is a highly reactive, short-lived compound. Studies indicate that thiophosgene causes local irritation of the site with which it comes in contact, and is believed to cause tumors through irritation of the duodenum. Because they are so short-lived, thiophosgene residues cannot be quantified. Without measurable residues of the common metabolite, it is difficult to relate exposures of captan to those of folpet since the formation of thiophosgene may be different for both compounds. However, assuming that the carcinogenic effects observed in both pesticides are due solely to the metabolite thiophosgene, the Agency believes it is reasonable to add the estimate cancer risks from the individual aggregate risks from both folpet and captan to obtain a worst-case estimate.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The data provided no indication of increased susceptibility in two prenatal developmental toxicity studies in rats following in utero or in the two (2) 2–generation reproduction studies in rats. Two developmental toxicity studies in rabbits are also available. In a study with New Zealand rabbits, folpet caused an increase in the incidence of hydrocephalus in fetuses and with the associated dome skull and irregularly-shaped fontanelles at the mid and high dose groups in the presence of maternal toxicity. Both fetal and litter incidences of this malformation were increased in a dose-related manner. There were no toxicological effects noted on litter size, resorptions, sex ratio, or number of skeletal malformations. For maternal toxicity, the NOAEL was 10 mg/kg/day and the LOAEL was 20 mg/kg/day, based on decreased body weight gain and food consumption. For developmental toxicity, the NOAEL was

10 mg/kg/day and the LOAEL was 20 mg/kg/day, based upon an increase in the number of fetuses and litters with hydrocephaly and related skull malformations. Although the developmental malformations (hydrocephaly) and associated maternal toxicity occur at similar doses, such effects are toxic manifestations as a result of exposure.

In order to determine the critical period of treatment for the occurrence of hydorcephaly and other treatment-related fetal anomalies observed in the above study, another developmental toxicity study was conducted with the same strain of rabbit with the highest dose group (60 mg/kg/day) receiving folpet on gestation days 7-9, 10-12, 13-15, or 16-18. The incidence of hydrocephalus was higher than historical or concurrent controls, but lower than in the previous study. The maternal toxicity noted was a dose-related decreased food consumption and variable decrease in body weight gain. Significantly increased incidence of irregularly-shaped fontanelles and slightly increased incidences of angulated hyoid alae were noted in the 60 mg/kg/day dose group.

In a second rabbit developmental toxicity study, HY/CR strain rabbits received folpet on gestation days 7 through 19. For maternal toxicity, the NOAEL was 40 mg/kg/day and the LOAEL was 160 mg/kg/day, based on decreased body weights and food consumption as well as clinical signs. For developmental toxicity, the NOAEL was 10 mg/kg/day and the LOAEL was 40 mg/kg/day, based on delayed ossification of the sternebrae. There was no evidence of hydrocephaly observed in this study at dose levels greater than in the previous study.

In addition, the Agency examined the available studies for captan, the structural analog of folpet, and determined that there was no indication of increased susceptibility of rabbits or hamsters to pre- or post-natal exposure to captan. In prenatal developmental toxicity studies in rabbits and hamsters and reproduction studies in the rat, all conducted using captan as the test material, toxicity to the offspring occurred at equivalent or higher doses than maternal toxicity.

3. *Conclusion*. i. There is a complete toxicity data base for folpet and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has determined that the FQPA Safety Factor can be reduced to 1X based upon the following weight-of-the-evidence considerations:

a. There was no evidence of quantitative or qualitative susceptibility in two developmental toxicity studies in the rat;

b. There was no evidence of enhanced suspectibility to the pups in two different 2–generation reproduction studies in the rat;

c. Folpet is not a cholinesterase inhibitor and, therefore, comments made at the June 26-27, 2002 Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) meeting on the Determination of the Appropriate FQPA Safety Factor(s) in the Organophosphorous Pesticide Cumulative Risk Assessment: Susceptibility and Sensitivity to the Common Mechanism, Acetylcholinesterase Inhibition should not influence this uncertainty factor decision.

d. There is inconsistency between the two available developmental toxicity studies in the rabbit. When tested at lower doses, there is a concern for hydrocephaly. However, when this study was repeated in the same strain of rabbit at higher dose levels, no evidence of hydrocephaly was observed. Nevertheless, for purposes of risk assessment, the Agency has selected the developmental NOAEL of 10 mg/kg/day from the rabbit developmental study in which hydrocephaly was observed as the endpoint for evaluating acute risk.

e. Other than the one rabbit developmental toxicity study, there are no other signs from the available toxicology database of a concern for neurotoxic effects.

f. Furthermore, the Agency's exposure assumptions are conservative. The assessment assumes that all hops consumed in the United States are treated with folpet. In addition, the analysis presumes that all avocados grown in Florida are treated with this fungicide. The percent crop treated data for the imported commodities assumed that all crop exported to the U.S. from countries in which folpet is registered are treated with this chemical. Therefore, a figure of 1% crop treated was assumed for the following commodities: Apple, cranberry, cucumber, grape, lettuce, melon, onion, strawberry, and tomato.

ii. The Agency has also determined that a developmental neurotoxicity study for folpet is not warranted based upon the following considerations:

a. Although hydrocephalus was observed in one developmental toxicity study in the rabbit, it occurred at maternally toxic doses and was only seen in one species;

b. No alterations to the fetal nervous system were seen in the developmental rat studies at the same doses that induce hydrocephaly in rabbits;

c. Although there are no acute or subchronic neurotoxicity studies available, there is no evidence of neurotoxicity or neuropathology in adult animals in any of the studies;

d. The available data indicate that the developmental neurotoxicity study would have to be tested at dose levels higher than 150 mg/kg/day because no developmental toxicity was observed in rats at 2,000 mg/kg/day. In addition, given the results in the 2–generation reproduction study (NOAEL of 168 mg/kg/day), it is anticipated that in order to elicit any fetal nervous system abnormalities in the developmental neurotoxicity study, the selected dose levels would have to be higher than 160 mg/kg/day.

e. Since the dose level selections for the developmental neurotoxicity study would be greater than 160 mg/kg/day, the resultant NOAEL would be either comparable to, or higher than, the doses currently used in the risk assessment. The NOAEL of 10 mg/kg/day selected for the acute reference dose and the residential exposure and risk assessments is seventeen times lower than the offspring NOAEL in the reproduction study. The NOAEL of 9 mg/kg/day selected for the chronic reference dose is nineteen times lower than the offspring NOAEL in the reproduction study. Therefore, it is unlikely that the developmental neurotoxicity study would change the current doses used for overall risk assessments.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values

as used by the Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to folpet will occupy <1 % of the aPAD for females 13 years and older. In addition, there is potential for acute dietary exposure to folpet in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FOLPET

Population Subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females, 13-49 years old	0.1	<1	309	0.83	2,800

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to folpet from food will utilize less than 1% of the cPAD for all population subgroups within the United States. Based the use pattern, chronic residential exposure to residues of folpet is not expected. In addition, there is potential for chronic dietary exposure to folpet in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FOLPET

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.09	<1%	0.62	0.83	3,100
All Infants	0.09	<1%	0.62	0.83	900
Children, 1-2 years	0.09	<1%	0.62	0.83	900
Females, 13-49 years	0.09	<1%	0.62	0.83	2,700
Adults, 50+ years	0.09	<1%	0.62	0.83	3,100

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Folpet is currently registered for use that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate-term exposures for folpet.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 370. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term and intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of folpet in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term or intermediate-term aggregate exposures to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENTS FOR SHORT-TERM AND INTERMEDIATE-TERM EXPOSURES TO FOLPET

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	DWLOC (ppb)
Females, 13-49 years	370	100	0.62	0.83	2,200

4. *Aggregate cancer risk for U.S. population.* The aggregate cancer risk (food plus residential) from exposure to folpet is estimated to be 7.2 x 10^{-8}. Assuming a negligible risk level of 1.0 x 10^{-6}, the cancer DWLOC would be 15 ppb. Based on the FIRST and SCI-GROW models the EECs for chronic exposures to folpet are estimated to be 0.62 ppb for surface water and 0.83 ppb for ground water, significantly lower than the DWLOC.

As discussed in Unit III.C.4., captan and folpet share a common metabolite, thiophosgene, which the Agency believes to be responsible for the carcinogenic effects of these compounds. Thiophosgene is a highly reactive, short-lived compound. Studies indicate that thiophosgene causes local irritation of the site with which it comes in contact, and is believed to cause tumors through irritation of the duodenum. Because they are so short-lived, thiophosgene residues cannot be quantified. Without measurable residues of the common metabolite, it is difficult to relate exposures of captan to those of folpet since the formation of thiophosgene may be different for both compounds. However, assuming that the carcinogenic effects observed in both pesticides are due solely to the metabolite thiophosgene, the Agency believes it is reasonable to add the estimate cancer risks from the individual aggregate risks from both folpet and captan to obtain a worst-case estimate.

For captan, the estimated cancer risk for the U.S. population from exposure to food only is 1.26 x 10^{-7}. As discussed above, the estimate cancer risk (food only) from exposure to folpet is 7.2 x 10^{-8}. If these two risk estimates are added together, the total estimated cancer risk is 2.0 x 10^{-7}. Assuming a negligible cancer risk in the range of 1.0 x 10^{-6} to 3.0 x 10^{-6}, the smallest cancer DWLOC would be 11 ppb. Based on the FIRST and SCI-GROW models the EECs for chronic exposures to folpet are estimated to be 0.62 ppb for surface water and 0.83 ppb for ground water. The EECs for chronic exposure to captan are estimated to be 4 ppb for surface water and 1 ppb for groundwater. The combined EECs for chronic exposure to captan plus folpet are 5 ppb for surface water and 2 ppb for groundwater, both below the DWLOC of 11 ppb.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to folpet residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate gas chromatography/electron capture detector (GC/ECD) analytical method is available for enforcing tolerances of folpet in or on plant commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

No CODEX MRLs exist for folpet on hop.

V. Conclusion

Therefore, the tolerance is established for residues of folpet, (N–(trichloromethylthio)phthalimide), in or on hop, dried cones at 120 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0075 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 5, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov,* or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0075, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 25, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.191 is amended:

i. By designating the existing text as paragraph (a) and adding a heading, and alphabetically adding a commodity to the table in newly designated paragraph (a); and

ii. By adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.191 Folpet; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * *	* *
Hop, dried cones	120[1]
* * *	* *

1 There are no U.S. registrations on hop, dried cones as of February 14, 2003

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–5192 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Clarendon, TX

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 70 to 79, revised as of October 1, 2002, in § 73.202(b), on page 108, the Table of FM Allotments is amended under Texas by adding Clarendon, Channel 257C2.

[FR Doc. 03–55507 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1080–AI17

Endangered and Threatened Wildlife and Plants; Final Rule to List the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for the Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*) pursuant to the Endangered Species Act of 1973, as amended (Act). This population consists of fewer than 30 wild individuals in Douglas County, Washington, and a small captive population.

The Columbia Basin pygmy rabbit is imminently threatened by recent decreases in its population size and distribution that have caused it to be susceptible to the combined influence of catastrophic environmental events, habitat degradation and fragmentation, disease, predation, demographic limitations, and loss of genetic heterogeneity. We find that these threats constitute a significant risk to the well-being of the Columbia Basin pygmy rabbit and, as such, make the protective measures afforded by the Act immediately available with publication of this final rule.

DATES: This rule becomes effective on March 5, 2003.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, Washington 99206.

FOR FURTHER INFORMATION CONTACT: Christopher Warren, at the address listed above (telephone 509/891–6839; facsimile 509/891–6748; electronic mail: *chris_warren@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

The pygmy rabbit (*Brachylagus idahoensis*) is a member of the family Leporidae, which includes hares and rabbits. The species has been placed in a number of genera since it was first classified in 1891 as *Lepus idahoensis* (Washington Department of Fish and Wildlife (WDFW) 1995a). In 1904, it was reclassified and placed in the genus *Brachylagus.* In 1930, it was again reclassified and placed in the genus *Sylvilagus.* More recent examination of dentition (Hibbard 1963) and analysis of blood proteins (Johnson 1968) suggest that the pygmy rabbit differs significantly from species within either the *Lepus* or *Sylvilagus* genera. The pygmy rabbit is now generally considered to be within the monotypic genus *Brachylagus,* and classified as *B. idahoensis* (Green and Flinders 1980a; WDFW 1995a). There are no recognized subspecies of the pygmy rabbit (Dalquest 1948; Green and Flinders 1980a).

The pygmy rabbit is the smallest Leporid in North America, with mean adult weights from 375 to about 500 grams (0.83 to 1.1 pounds), and lengths from 23.5 to 29.5 centimeters (cm) (9.3 to 11.6 inches (in)) (Orr 1940; Janson 1946; Wilde 1978; Gahr 1993; WDFW 1995a; T. Katzner, Arizona State University, pers. comm. 2002). Females tend to be slightly larger than males. Pygmy rabbits undergo an annual molt. During summer, their overall color is slate-gray tipped with brown. Their legs, chest, and nape (back of neck) are tawny cinnamon-brown, their bellies are whitish, and the entire edges of their ears are pale buff. Their ears are short (3.5 to 5.2 cm (1.4 to 2.0 in)), rounded, and thickly furred outside. Their tails are small (1.5 to 2.4 cm (0.6 to 0.9 in)), uniform in color, and nearly unnoticeable in the wild (Orr 1940; Janson 1946; WDFW 1995a). The pygmy rabbit is distinguishable from other Leporids by its small size, short ears, gray color, small hind legs, and lack of white on the tail.

Pygmy rabbits are typically found in areas of tall, dense sagebrush (*Artemisia* spp.) cover, and are highly dependent on sagebrush to provide both food and shelter throughout the year (Orr 1940; Green and Flinders 1980a; WDFW 1995a). The winter diet of pygmy rabbits is comprised of up to 99 percent sagebrush (Wilde 1978), which is unique among Leporids (White *et al.* 1982). During spring and summer in Utah, their diet consists of roughly 51 percent sagebrush, 39 percent grasses (particularly native bunch-grasses, such as *Agropyron* spp. and *Poa* spp.), and 10 percent forbs (an herb other than grass) (Green and Flinders 1980b). There is evidence that pygmy rabbits preferentially select native grasses as forage during this period in comparison to other available foods. In addition, total grass cover relative to forbs and shrubs may be reduced within the immediate areas occupied by pygmy rabbits as a result of its use as a food source during spring and summer (Green and Flinders 1980b). The specific diets of pygmy rabbit populations likely change depending on the region occupied (T. Katzner, pers. comm. 2002).

The pygmy rabbit is believed to be one of only two Leporids in North America that digs its own burrows (Nelson 1909; Green and Flinders 1980a; WDFW 1995a), the other being the volcano rabbit (*Romerolagus diazi*) found in central Mexico (Durrell and Mallinson 1970). Pygmy rabbit burrows

are typically found in relatively deep, loose soils of wind-borne or water-borne (*e.g.*, alluvial fan) origin. Pygmy rabbits occasionally make use of burrows abandoned by other species, such as the yellow-bellied marmot (*Marmota flaviventris*) or badger (*Taxidea taxus*) (Wilde 1978; Green and Flinders 1980a; WDFW 1995a) and, as a result, may occur in areas of shallower or more compact soils that support sufficient shrub cover (Bradfield 1974). During winter, pygmy rabbits make extensive use of snow burrows, possibly to access sagebrush forage (Bradfield 1974), as travel corridors among their underground burrows, and/or as thermal cover (Katzner and Parker 1997).

Pygmy rabbits, especially juveniles, likely use their burrows as protection from predators and inclement weather (Bailey 1936; Bradfield 1974). The burrows frequently have multiple entrances, some of which are concealed at the base of larger sagebrush plants (WDFW 1995a). Burrows are relatively simple and shallow, often no more than 2 meters (m) (6.6 feet (ft)) in length and usually less than 1 m (3.3 ft) deep with no distinct chambers (Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Burrows are typically dug into gentle slopes or mound/inter-mound areas of more level or dissected topography (Wilde 1978; U.S. Department of Agriculture (USDA)1991; Gahr 1993). In general, the number of active burrows in an area increases over the summer as the number of juveniles increases. However, the number of active burrows may not be directly related to the number of individuals in a given area because some individual pygmy rabbits appear to maintain multiple burrows, while some individual burrows are used by multiple individuals (Gahr 1993; WDFW 1995a).

Pygmy rabbits begin breeding their second year and, in Washington, breeding occurs from February through July (WDFW 1995a). In some parts of the species' range, females may have up to three litters per year and average six young per litter (Green 1978; Wilde 1978). Breeding appears to be highly synchronous in a given area and juveniles are often identifiable to cohorts (Wilde 1978). No evidence of nests, nesting material, or lactating females with young has been found in burrows (Bradfield 1974; Gahr 1993; WDFW 1995a). Individual juveniles have been found under clumps of sagebrush, although it is not known precisely where the young are born in the wild or if they may be routinely hidden at the bases of scattered shrubs or within burrows (Wilde 1978).

Current information on captive pygmy rabbits indicates that females may excavate specialized ''natal'' burrows for their litters in the vicinity of their regular burrows (P. Swenson, Oregon Zoo, pers. comm. 2001; L. Shipley, Washington State University (WSU), pers. comm. 2001). Apparently, females begin to dig and supply nesting material (*e.g.*, grass clippings) to these burrows several days prior to giving birth, and may give birth and nurse their young at the ground surface in a small depression near the burrow's entrance. After nursing, the young return to the burrow and the female re-fills the burrow entrance with loose soil and otherwise disguises the immediate area to avoid detection. Other ''dead-end'' burrows that females construct nearby are apparently associated with the natal burrows and may be important for providing proper aeration. Females may also alter their defecation and latrine habits while pregnant and nursing (P. Swenson, pers. comm. 2001). Further work with captive and wild pygmy rabbits should shed additional light on the details of their reproductive strategy.

Pygmy rabbits may be active at any time of the day or night and appear to be most active during mid-morning (Bradfield 1974; Green and Flinders 1980a; Gahr 1993). Pygmy rabbits maintain a low stance, have a deliberate gait, and are relatively slow and vulnerable in more open areas. They can evade predators by maneuvering through the dense shrub cover of their preferred habitats, often along established trails, or by escaping into their burrows (Bailey 1936; Severaid 1950; Bradfield 1974).

Pygmy rabbits tend to have relatively small home ranges during winter, remaining within roughly 30 m (98 ft) of their burrows (Orr 1940; Janson 1946; Gahr 1993; Katzner and Parker 1997), although some snow burrows may extend outward up to 100 m (328 ft) (Bradfield 1974). They have larger home ranges during spring and summer (Orr 1940; Janson 1946; Gahr 1993; Katzner and Parker 1997). During the breeding season in Washington, females tend to make relatively short movements within a small core area and have home ranges covering roughly 2.7 hectares (ha) (6.7 acres (ac)); males tend to make longer movements, traveling among a number of females, resulting in home ranges covering roughly 20.2 ha (49.9 ac) (Gahr 1993). These home range estimates in Washington are considerably larger than for pygmy rabbit populations in other areas of their historic range (WDFW 1995a; Katzner and Parker 1997). Pygmy rabbits may travel up to 1.2 kilometers (km) (0.75 miles (mi)) from their burrows (Gahr 1993), and there are a few records of apparently dispersing individuals moving up to 3.5 km (2.17 mi) (Green and Flinders 1979; Katzner and Parker 1998).

The annual mortality rate of adult pygmy rabbits may be as high as 88 percent, and over 50 percent of juveniles can apparently die within roughly 5 weeks of their emergence (Wilde 1978; WDFW 1995a). However, the mortality rates of adult and juvenile pygmy rabbits can vary considerably between years, and even between juvenile cohorts within years (Wilde 1978). Predation was shown to be the main cause of pygmy rabbit mortality in Idaho (Green 1979). Potential predators include badgers, long-tailed weasels (*Mustela frenata*), coyotes (*Canis latrans*), bobcats (*Felis rufus*), great horned owls (*Bubo virginianus*), long-eared owls (*Asio otus*), ferruginous hawks (*Buteo regalis*), northern harriers (*Circus cyaneus*), and common raven (*Corvus corax*) (Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978; WDFW 1995a; D. Hays, WDFW, pers. comm. 2002; M. Hallet, WDFW, pers. comm. 2002).

Population cycles are not known in pygmy rabbits, although local, relatively rapid population declines have been noted in several States (Bradfield 1974; Weiss and Verts 1984; WDFW 1995a). After initial declines, pygmy rabbit populations may not have the same capacity for rapid increases in numbers as other Leporids due to their close association with specific components of sagebrush ecosystems, and the relatively limited availability of their preferred habitats (Wilde 1978; Green and Flinders 1980b; WDFW 1995a).

Distribution and Status

The historic distribution of the pygmy rabbit included much of the semi-arid, shrub steppe region of the Great Basin and adjacent intermountain zones of the conterminous western United States (Green and Flinders 1980a), and included portions of Montana, Idaho, Wyoming, Utah, Nevada, California, Oregon, and Washington (Figure 1).

BILLING CODE 4310–55–P

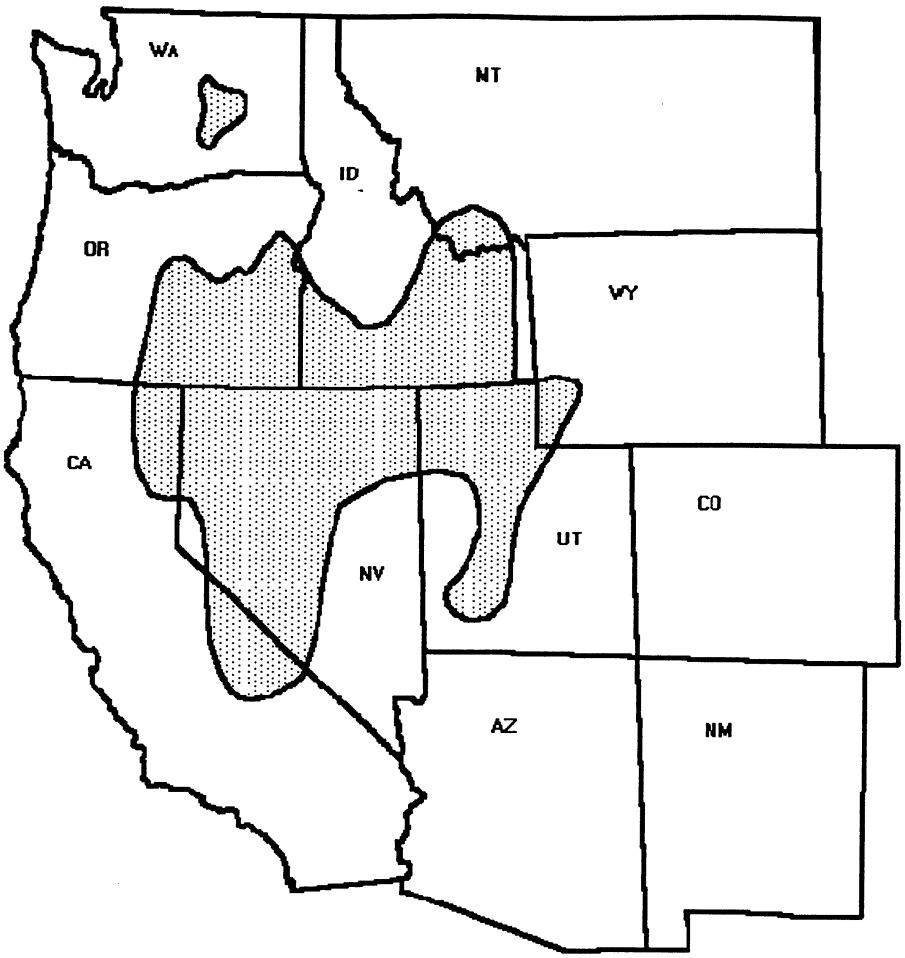


Figure 1. The approximate historic range-wide distribution of the pygmy rabbit (Weiss and Verts 1984; WDFW 1995; T. Katzner, pers. comm., 2002).

BILLING CODE 4310–55–C

Currently, pygmy rabbits are not distributed continuously across their range, nor were they in the past. Rather, they are found in areas within their broader distribution where sagebrush cover is sufficiently tall and dense, and soils are sufficiently deep and loose to allow burrowing (Bailey 1936; Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995a). The local distribution of these habitat patches, and thus pygmy rabbits, likely shifts

across the landscape in response to various sources of disturbance (*e.g.*, fire, flooding, grazing, crop production) combined with long- and short-term weather patterns. In the past, more dense vegetation along permanent and intermittent stream channels, alluvial fans, and sagebrush plains probably provided travel corridors and dispersal habitat for pygmy rabbits between appropriate use areas (Green and Flinders 1980a; Weiss and Verts 1984; WDFW 1995a). Since European settlement of the western United States, more dense vegetation associated with some human activities (*e.g.*, fence rows, roadway shoulders, crop margins, abandoned fields) may have also acted as avenues of dispersal between local populations of pygmy rabbits (Green and Flinders 1980a; Pritchett *et al.* 1987).

Prehistoric Distribution

There is very little information currently available regarding the prehistoric distribution of the pygmy rabbit throughout the majority of its range. However, the pygmy rabbit has been present within the Columbia Basin, a geographic area that extends from northern Oregon through eastern Washington (Quigley *et al.* 1997), for over 100,000 years (Lyman 1991). This population segment, which we refer to as the Columbia Basin pygmy rabbit, is believed to have been disjunct from the remainder of the species' range since at least the early Holocene (10,000 to 7,000 years before present (BP)), as suggested by the fossil record (Grayson 1987; Lyman 1991). This separation is in contrast to the relatively short-term, local patterns of isolation, extirpation, and recolonization that likely occur throughout pygmy rabbit range (see above). The Columbia Basin pygmy rabbit probably had a broader distribution during the mid-Holocene (roughly 7,000 to 3,000 years BP) (Lyman 1991). Gradual climate change affecting the distribution and composition of sagebrush communities is thought to have resulted in a reduction of the Columbia Basin pygmy rabbit's range during the late Holocene (3,000 years BP to present) (Grayson 1987; Lyman 1991).

Historic and Current Distribution

Columbia Basin pygmy rabbits have been considered rare with local areas of occurrence within the Columbia Basin for many years (Dalquest 1948), although there is little comprehensive information available regarding their historic distribution and abundance within this region (WDFW 1995a). Museum specimens and reliable sight records indicate that Columbia Basin pygmy rabbits probably occurred in portions of at least five Washington counties during the first half of the 1900s, including Douglas, Grant, Lincoln, Adams, and Benton (Figure 2).

BILLING CODE 4310–55–P

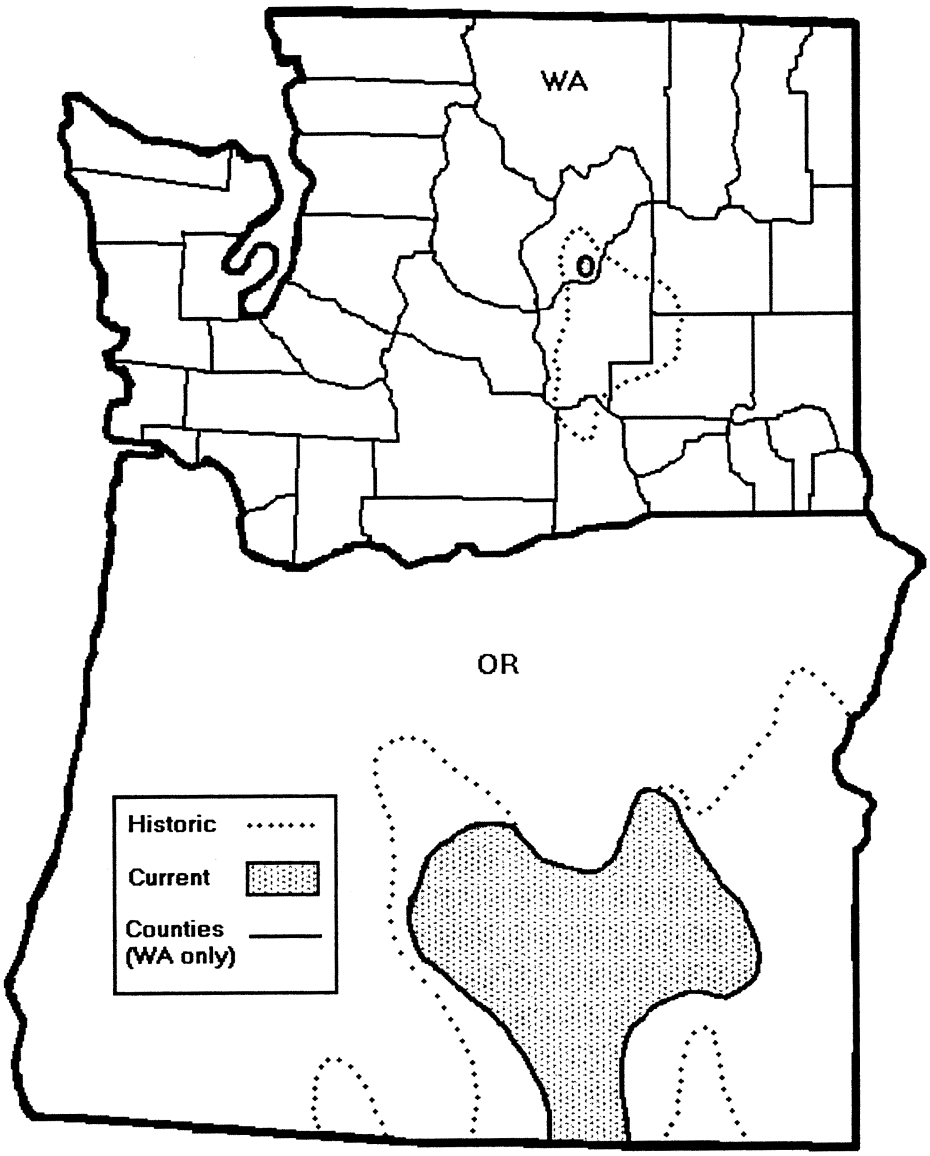


Figure 2. The approximate historic and current distribution of the pygmy rabbit in Washington and Oregon (Weiss and Verts 1984; WDFW 1995).

BILLING CODE 4310–55–C

Once thought to be extirpated, Columbia Basin pygmy rabbits were again located in Washington in 1979. Intensive surveys in 1987 and 1988 discovered five small subpopulations in southern Douglas County; three occurred on State lands and two on private lands (WDFW 1995a). With the exception of a single site record from Benton County in 1979, Columbia Basin pygmy rabbits have been found only in southern Douglas and northern Grant counties since 1956 (WDFW 2000a). The Washington Wildlife Commission designated the pygmy rabbit as a State threatened species in 1990, and reclassified it as endangered in 1993 (WDFW 1995a).

The number of Columbia Basin pygmy rabbit subpopulations and active burrows in Washington has declined over the past decade (WDFW 2001a). Four of the five subpopulations located in 1987 and 1988 were very small, with fewer than 100 active burrows (WDFW 1995a); the largest subpopulation (at the State-owned Sagebrush Flat site in

Douglas County) contained roughly 588 active burrows in 1993, when it was estimated to support fewer than 150 rabbits (Gahr 1993). While an additional subpopulation was discovered on private land in northern Grant County in 1997, three of the small subpopulations originally located were extirpated during the 1990s, leaving just three known subpopulations in 1999 (WDFW 2001a).

One of the three remaining sites experienced a catastrophic fire in 1999 and declined to three active burrows, while the newly discovered site in Grant County declined for unknown reasons to two active burrows following the winter of 1999–2000 (WDFW 2001a). These two subpopulations are now thought to be extirpated (WDFW 2001b). In addition, during the winter of 1997–1998, the number of active Columbia Basin pygmy rabbit burrows at the Sagebrush Flat site declined by approximately 50 percent, and has continued to decline each year since (WDFW 2001a). The entire, wild Columbia Basin pygmy rabbit population is now considered to consist of fewer than 30 individuals from just one known subpopulation at the Sagebrush Flat site in Douglas County (D. Hays, pers. comm. 2002).

Although habitat loss and fragmentation have likely played a primary role in the long-term decline of the Columbia Basin pygmy rabbit, it is unlikely that these factors have directly influenced the post-1995 declines at the Sagebrush Flat site and the extirpations of some of the smaller populations (WDFW 2001a). Once populations decline below a certain threshold, they are at risk of extirpation from a number of influences including chance environmental events (*e.g.*, extreme weather), catastrophic habitat or resource failure (*e.g.*, due to fire or insect infestations), predation, disease, demographic limitations, and loss of genetic heterogeneity. The Columbia Basin pygmy rabbit in the wild is currently at such risk and, without intervention, is likely to become extirpated in the near future (WDFW 2001a).

Previous Federal Action

We added the pygmy rabbit to our candidate species list on November 21, 1991, as a category 2 species (56 FR 58804). A category 2 species was one for which we possessed information indicating that a proposal to list it as threatened or endangered under the Act was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In a February 28, 1996, notice, we discontinued the designation of category 2 species as candidates for listing under the Act (61 FR 7596). The Columbia Basin pygmy rabbit was not included as a candidate for listing in this notice.

In FY 2001, the Service was nearly faced with a situation where it could not comply with all its court orders. Early in calendar year 2001, it became apparent that the cost of compliance with existing court orders exceeded our FY 2001 listing funding. After more than 6 months of negotiating, the Service was able to reach an agreement with several plaintiffs that allowed us to postpone a few actions previously scheduled for work in FY 2001. This agreement allowed us to reallocate funding to complete court-ordered work as well as some listing actions. On August 28, 2001, we reached an agreement with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society to complete work on a number of species proposed for listing. Under this agreement, we were required to issue several final listing decisions, propose a number of other species for listing, and review three species for emergency listing, including the Columbia Basin DPS of the pygmy rabbit (Center for Biological Diversity, *et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.), entered by the court on October 2, 2001).

On November 30, 2001, we published an emergency rule to list the Columbia Basin pygmy rabbit as endangered (66 FR 59734). We found that emergency listing action was justified because immediate and significant risks to the well-being of this DPS existed due to its recent decreases in population size and distribution over the past several years. Our November 30, 2001, emergency rule provided Federal protection to the Columbia Basin pygmy rabbit pursuant to the Act for a period of 240 days. Concurrently with the emergency rule, we also published a proposed rule to list this DPS as endangered under our normal listing procedures (66 FR 59769). On February 7, 2002, we published a notice in the **Federal Register** extending the comment period for the proposed rule through February 28, 2002 (67 FR 5780). The comment period was reopened to accommodate requests by State resource agencies and private interests for additional time to provide input. On February 12, 2002, we held a public meeting in East Wenatchee, Washington, to discuss the proposed rule with any interested parties. On July 17, 2002, we published a notice in the **Federal Register** extending the comment period for the proposed rule through August 1, 2002 (67 FR 46951).

In accordance with section 10(a)(1)(A) of the Act, on December 18, 2001, we issued a recovery permit to the WDFW (TE050644) for their ongoing management actions to protect and conserve the Columbia Basin pygmy rabbit (see Current Management Actions, below). We issued revisions to this permit on January 10, 2002, and March 18, 2002. We also published notices in the **Federal Register** on December 19, 2001, and March 20 and April 3, 2002, describing the emergency circumstances, announcing receipt of permit applications, and issuing public notice exemptions concerning this permit and its revisions (66 FR 65508, 67 FR 15825, 67 FR 13004).

Current Management Actions

The WDFW has undertaken a variety of conservation actions for the Columbia Basin pygmy rabbit since 1979 (WDFW 1995a, 2001a). These actions have included population surveys, habitat inventories, land acquisitions, habitat restoration, land management agreements, initiation of studies on the effects of livestock grazing, and predator control. These efforts have been funded by a variety of sources. As funding sources and staffing levels allow, WDFW efforts to conserve the Columbia Basin pygmy rabbit in the wild will continue (D. Hays, pers. comm. 2002).

During the fall of 2000, the WDFW, in cooperation with the Oregon Zoo, initiated a study of husbandry techniques for pygmy rabbits (WDFW 2001a). This study used five pygmy rabbits captured in Idaho and was undertaken to improve the information base for proposed captive propagation and release efforts for the Columbia Basin pygmy rabbit. Due to the continuing decline of pygmy rabbit subpopulations and active burrows in Washington, the WDFW, in cooperation with WSU, expedited their captive propagation efforts for the Columbia Basin pygmy rabbit during the spring of 2001 (WDFW 2001b; D. Hays, pers. comm. 2001).

The main goal of this effort is to capture up to 20 individuals to establish a captive breeding stock. The actual number and type (gender, age, family unit) of pygmy rabbits to be taken from the wild is based partly on information from the ongoing husbandry study of Idaho pygmy rabbits, partly on estimates of what is needed to allow for appropriate manipulation of family lineages to better manage this population's unique genetic profile, and partly on the availability of animals for capture. Any Columbia Basin pygmy

rabbits that are not considered essential to the captive propagation effort will be left in the wild, and ongoing management to protect the wild portion of this population will continue.

Since the spring of 2001, 16 Columbia Basin pygmy rabbits (nine females, seven males) have been captured as an initial source for captive breeding efforts (D. Hays, pers. comm. 2002). In addition, shortly after being captured, one female gave birth to a litter of five offspring (two females, three males) that was conceived in the wild (D. Hays, pers. comm. 2001; L. Shipley, pers. comm. 2001). Of the adult rabbits, two males and one female captured from the wild subsequently died (WDFW 2001c). Full necropsies were conducted on these three specimens, with the following results: One male, which died shortly after being captured, may have had reduced body condition while in the wild; the other male died from unknown causes; and the female died due to complications caused by a fall from a sagebrush plant placed in her cage. Several procedures, developed in coordination with results from the ongoing husbandry study, have been implemented to reduce the risk of capture-related mortality of pygmy rabbits. In addition, in order to reduce the risk of catastrophic loss of a single captive population, a number of Columbia Basin pygmy rabbits have been placed at the Oregon Zoo facility. Appropriate measures have been taken to ensure that the Columbia Basin pygmy rabbits remain completely segregated from the pygmy rabbits captured in Idaho that are being used for the husbandry study.

The remaining 18 captive Columbia Basin pygmy rabbits appear to have adjusted well to the two rearing facilities (WDFW 2001c). As opportunities arise, the intent is to capture additional Columbia Basin pygmy rabbits that will complement the genetic profiles and potential breeding scenarios of those already in captivity (D. Hays, pers. comm. 2002; K. Warheit, WDFW, pers. comm. 2002).

The WDFW's captive propagation program affords an opportunity to protect and maintain the Columbia Basin pygmy rabbit until conditions can be made more favorable for its survival in the wild. Ultimately, the goal of the captive propagation effort is to release captive-bred Columbia Basin pygmy rabbits back into suitable habitats within their historic range where viable subpopulations can become re-established and self-sustained in the wild (WDFW 2001b; D. Hays, pers. comm. 2001). The number and size of the wild subpopulations necessary for recovery pursuant to the Act have not yet been determined. Columbia Basin pygmy rabbits within captive rearing facilities will not be counted towards recovery of the species. The timing and objectives for the release phase of the program will be further developed as the captive propagation effort becomes established. The WDFW will remain the lead agency for these efforts, and has developed a Science Advisory Group to provide recommendations and technical oversight for the conservation program. The group is currently comprised of State and Federal agency personnel, public zoo, and university experts, representatives from non-governmental organizations, and private individuals with interests in the conservation of the Columbia Basin pygmy rabbit.

The Nature Conservancy (TNC), a non-governmental natural resource advocacy organization, has acquired, or obtained easements on, portions of the remaining shrub steppe habitat in southern Douglas and northern Grant counties, including the acquisition of approximately 6,900 ha (17,000 ac) adjacent to the WDFW's Sagebrush Flat site. As appropriate, TNC lands in central Washington will be managed to support the conservation efforts undertaken for the Columbia Basin pygmy rabbit (C. Warner, TNC, pers. comm. 2001).

Portions of the remaining shrub steppe habitat in southern Douglas and northern Grant counties are under the jurisdiction of the U.S. Bureau of Land Management (BLM) and State resource agencies. Conservation measures for the Columbia Basin pygmy rabbit are considered in the management of these agency lands (D. Hays, pers. comm. 2001; N. Hedges, BLM, pers. comm. 2001). Many of the existing and future land acquisitions and management actions of the TNC, BLM, and State agencies in this area are targeted at sites recently occupied by the Columbia Basin pygmy rabbit and at providing connectivity of appropriate habitats between these sites.

Large areas of privately owned lands in Douglas County are currently withdrawn from crop production and planted to native and non-native cover under the Federal Conservation Reserve Program (CRP), established in 1985 (USDA 1998). These lands, some of which have been set aside since the late 1980s, provide grass and shrub cover that may improve the habitat conditions of areas potentially occupied or used as dispersal corridors by the Columbia Basin pygmy rabbit. New and re-signed program contracts completed in 1998 increased the acreage of CRP lands in Douglas County. However, contracts extend for just 10 years, and new standards for CRP lands were implemented that required replanting of significant acreage under existing contracts (USDA 1998; M. Schroeder, WDFW, pers. comm. 2001). Presently, it is unclear what effects the CRP lands and current changes to the program may have on the Columbia Basin pygmy rabbit.

Currently, we are assisting private landowners and their conservation districts with development of a county-wide habitat conservation plan (HCP) for agricultural lands in Douglas County, Washington. When completed, the Foster Creek HCP will likely include measures to protect the Columbia Basin pygmy rabbit and may complement other, ongoing conservation efforts in Douglas County.

Distinct Vertebrate Population Segment

Pursuant to the Act (16 U.S.C. 1531 *et seq.*), we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and Congressional direction, the Service and the National Marine Fisheries Service (NMFS) developed a joint policy in 1996 that addresses the recognition of DPS for potential listing actions (61 FR 4722). The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Two elements are used to assess whether a population segment under consideration for listing pursuant to the Act constitutes a DPS. The two elements are: (1) The population segment's discreteness from the remainder of the taxon; and (2) the population segment's significance to the taxon to which it belongs. A systematic application of these elements is appropriate, with discreteness criteria applied first, followed by significance analysis. If we determine that a population segment being considered for listing represents a DPS, then the status of the population and level of threats to the population segment is evaluated based on the five listing factors established by the Act to determine if listing the DPS as either threatened or endangered is warranted.

Discreteness

Discreteness may be demonstrated by either, or both, of the following: (1) Physical, physiological, ecological, behavioral, morphological, or genetic discontinuity between population

segments; or (2) international governmental boundaries between which differences in regulatory mechanisms exist that are significant with regard to conservation of the taxon. The pygmy rabbit does not occur outside of the lower 48 conterminous United States, so the international boundary criterion does not apply.

The Columbia Basin pygmy rabbit has been physically discrete from the remainder of the taxon for several millennia (*see* Distribution and Status, above). In addition, there is current evidence that the Columbia Basin pygmy rabbit is genetically and ecologically discrete from the remainder of the taxon (*see* Significance, below). Based on this information, we find that the Columbia Basin pygmy rabbit population segment is discrete from the remainder of the taxon pursuant to the Act. Physiological, behavioral, or morphological differences between the Columbia Basin pygmy rabbit and populations throughout the remainder of the species' range are not known at this time.

Significance

The types of information that may demonstrate the significance of a discrete population segment to the remainder of its taxon include, but are not limited to: (1) Persistence of the population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the population segment differs markedly from other population segments in its genetic characteristics. The following significance factors have bearing on the Columbia Basin pygmy rabbit.

Markedly different genetic characteristics. Several studies have been initiated to investigate the pygmy rabbit's genetic profile (WDFW 2000c; WDFW 2001a, c; Cegelski and Waits, undated). To date, the genetic analyses include current (*ca* 1990s to present) samples from Washington, Idaho, and Montana; and museum specimens (*ca* 1910s to 1980s) from Washington, Idaho, Montana, and Oregon, with a median date of 1949 among these States (WDFW 2001c). Analyses have included both mitochondrial DNA (from current samples only) and nuclear DNA markers (WDFW 2001c; K. Warheit, pers. comm. 2001, 2002).

Results from recent genetic analyses indicate that the Columbia Basin pygmy rabbit is markedly different from other pygmy rabbit population segments (WDFW 2001c; K. Warheit, pers. comm. 2001, 2002). These differences are consistent in both mitochondrial DNA and nuclear DNA indices, and between current (Washington versus Idaho and Montana) and museum (Washington versus Idaho, Montana, Oregon) samples. The genetic results suggest that the Columbia Basin pygmy rabbit diverged (*i.e.,* was genetically isolated) from the remainder of the taxon at least 10,000 to 25,000 years BP, and possibly as long as 40,000 to 115,000 years BP (WDFW 2001c; K. Warheit, pers. comm. 2001, 2002). The genetic differences that have so far been identified between the Columbia Basin pygmy rabbit and other pygmy rabbit populations are similar in nature to subspecific differences recognized in other mammal species. However, potential taxonomic reorganization of the pygmy rabbit species will require additional study (WDFW 2001c).

In addition to the genetic differences that likely result from long-term isolation described above, the Columbia Basin pygmy rabbit also exhibits significantly less genetic diversity compared to other pygmy rabbit populations. Furthermore, the level of genetic diversity in this population segment has declined significantly and at an accelerated rate since the mid-1900s (Washington current versus Washington museum specimens). These results suggest a recent and rapid decline in the effective population size (*i.e.,* the number of individuals contributing to reproduction) of the Columbia Basin pygmy rabbit, and that this population segment may be experiencing a degree of inbreeding depression (WDFW 2001c).

Two conclusions may be drawn from the recent results of the genetic research on the pygmy rabbit—(1) the unique genetic characteristics of the Columbia Basin pygmy rabbit represent an important component in the evolutionary legacy of the species and, therefore, a genetic resource worthy of conservation; and (2) efforts should be undertaken to address the low level of genetic diversity within this population segment (K. Warheit, pers. comm. 2001, 2002).

Persistence in an unusual or unique ecological setting. With regard to the historic distribution of the pygmy rabbit, several studies have defined and mapped landscape-level ecosystem components of Washington and Oregon and, to varying degrees, address the management of natural resources within these regional ecosystems (Daubenmire 1988; Franklin and Dyrness 1988; Keane *et al.* 1996; Quigley *et al.* 1997; Wisdom *et al.* 1998). Although there are considerable differences between the studies, the ecosystem mapping units that were developed as a result of these studies are relatively consistent. These ecosystem mapping units are important for determining if the Columbia Basin pygmy rabbit may occupy an unusual or unique ecological setting. In addition, it is important for delineating the boundaries of any potential DPS in the region, as required by our DPS policy. Currently, there is insufficient information available to address the other shrub steppe ecosystems comprising historic pygmy rabbit range outside of Washington and Oregon.

During the early 1900s, the pygmy rabbit populations in Washington and Oregon (Figure 2) occurred in five ecosystems identified by the above studies. For the purposes of this DPS analysis, we refer to these ecosystems as the Columbia Basin, High Lava Plains, Northern Great Basin, Owyhee Uplands, and Modoc Plateau (after Quigley *et al.* 1997). The Columbia Basin occurs in Washington and northern Oregon; the other four ecosystems occur in central and southern Oregon (Figure 3).

BILLING CODE 4310–55–P

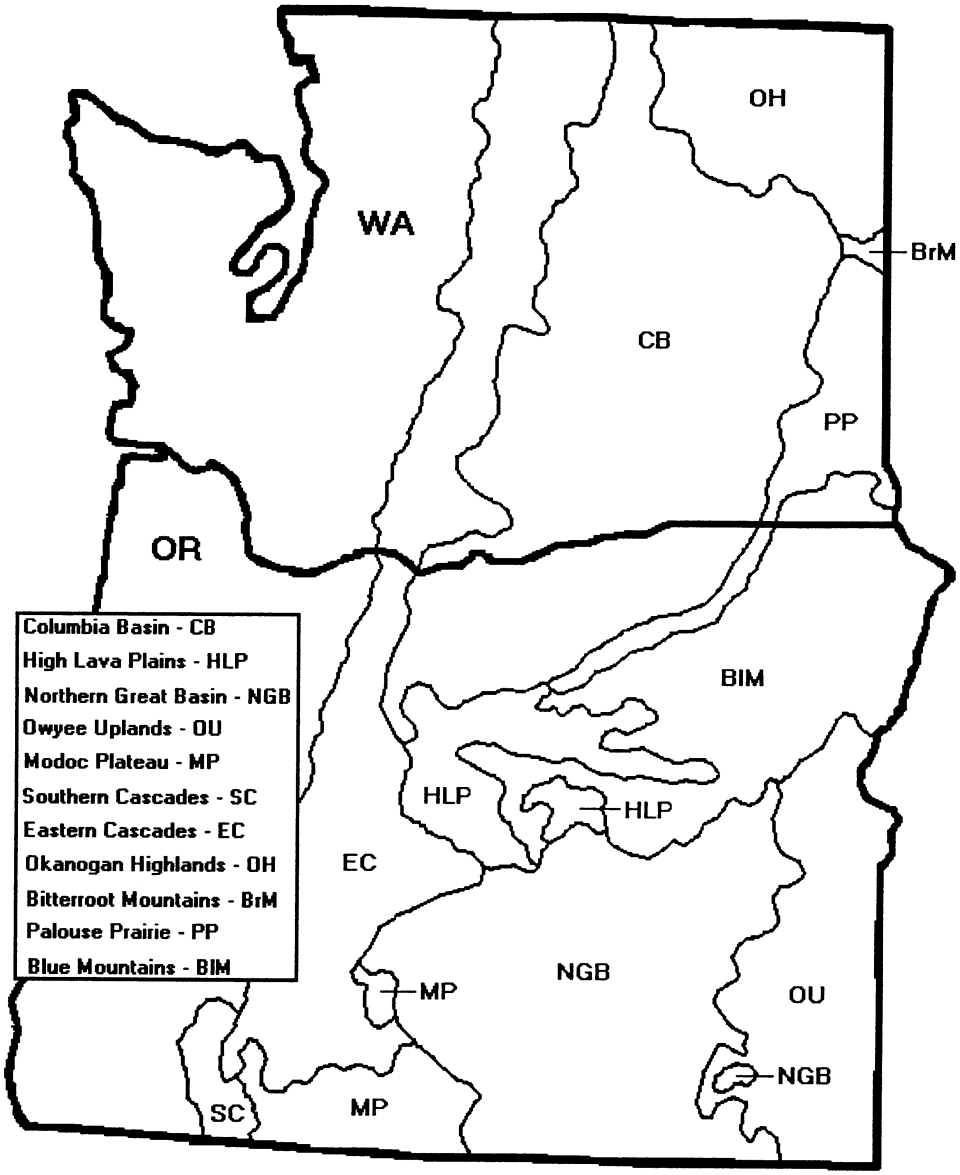


Figure 3. The ecosystems of eastern Washington and Oregon (as modified from Daubenmire 1988; Franklin and Dyrness 1988; Keane et al. 1996; Quigley et al. 1997).

BILLING CODE 4310–55–C

These ecosystems are interspersed to varying degrees with forested habitats of the Southern and Eastern Cascades ecosystems to the west, Okanogan Highlands to the north, Bitterroot and Blue Mountains to the east, and steppe (grassland) habitats of the Palouse Prairie to the east.

The historic range of the Columbia Basin pygmy rabbit occurred entirely within the Columbia Basin of central Washington, and this population segment has been the only representation of the taxon within this ecosystem for thousands of years. During the early 1900s, the population segment of pygmy rabbits in central and southern Oregon was apparently locally dispersed across the High Lava Plains, Northern Great Basin, Owyhee Uplands, and Modoc Plateau (Figures 2 and 3). The distribution of the pygmy rabbit in Oregon has likely declined during the last century (Weiss and Verts 1984; WDFW 2000b) and, currently, primarily

encompasses areas within the Northern Great Basin ecosystem.

A number of significant differences are found between the Columbia Basin ecosystem and the balance of pygmy rabbit range in central and southern Oregon. In general, the Columbia Basin is lower in elevation, contains soils of varying origin, and has been influenced by different geological processes. These structural differences, combined with regional climatic conditions, significantly influence the broad plant associations found within each ecosystem (Daubenmire 1988; Franklin and Dyrness 1988). Historically, transitional steppe habitats were much more prevalent in the Columbia Basin than in the ecosystems of central and southern Oregon. In contrast, juniper (*Juniperus* spp) woodlands and salt-desert shrub habitats were much more common in central and southern Oregon. Finally, there are significant differences in the type and distribution of sagebrush taxa among the ecosystems (Table 1).

TABLE 1. DIFFERENCES IN ECOSYSTEM ELEMENTS BETWEEN REGIONS OCCUPIED BY THE EXTANT POPULATION SEGMENTS OF THE PYGMY RABBIT IN WASHINGTON AND OREGON (AFTER WINWARD 1980; DAUBENMIRE 1988; FRANKLIN AND DYRNESS 1988; MCNAB AND AVERS 1994; DOBLER *et al.* 1996; QUIGLEY *et al.* 1997).

Ecosystem Elements: Geologic, Edaphic, and Transitional Habitats

Population segment	Elevations	Soils	Channeled scablands	Internally-drained playas	Steppe	Juniper woodland	Salt-desert scrub
Columbia Basin	<914m (<3,000 ft)	Deep/Loamy Glacial/ Eolian.	Prominent (north).	Rare/Absent	Abundant (east)	Rare/Absent	Rare/Absent.
Central/Southern Oregon.	>1,067 m (<3,500 ft)	Thin/Rocky Volcanic (HLP [1]) Deep/Alluvial (NGB [1], OU [1]).	Rare/Absent	Prominent (NGB, OU).	Rare/Absent	Abundant (HLP) Present (NGB, OU).	Abundant (NGB, OU).

Ecosystem Elements: Sagebrush (*Aretemesia*) Taxa [2]

Population segement	Basin ssp.	Wyoming ssp.	Mountain ssp.	Low	Three-tip	Stiff	Early	Silver	Black
Columbia Basin	Dominant	Present (west).	Rare/Absent	Rare/Absent	Abundant (north).	Abundant	Rare/Absent	Rare/Absent	Rare/Absent.
Central/Southern Oregon	Rare/Absent	Dominant	Abundant	Abundant	Present (OU).	Present	Present (HLP).	Present (NGB, OU).	Present (NGB, OU).

[1] Element primarily applies to the ecosystems noted: HLP—High Lava Plains; NGB—Northern Great Basin; OU—Owyhee Uplands.
[2] Big Sagebrush (*A. tridentata*) Subspecies (ssp): Basin—*A.t. tridentata,* Wyoming—*A.t. wyomingensis,* Mountain—*A.t. vaseyana;* Low—*A. arbuscula;* Three-tip—*A. tripartita;* Stiff—*A. rigida;* Early—*A. longiloba;* Silver—*A. cana;* Black—*A. nova.*

There are a number of broad habitat associations in common between the Columbia Basin and the ecosystems of central and southern Oregon (Daubenmire 1988; Franklin and Dyrness 1988). However, even within these common habitat associations, notable differences exist. In general, the composition of forb species differs considerably between the Columbia Basin and the ecosystems in central and southern Oregon (*cf* Daubenmire 1988; Franklin and Dyrness 1988). Even when the same forb species may be present, the two regions typically support different subspecies or varieties of these taxa (Hitchcock and Cronquist 1973).

Currently, it is unclear if the Columbia Basin pygmy rabbit is different in several respects (*i.e.*, physiologically, behaviorally, or morphologically) from other pygmy rabbit populations throughout the remainder of the species' historic range. However, based on the above ecological information, and the pygmy rabbit's close association with sagebrush ecosystems, we conclude that the Columbia Basin represents a unique ecological setting for the taxon due to its different geologic, climatic, edaphic (soil), and plant community components. In addition, the Columbia Basin ecosystem holds different management implications for the Columbia Basin pygmy rabbit compared to the ecosystems of southern Oregon and the population segment of pygmy rabbits occupying that region (*see* above), and likely also compared to the other sagebrush ecosystems and population segments found throughout the remainder of the species' range (*see* Background, above, and Summary of Factors Affecting the DPS, below).

Significant gap in the range of the taxon. The Columbia Basin pygmy rabbit represents an isolated portion of the northern-most extent of the historic distribution of the taxon (Figure 1). Paleontological records indicate that the prehistoric distribution of this population segment (*ca* 150 to 10,000 + years BP) may have encompassed roughly 23 percent of the Columbia Basin (after Lyman 1991). As recently as the early 1900s, this population segment was distributed across approximately 10 percent of the Columbia Basin ecosystem (*cf* Figures 2 and 3). Currently, the Columbia Basin pygmy rabbit occurs in less than 1 percent of its overall historic distribution, and a small fraction of its potential prehistoric distribution.

A number of studies address the characteristics of peripheral and/or isolated populations and their influences on, and importance to, the remainder of the taxon. These studies indicate that peripheral and isolated populations may experience increased directional selection due to marginal or varied habitats at range peripheries, exhibit adaptations specific to these differing selective pressures, demonstrate genetic consequences of reduced gene flow dependent on varying levels of isolation, and/or have different responses to anthropogenic influences (Levin 1970; MacArthur 1972; Morain 1984; Lacy 1987; Hengeveld 1990; Saunders *et al.* 1991; Hoffmann and Blows 1994; Furlow and Armijo-Prewitt 1995; Garcia-Ramos and Kirkpatrick 1997).

The available information regarding the past distribution and isolation of the Columbia Basin pygmy rabbit demonstrates that this population segment is likely experiencing increased directional selection due to marginal and varied habitats at the periphery of the taxon's range. In addition, this population segment is exhibiting genetic

consequences of long-term isolation from other population segments and is responding, and will continue to respond, to the different anthropogenic influences in the region.

Based on the above information, we conclude that the loss of the Columbia Basin pygmy rabbit would represent a significant gap in the range of the taxon, due to the loss of a conspicuous peripheral and isolated extension of its current and historic range.

Conclusion of DPS Review

Based on the available information described above, we find that the Columbia Basin pygmy rabbit is discrete from, and significant to, the remainder of the taxon, and thus constitutes a DPS. The discreteness of this population segment is demonstrated by its physical, genetic, and ecological isolation from the remainder of the taxon. The significance of this population segment is demonstrated by: (1) Its genetic characteristics, which differ markedly from other population segments; (2) its long-term persistence in the unique ecological setting of the Columbia Basin; and (3) the significant gap in the current and historic range of the taxon that the loss of this population segment would represent. As required by our DPS policy, we have determined that the bounds of this DPS are conterminous with the historic distribution of the pygmy rabbit within the Columbia Basin ecosystem (Figure 2).

Summary of Comments and Recommendations

In our November 30, 2001, proposed rule (66 FR 59769) and associated notifications, we requested that all interested parties submit comments, data, or other information that might contribute to development of a final listing decision. The comment period for the proposed rule was originally open from November 30, 2001, through January 29, 2002. During this period, we received a number of requests to extend the comment period and five requests to hold a public hearing to address the proposed rule. On February 7, 2002, we extended the comment period for the proposed rule through February 28, 2002. In addition, after coordinating meeting details with the requesters, on February 12, 2002, we held a public meeting in East Wenatchee, Washington, to present the information we had available on the Columbia Basin pygmy rabbit, to receive input, and to discuss the proposed rule with any interested parties. On July 17, 2002, we extended the comment period for the proposed rule through August 1, 2002.

On November 30, 2001, February 7, 2002, and July 17, 2002, we contacted appropriate Federal, State, tribal, and local resource agencies and governmental offices, scientific organizations, agricultural organizations, outdoor user groups, environmental groups, and other interested parties and requested that they comment on the proposed rule. We established several methods for interested parties to provide comments and other materials, including verbally or in writing at the public meeting, by letter, facsimile, or, during the original and final open comment periods, by electronic mail. Notices of the extended comment period and public meeting announcement were also published in local newspapers on February 7, 2002, including the Wenatchee World, Columbia Basin Herald, and Spokesman Review.

We received a total of 34 letters, facsimiles, comment cards, and electronic mailings from the public with comments and/or questions concerning the proposed rule on the Columbia Basin pygmy rabbit during the three comment periods. We also received 2 letters from the same individual. Of the comments received, 9 were in support of the listing action, 6 were opposed to the listing, and 19 were neutral.

We revised and updated the information contained in this final rule to reflect the additional information we received during the open comment period for the proposed rule. We address substantive comments concerning various aspects of the proposed rule, below. General topics are categorized and comments of a similar nature under each topic are grouped together below, along with our response to each.

Impact of Listing Action

Issue 1: We received a number of requests to explain more fully what the potential effects of listing the Columbia Basin pygmy rabbit would be on private lands, or private management actions on public lands, throughout the population's historic distribution.

Our Response: Once a species becomes listed, either through our emergency or normal listing process, section 9 of the Act sets forth a series of general prohibitions that apply to that species. Of primary concern for Columbia Basin pygmy rabbits, the prohibitions make it illegal for any person subject to the jurisdiction of the United States to ''take'' them. The definition of ''take'' under the Act includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. ''Harm'' is further defined to include significant habitat modification or degradation that results in death or injury to the listed wildlife by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. ''Harass'' is further defined to include actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Other general prohibitions make it illegal to import or export listed wildlife or its parts or products, transport it in interstate or foreign commerce in the course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. Section 11 of the Act describes the civil and criminal penalties that may be imposed on any individual or organization that violates these prohibitions.

Section 10 of the Act provides a number of exceptions to the prohibitions against prescribed in section 9. In other words, activities that could result in take of the Columbia Basin pygmy rabbit may be permitted by the Service if certain conditions are met. Under section 10(a)(1)(A), we may permit activities otherwise prohibited by section 9 if they are conducted for scientific purposes or to enhance the propagation or survival of the Columbia Basin pygmy rabbit (recovery permits). Under section 10(a)(1)(B), we may permit activities otherwise prohibited by section 9 if the resulting take is incidental to, and not the purpose of, the otherwise lawful activities (incidental take permits). In order for us to issue an incidental take permit, an applicant must submit an HCP that specifies: (1) The impact that will likely result from such taking; (2) what steps will be taken to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (3) what alternative actions to such taking were considered and the reasons why such alternatives are not used; and (4) other such measures that the Secretary of Interior (Secretary) may require.

With regard to non-Federal property, if pygmy rabbits are not present on the property, the Act's taking prohibition would not apply there. Where non-Federal property is occupied by the Columbia Basin pygmy rabbit, if management activity would not result in take, section 9 would also not apply. Even if non-Federal property is occupied by the pygmy rabbit and management activities are likely to result in take, an incidental take permit may still be available under section

10(a). Service and technical assistance will be available to landowner(s) and/or operator(s) to help them avoid, minimize, or mitigate any adverse impacts to the Columbia Basin pygmy rabbit.

Proposed activities authorized, funded, or carried out by a Federal agency are subject to the consultation requirements Congress prescribed in section 7 of the Act. Circumstances under which a proposed Federal action or Federal nexus may affect the Columbia Basin pygmy rabbit will be handled through consultation with the involved Federal agency and applicant(s), as necessary, on a case-by-case basis, in accordance with section 7 of the Act.

Issue 2: Various commenters expressed concern regarding circumstances where landowners or operators of currently unoccupied habitat are adjacent to occupied sites or areas potentially used for reintroduction efforts, and what the consequences of future occupation of these lands by the Columbia Basin pygmy rabbit may be.

Our Response: Authorization of take of rabbits incidental to otherwise lawful activities may be available through development of HCPs and issuance of incidental take permits in accordance with section 10(a) of the Act. In addition, landowners or operators may enter into Safe Harbor Agreements that provide regulatory assurances to landowners who manage their properties in such a way as to attract Columbia Basin pygmy rabbits. As with currently occupied habitats, we will continue to work cooperatively with, and provide technical assistance to, landowners and operators to help them avoid, minimize, or mitigate any potential future impacts to the Columbia Basin pygmy rabbit.

Critical Habitat

Issue 3: We received a number of comments concerning critical habitat and how it relates to the emergency, proposed, and final rules for the Columbia Basin pygmy rabbit.

Our Response: Neither our emergency, proposed, nor this final rule designates critical habitat for the Columbia Basin pygmy rabbit. We find that designation of critical habitat for the Columbia Basin pygmy rabbit is not determinable at this time because information sufficient to perform the required analyses of the impacts of the designation is lacking (*see* Critical Habitat, below). We will continue to protect the Columbia Basin pygmy rabbit and its habitat through section 7 consultations on Federal actions that may affect this population segment, through the recovery process, through HCPs under section 10, and through enforcement of take prohibitions under section 9 of the Act.

National Environmental Policy Act (NEPA)

Issue 4: Several comments suggested the need for NEPA analyses, or requested an explanation of why the NEPA process is not necessary, for this final rule.

Our Response: We have determined that environmental assessments (EAs) and environmental impact statements (EISs) developed pursuant to NEPA do not need to be prepared in connection with regulations adopted pursuant to the listing process under section 4(a) of the Act. The Federal Council on Environmental Quality has determined, based on court decisions, that listing actions under the Act are exempt from NEPA review as a matter of law. We published a notice that further describes our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Determination of Status of Columbia Basin and Other Pygmy Rabbit Populations

Issue 5: We received a number of comments and questions concerning how new information about the presence of additional subpopulations of Columbia Basin pygmy rabbits may affect the status of the population, the listing process, or this final rule.

Our Response: If significant new information becomes available regarding additional subpopulations of Columbia Basin pygmy rabbits, the new information could affect the priority of the management actions identified for the captive propagation program and/or the ongoing conservation actions being implemented for the remaining wild portion of the population. The information we currently have available indicates that it is unlikely that a sufficiently large, well distributed ''unknown'' subpopulation may still occur that would completely remove the need for protection of the species under the Act. No additional information on locations of other subpopulations of Columbia Basin pygmy rabbits was provided during the comment period.

Issue 6: We received a number of comments and questions concerning how we determined the historic range of the pygmy rabbit, what the abundance and status of various pygmy rabbit populations are, how abundance estimates are determined, and the causes behind the recent declines in the Columbia Basin pygmy rabbit.

Our Response: Information concerning the current, historic, and prehistoric distribution of the Columbia Basin pygmy rabbit population primarily comes from scientific literature, including peer-reviewed journal articles, doctoral dissertations, master's theses, and/or State natural resource agency reports and data. These sources are referenced within the body of the rule, as appropriate. As discussed above (*see* Distribution and Status), there is very little information currently available regarding the abundance of pygmy rabbits throughout the majority of their current range. Due to the ongoing efforts of the WDFW to monitor and study pygmy rabbits over the last several decades, there is considerably more information available regarding the current abundance and distribution of the Columbia Basin population.

With regard to the past distribution and abundance of the Columbia Basin pygmy rabbit, we assume that this population was more broadly distributed and had a greater abundance of individuals within this region historically. This assumption is based on the available information addressing other pygmy rabbit populations, the population dynamics of other Leporid species, and the general concepts and theory of minimum viable populations. Given this available information, it is unlikely that the Columbia Basin pygmy rabbit would have persisted within this region for thousands of years with such a limited distribution and at such minimum abundance levels. Nevertheless, the available information only indicates the occurrence of several small subpopulations in portions of five counties in central Washington since the early 1900s. As such, the historic distribution and abundance of the Columbia Basin pygmy rabbit that we report in this final rule represent minimum estimates.

Obtaining precise estimates of wildlife abundance levels is often very difficult. This is because: (1) The abundance of many wildlife populations naturally fluctuates between years, and even between seasons within years; (2) individuals are often difficult to observe; (3) individuals often move between observations or there is an unknown amount of mixing of individuals between observed areas; and (4) observation techniques can affect the behavior of the individuals being observed. Because of these limitations, managers often use a ''surrogate'', or index, to estimate a probable range of values concerning wildlife abundance levels. With regard to pygmy rabbits, the occurrence of their burrows and estimates of the burrows' ages and/or

activity levels (*e.g.,* active, fresh, old, very old) are typically used to monitor the status of a given population.

We understand that there are limitations in the available information addressing the current and historic distribution and abundance of the Columbia Basin and other pygmy rabbit populations. However, the available information provides several important parameters with regard to our listing determination, including: (1) The distribution of the Columbia Basin pygmy rabbit has declined dramatically from historic levels; (2) five of six known subpopulations remaining in the mid-1990s have been extirpated; and (3) the abundance of active burrows and, by extension, individual pygmy rabbits within the last known occupied site, has declined dramatically over this same recent time period. The estimates of individual Columbia Basin pygmy rabbits known to remain in the wild, as presented in the proposed rule and this final rule, represent maximum estimates and are based on the best professional judgement of recognized experts.

As discussed below (*see* Summary of Factors Affecting the DPS), several factors and their interactions are implicated in the historic and recent declines of the Columbia Basin pygmy rabbit, including habitat conversion and fragmentation, wildfire, predation, livestock grazing, and disease. However, addressing the extremely small size and limited distribution of this population is our primary concern for the immediate conservation and protection measures for the Columbia Basin pygmy rabbit. Measures to address the more general and/or long-term threat factors will be identified as our recovery program is further developed (*see* Captive Propagation and Recovery, below).

Livestock Grazing

Issue 7: We received a large number of comments concerning our interpretation of the available information with regard to livestock grazing and the potential effects it has on the Columbia Basin pygmy rabbit. Some comments suggested that we were overly critical concerning the negative effects of livestock grazing and did not adequately address its potential benefits to the Columbia Basin pygmy rabbit. In contrast, other comments suggested that we down-played the negative effects of livestock grazing and implied that regulatory restrictions should be placed on grazing activities in all areas currently or potentially used by the Columbia Basin pygmy rabbit.

Our Response: As with the available information addressing distribution and abundance (see above response), we understand that there are limitations in the available information concerning the effects of livestock grazing on the Columbia Basin pygmy rabbit. However, with regard to adverse effects of livestock grazing, the one study available found several important characteristics—(1) Male Columbia Basin pygmy rabbits tend to make longer movements and require larger home ranges during the breeding season in recently grazed areas as opposed to areas that have not been grazed for several decades (Gahr 1993); (2) there tend to be fewer burrows available to, or constructed by, Columbia Basin pygmy rabbits in recently grazed areas (L. Shipley, pers. comm. 2001); (3) Columbia Basin pygmy rabbits occupying recently grazed sites tend to have a greater proportion of their summer through winter diets composed of sagebrush as opposed to grasses and forbs (L. Shipley, pers. comm. 2001); (4) the nutritional quality of the available grasses and shrubs tends to be less from fall through spring in recently grazed areas (L. Shipley, pers. comm. 2002); and (5) livestock can directly damage pygmy rabbit burrow systems through trampling (Rauscher 1997; N. Siegel, WSU, pers. comm. 2001; M. Hallet, pers. comm. 2002).

Other, more general, information also suggests the adverse effects on the Columbia Basin pygmy rabbit associated with livestock management activities. These other potential impacts include sagebrush control efforts, effects on predator distribution and density through the use of artificial watering or supplemental nutrition and feeding sources for livestock, structural damage to dense stands of sagebrush by livestock, removal of current herbaceous growth or residual cover of native grasses and forbs by livestock for forage, and increases in the density or distribution of various invasive weed species.

The available information described above suggests there is a potential for take of the Columbia Basin pygmy rabbit to occur, as defined by the Act, in association with some livestock grazing operations. These potential impacts may be in the form of direct take (*e.g.,* injury or mortality due to trampling of occupied burrows or sagebrush eradication efforts), or in the form of indirect take (*e.g.,* harm or harassment due to habitat modification or degradation that significantly impairs normal behavioral patterns associated with the Columbia Basin pygmy rabbit's breeding, feeding, or sheltering activities). Due to the extremely low number and restricted distribution of Columbia Basin pygmy rabbits, additional mortality resulting from livestock grazing practices currently represents a potentially significant threat to their continued existence.

Pygmy rabbits have coexisted with various levels of livestock grazing activities throughout their historic range for many years. Currently, it is unclear if light or moderate levels of livestock grazing may be compatible with, or even beneficial to, long-term conservation efforts for otherwise secure populations of pygmy rabbits. The effects of livestock grazing that have been identified to potentially benefit the Columbia Basin pygmy rabbit include: (1) Increasing the vigor of grass species through mechanical disturbance by livestock; (2) increasing the abundance of sagebrush cover through altered competitive advantage by removal or reduction of associated shrub steppe vegetation; (3) increasing the biological diversity of wildlife and vegetation species; and (4) creating more open habitats that provide improved security through increased visual line-of-sight for pygmy rabbits.

It is our intention, once the captive propagation program becomes better established and appropriate protection measures are in place to ensure the security of the remaining wild portion of the population, to reinitiate or support future studies to address the potential effects of livestock grazing (both positive and negative) on the Columbia Basin and/or other pygmy rabbit populations. These efforts should attempt to include the evaluation of pygmy rabbits in areas subject to various intensities and timing of livestock grazing, areas where livestock grazing has been discontinued for known periods of time, sites that have historically remained free of livestock grazing, and areas of varying soils and initial ecosystem conditions. These evaluations will help fill the current information gaps regarding the effects of livestock grazing on the Columbia Basin pygmy rabbit and provide a basis for analyzing grazing activities under sections 7 and 10(a) of the Act.

The specific conditions under which livestock grazing activities will be addressed in habitats occupied by the Columbia Basin pygmy rabbit will be further defined as our recovery program is developed (*see* Captive Propagation and Recovery, below).

Issue 8: We received several comments concerning the effects of current and historic grazing by native herbivores, such as white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), elk (*Cervus elaphus*), and American bison (*Bison bison*), on the Columbia Basin pygmy rabbit. In

addition, some comments expressed concern regarding why this form of grazing is treated differently than the effects of livestock grazing and what management actions we may undertake to address these grazing effects.

Our Response: The available information suggests that the shrub steppe habitats of the Columbia Basin evolved in the absence of substantial grazing pressure from large native herbivores since the latest period of glaciation, roughly 12,000 years BP (Mack and Thompson 1982; Daubenmire 1988; Lyman and Wolverton 2002). Deer and elk are also primarily browsing, as opposed to grazing, animals. In addition, the ecological effects of grazing by various livestock (*e.g.,* cattle, horses, sheep) are not typically considered to be comparable to those of native herbivores (Lyman and Wolverton 2002). In relatively large, well distributed pygmy rabbit populations, we would not expect grazing by native herbivores to represent a significant threat to their long-term security.

Historically, central Washington supported extensive livestock grazing operations throughout the shrub steppe habitats potentially used by the Columbia Basin pygmy rabbit (Daubenmire 1988; WDFW 1995a). Excessive livestock grazing pressure can have significant impacts on the shrub steppe ecosystems found throughout the historic range of the Columbia Basin pygmy rabbit (Fleischner 1994), and these impacts may be exacerbated in the Columbia Basin (see above response). Contemporary grazing levels are much reduced from historic levels; however, large livestock operations continue within the shrub steppe habitats of the Columbia Basin to the present. From 1986 to 1993, an average of roughly 280,000 cattle were being supported in the five central Washington counties that historically harbored the Columbia Basin pygmy rabbit (WDFW 1995b).

The available information suggests that the historic and seasonal use patterns and concentrations of native herbivores and their associated grazing effects within the Columbia Basin are considerably different from those of livestock operations. In addition, the available information does not indicate that natural levels of grazing by native herbivores, or their grazing patterns as they may have been altered by contemporary human activities, currently represent a risk to the Columbia Basin pygmy rabbit.

Predation and Disease

Issue 9: We received a number of questions and comments concerning our interpretation of the available information addressing predation and disease and the potential effects they have on the Columbia Basin pygmy rabbit. In addition, several commenters raised issues and questions concerning our potential future management actions to address these threat factors.

Our Response: Information concerning the potential current and historic impacts from predation and disease on the Columbia Basin and other pygmy rabbit populations primarily comes from scientific literature, including peer-reviewed journal articles, doctoral dissertations, master's theses, and/or State natural resource agency reports and data. In addition, the past and current management efforts that the WDFW has undertaken to address these threat factors are presented in the preamble to the rule. The details of planned future Federal management actions to address these threat factors will be further defined as our recovery program is developed (*see* Captive Propagation and Recovery, below).

The available information suggests that in relatively large, well distributed pygmy rabbit populations, predation and disease are not likely to represent a significant threat to their long-term security. However, due to the extremely small size and localized occurrence of the Columbia Basin pygmy rabbit, the available information suggests that human-altered predation and/or disease patterns, and even natural levels of predation and disease, may significantly impair conservation efforts for the remaining wild and captive portions of this population segment.

Captive Propagation and Recovery

Issue 10: We received a number of comments regarding the captive propagation program established by the WDFW and our potential management activities to address recovery of the Columbia Basin pygmy rabbit. These comments addressed a wide variety of issues and questions, including the health and breeding success of captive pygmy rabbits, impacts to pygmy rabbit populations associated with research or conservation efforts, other potential differences between the various pygmy rabbit populations (*e.g.*, physiological, behavioral, morphological), the survival characteristics of captive bred versus wild individuals, habitat enhancement or restoration standards for mitigation efforts, Federal recovery policy for down-listing or delisting the Columbia Basin pygmy rabbit, and reintroduction protocols and potential release sites for the recovery program.

Our Response: The available information we have regarding the biology and ecology of the Columbia Basin pygmy rabbit, impacts to the populations, and mitigation efforts is referenced within the preamble to this final rule.

The WDFW's captive propagation program affords an opportunity to maintain a sufficient number of Columbia Basin pygmy rabbits in captivity until appropriate recovery measures are developed and implemented to ensure the population's survival in the wild. Ultimately, the goal of the captive propagation effort is to release captive-bred Columbia Basin pygmy rabbits back into suitable habitats within their historic range so that viable subpopulations can become re-established. However, the number and size of the wild subpopulations necessary for recovery pursuant to the Act have not yet been determined.

Listing the Columbia Basin pygmy rabbit as endangered will provide for the development of a recovery plan. Such a plan would bring together Federal, State, and local efforts for the conservation of the species to form a recovery planning team. During the Federal recovery planning process, a team develops a plan to establish a framework for agencies to coordinate recovery efforts and cooperate with each other in conservation efforts. A recovery plan will set recovery objectives and priorities, such as habitat enhancement and/or restoration efforts, reintroduction protocols, and potential release sites, assign responsibilities to achieve those goals and objectives, and estimate costs of various tasks necessary to achieve conservation and survival of this species. A recovery plan will also identify goals and objectives that need to be met in order to downlist or delist the species. The following comments may provide further clarification.

Issue 11: Concern was expressed regarding possible mixing of Columbia Basin pygmy rabbits being held in captivity with those from the Idaho population being used for the husbandry studies.

Our Response: There have been no instances of intermixing between the two source populations of captive pygmy rabbits. The WDFW, WSU, and Oregon Zoo implemented a number of appropriate measures to avoid the possibility of commingling of Columbia Basin and other pygmy rabbits being held in captivity. These, and additional measures, were also made conditions of the December 18, 2001, recovery permit we issued for the captive propagation program (*see* Previous Federal Action, above). These measures include

maintaining secure and appropriately marked cages, providing discrete holding areas or separation fencing between cages, and developing and adhering to strict transport and handling procedures to minimize any potential for direct contact between the captive pygmy rabbit populations. Furthermore, notification of any instances of commingling of Columbia Basin and other pygmy rabbits will be provided to the Service within 3 working days of the incident, and will include a description of the circumstances under which the commingling occurred and corrective measures to address that and any potential future incidents.

Issue 12: Concerns were expressed regarding the potential impacts to the Columbia Basin pygmy rabbit from various ongoing research and conservation activities, and our potential actions to address these concerns.

Our Response: We recognize that certain research and conservation activities have the potential to directly and indirectly affect the Columbia Basin pygmy rabbit. The available information addressing the circumstances under which these impacts may be occurring, or have the potential to occur in the future, are referenced in the preamble to the rule, as appropriate.

Research and management activities for the Columbia Basin pygmy rabbit will be regulated under the section 10 permitting process. The WDFW has closely coordinated its management activities to conserve the Columbia Basin pygmy rabbit with us. In addition, in cooperation with the WDFW, WSU, and the Oregon Zoo, we have developed a number of appropriate measures to avoid or reduce the risk of take of the Columbia Basin pygmy rabbit. These measures were made conditions of the December 18, 2001, recovery permit and its revisions that we issued for the captive propagation program and ongoing management activities at the Sagebrush Flat site (*see* Previous Federal Action, above). We will continue to work cooperatively with interested parties on activities conducted for scientific purposes or to enhance the propagation or survival of the Columbia Basin pygmy rabbit under section 10 of the Act.

Issue 13: Concern was expressed regarding our use and incorporation of information from other pygmy rabbit populations in the background biological discussions and other sections of the emergency and proposed listing rules. In addition, questions were raised regarding whether this information is appropriate or applicable to the Columbia Basin pygmy rabbit.

Our Response: Wildlife investigations often use information concerning closely related populations, subspecies, species, and even genera when making biological inferences about a given population. It is important that any inferences made from these comparisons recognize the potential differences between the populations (or higher taxa), and that any conclusions are limited to what the available information supports. However, understanding the life history of a closely related population (or higher taxa) is often beneficial, and at times even essential, to a more complete understanding of the population of interest. While the Columbia Basin pygmy rabbit is distinct from other pygmy rabbit populations, we recognize that they share many similarities in their life history characteristics. Recognizing these similarities is critical to our understanding of the Columbia Basin population.

Service policy concerning the consideration of a DPS for listing under the Act requires us to evaluate the discreteness and significance of a given population in comparison to the remainder of its taxon. Considering all of the available information on a species helps determine if significant differences may exist between its discrete populations.

Issue 14: Several commenters expressed concern regarding the area affected by the listing, and the potential extent of reintroduction efforts that may be undertaken to address recovery of the Columbia Basin pygmy rabbit.

Our Response: This final rule lists as endangered the pygmy rabbit in the Columbia Basin of central Washington (Figure 2). Appropriate sites within this region that could potentially be used for reintroduction efforts will be identified as our recovery program is further developed. Pygmy rabbit populations in other States throughout the species' historic range are not included in this listing action, nor will any areas outside of the historic range of the Columbia Basin pygmy rabbit population be considered for any recovery actions.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we sought independent expert review by seven specialists during the comment period on the proposal to list the Columbia Basin pygmy rabbit. The purpose of these reviews is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. The seven independent reviewers would provide expertise on pygmy rabbit biology, population genetics, Columbia Basin shrub steppe ecology and rangeland management. Six of these reviewers submitted comments on the proposed listing, and one did not respond. Experts that provided comments include: Two pygmy rabbit researchers, one from Arizona State University and one from Idaho State University; a research wildlife biologist from the Biological Resources Division of the U.S. Geological Survey; a population geneticist from the University of Denver; a research biologist from the WDFW; and a senior scientist from NMFS. All of the experts concurred that the proposed listing action was justified and appropriate. We have incorporated their comments into this final determination. We address substantive comments raised by the peer reviewers concerning various aspects of the emergency and proposed rules below, and issues of a similar nature are grouped together, along with our response to each.

Issue 1: The role of habitat loss and fragmentation in the long-term decline of the Columbia Basin pygmy rabbit should be further emphasized in the final rule. In addition, measures to address habitat protection and restoration, including identifying specific habitat parameters and the control of exotic and/or invasive plant species, should be further addressed in the final rule.

Our Response: We recognize that habitat loss and fragmentation have likely played a primary role in the long-term decline of the Columbia Basin pygmy rabbit. In addition, we recognize that habitat protection and restoration will play a central role in future conservation efforts for this population. We will review and further develop specific habitat parameters and criteria, in cooperation with interested parties, at such time as we undertake future Federal conservation or recovery initiatives for the Columbia Basin pygmy rabbit.

Issue 2: The biophysical role of habitat (*e.g.*, thermal cover provided by native bunch grasses), and the potential impacts to this role from livestock grazing, should be further emphasized in the final rule.

Our Response: We recognize the potential for habitat to play an important biophysical role for the Columbia Basin pygmy rabbit, and that livestock grazing may affect these habitat parameters. However, there is very little additional information available regarding this potential relationship and, until it becomes available, clarification of this issue needs further investigation.

Issue 3: An expert comment was made that our use of the terms ''prehistoric'', ''historic'', and ''recent'' be further clarified in the final rule.

Our Response: In general, use of the identified terms in the final rule is as follows: prehistoric refers to information relating to conditions greater than roughly 200 years BP (*i.e.*, prior to extensive European settlement of the western United States), and recorded largely after the fact (*e.g.*, paleontological records); historic refers to information relating from roughly 200 to 50 years BP, and recorded primarily in the written tradition and at the time of occurrence; and recent refers to recorded information from the previous several decades. We recognize that the use of these terms is not absolute and some overlap between them is inevitable. As possible, we have added clarity to the use of these terms in the final rule, including the use of ''past'' when referring to all of these time periods combined, and ''current'' when referring to the contemporary time frame (*i.e.*, roughly the previous decade).

Issue 4: It was emphasized that plague is exotic to North American ecosystems and that native species are likely to be poorly adapted to this potential threat factor. In addition, epizootics (an outbreak of disease) in wild animals are often very difficult to detect, and disease can not easily be ruled out as a significant possible risk factor. Finally, the potential occurrence of plague in badgers from Idaho was identified, and it was suggested that disease may be implicated in other mammal declines in the Columbia Basin (*e.g.*, jack rabbits).

Our Response: We concur with these clarifications and continue to consider disease a significant potential threat to the Columbia Basin pygmy rabbit.

Issue 5: It was emphasized that a successful captive propagation program should be considered extremely important for the conservation and management of the Columbia Basin pygmy rabbit's unique genetic profile.

Our Response: We concur with this clarification. We will continue to support the development of an effective captive propagation program for the Columbia Basin pygmy rabbit in order to release the species into suitable habitats within their historic range so that viable subpopulations can become established and self-sustained in the wild.

Issue 6: It was suggested that the reasoning behind identifying threat factors B, C, and D for the Columbia Basin pygmy rabbit (*see* below) was somewhat circular; that is, if the population was not endangered from other, long-term causal factors (A and E), these other factors (B, C, D) would not represent current threats to the population. In addition, it was presumed that protection for the Columbia Basin pygmy rabbit under the Act could have been considered sooner to lessen the potential influences and complications of any such ''secondary'' threat factors.

Our Response: We are required to fully consider all five threat factors identified by the Act, regardless of whether they may be proximate or ultimate causal factors in the status of a given taxon. In addition, with regard to potential conservation and recovery efforts, identifying and controlling these more immediate threat factors is often critical to the long term security of a taxon, and consideration of longer-term conservation measures needed to ultimately achieve recovery of the taxon is often of a less urgent nature.

It is appropriate to propose a species for listing at the time when sufficient information is available. For the Columbia Basin pygmy rabbit, when we had sufficient information we took the appropriate action.

Issue 7: Concern was expressed regarding whether the emergency listing process was needed, whether it was as thorough as the Service's normal listing process, and whether there are significant differences between the two listing pathways.

Our Response: Emergency listing is appropriate when there are significant and imminent risks to the well-being of a taxon. We determined that such risks existed for the Columbia Basin pygmy rabbit primarily due to the population's extremely small size, ongoing loss and significant decline of its identified subpopulations, genetic indicators suggesting the likelihood of inbreeding depression within the population, and the unproven nature of the proposed captive breeding and subsequent reintroduction efforts for the species.

The principal differences between emergency and normal listing processes are that, under emergency listing, the Secretary may make the protective measures of the Act immediately available to the species, upon a finding of a significant risk posed to its well-being, but the listing is in force for only 240 days, and there are certain exemptions regarding the requirements of public notification and input. The 240-day expiration of an emergency listing is the primary reason we attempt to concurrently, or shortly thereafter, publish a proposed rule to list the species, as was done for the Columbia Basin pygmy rabbit, and finalize the listing as soon as possible.

Issue 8: The suggestion was made that the status of the pygmy rabbit as a monotypic genus could be a consideration regarding the potential significance of its discrete populations.

Our Response: Currently, we do not consider the status of taxa above the species level in our DPS analyses, nor is it specifically identified in the joint Service/NMFS policy addressing the recognition of DPS. However, we do consider taxonomic delineations above the species level in our priority ranking system to address the status of proposed and candidate species for potential listing actions under the Act.

Issue 9: It was emphasized that, during our DPS analyses, careful consideration should be given to the appropriateness of using the same database to address both the discreteness and significance of a population in comparison to the remainder of its taxon, especially with regard to the available genetic data.

Our Response: We concur with this clarification and recognize that, in various instances, it may be appropriate to consider the same database to address both DPS criteria. As suggested by the genetic information for the Columbia Basin pygmy rabbit presented above, we recognize that it is important to note whether the available data can be used primarily to address the isolation (*i.e.*, discreteness) of a taxon's populations, the potential differentiation of a taxon's discrete populations from one another (*i.e.*, significance), or as the data may relate to both criteria. In addition to the genetic information, we recognize that other sources of data, including behavioral, physiological, morphological, genetic, and ecological, may also apply to a taxon's discreteness and significance simultaneously. We will continue to address these conservation issues with regard to the pygmy rabbit throughout the species historic range as any additional information may become available.

Additional Information and Evaluations

Comments and additional data received during the comment periods, as well as further analysis on our part, raised several issues addressed in this final rule. We address these issues more specifically below.

Additional information became available as follows:

(1) The common raven is a significant potential predator of the Columbia Basin pygmy rabbit, and we also discuss WDFW's past and ongoing management efforts to address this threat factor.

(2) Vandalism has the potential to result in direct or indirect take of

Columbia Basin pygmy rabbits held in captivity, and site security as an important management consideration to address this potential threat. *See* Summary of Factors Affecting the DPS and Available Conservation Measures sections.

(3) Washington State legislation (HB 1309) provides measures with regard to conservation of the Columbia Basin pygmy rabbit. *See* Summary of Factors Affecting the DPS section.

(4) Regarding the status and results of ongoing conservation and research efforts for the Columbia Basin pygmy rabbit, there is updated information concerning the WDFW's captive propagation program and research addressing the effects of livestock grazing. *See* Current Management Actions, Distinct Population Segment Review, and Summary of Factors Affecting the DPS sections.

(5) There is potential for a significant gap in the range of the pygmy rabbit should the Columbia Basin population segment become extirpated. This assessment helps further clarify the concept of significance as it is defined in the Act and our policy addressing the recognition of DPS. *See* Distinct Population Segment Review section.

(6) Control of exotic plant species is a habitat protection and restoration measure for consideration during management actions and scientific investigations. *See* Available Conservation Measures section.

Summary of Factors Affecting the DPS

After a thorough review and consideration of all available information, we have determined that the Columbia Basin pygmy rabbit warrants classification as an endangered DPS pursuant to the Act. We followed procedures found in section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424). We may determine a DPS to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Columbia Basin pygmy rabbit (*Brachylagus idahoensis*) follow.

A. *Present or threatened destruction, modification, or curtailment of habitat or range.* During the first half of the 1900s, large portions of more mesic (moist) shrub steppe habitats on deeper soils within the Columbia Basin were converted for dryland crop production (Daubenmire 1988; Franklin and Dyrness 1988; WDFW 1995a). During the mid-1900s, large-scale irrigation projects led to further conversion of more xeric (dry) shrub steppe habitats on deeper soils within the Columbia Basin for irrigated agriculture (WDFW 1995a; Franklin and Dyrness 1988; U.S. Department of Interior (USDI) 1998). In addition, urban and rural developments (*e.g.*, housing, industrial facilities, transportation corridors) in central Washington permanently remove native shrub steppe habitats. In 1994, it was estimated that approximately 60 percent of the original shrub steppe habitat in Washington had been converted for human uses (Dobler 1994), and shrub steppe habitats within the Columbia Basin continue to be converted for a variety of human uses. The Columbia Basin pygmy rabbit can not occupy these converted sites. Due to the small home ranges and relatively restricted movements of pygmy rabbits, conversion of native habitats in the Columbia Basin also removes or severely limits their dispersal corridors between suitable habitats.

A number of other, often interacting, influences affect the remaining native shrub steppe habitat within the Columbia Basin, including altered fire frequencies, invasion by non-native species, recreational activities, and livestock grazing. Sagebrush is easily killed by fire and, when it occurs at increased frequencies, it can remove sagebrush from the vegetation assemblage (Daubenmire 1988). In the absence of a sufficient seed source, sagebrush cannot readily reinvade sites where it has been removed, and it may be many years before it can become reestablished (WDFW 1995a). Due to a variety of factors (*see* below), the fire frequency has increased over portions of the remaining shrub steppe habitat within the Columbia Basin. Because of their close association with tall, dense stands of sagebrush, pygmy rabbits are precluded from occupying frequently burned areas.

Various non-native, invasive plant species, such as cheatgrass (*Bromus tectorum*) and knapweed (*Centauria* spp.), have become well established throughout the Columbia Basin (Daubenmire 1988; Franklin and Dyrness 1988). Areas with dense cover of cheatgrass are apparently avoided by pygmy rabbits in Oregon (Weiss and Verts 1984), and these newly established plant communities often provide fine fuels that can carry a fire. Combined with widespread unimproved road access and informal recreational activities that provide multiple sources of ignition, the establishment of non-native species increases the risk of fire and further reduces the security of areas that could potentially support the Columbia Basin pygmy rabbit (WDFW 1995a).

Fire was implicated in the loss of the only pygmy rabbit subpopulation ever recorded in Benton County, Washington, in 1979 (WDFW 1995a), and was directly associated with the loss of one of the few remaining subpopulations in Douglas County in 1999 (WDFW 2001b). The WDFW has taken measures to reduce the risk of fire at the Sagebrush Flat site (*e.g.*, constructing firebreaks). However, unimproved road access and informal recreational activities provide a continuing source for ignition of uncontrolled fires in the area (WDFW 1995a). Due to the extremely low number of Columbia Basin pygmy rabbits in the wild, their restriction to one known site, and their reliance on relatively tall, dense stands of sagebrush, natural and human-caused fire represents a significant threat to this portion of the population.

Land managed for livestock grazing is often cleared of sagebrush to increase the production of grasses and forbs as forage for cattle (WDFW 1995a; Rauscher 1997), although this management practice in the Columbia Basin has declined from past levels (L. Hardesty, WSU, pers. comm. 2002). Clearing areas of sagebrush cover removes habitat patches potentially used by the Columbia Basin pygmy rabbit. In addition, it can reduce the value of more marginal stands of sagebrush that may act as dispersal corridors for pygmy rabbits, further fragmenting the remaining suitable habitats. Much of the remaining shrub steppe habitat in the Columbia Basin is managed for livestock grazing (WDFW 1995a; N. Hedges, pers. comm. 2001).

Excessive livestock grazing removes current herbaceous growth and residual cover of native grasses and forbs and can increase the density of various non-native, invasive species and—over several years—young sagebrush stands (Daubenmire 1988; WDFW 1995a). In some instances, this disturbance may eventually result in the growth of tall, dense stands of sagebrush (Daubenmire 1988), potentially improving the shrub forage and cover conditions for pygmy rabbits. However, livestock grazing at these levels potentially reduces the forage base and cover characteristics of grasses and forbs for Columbia Basin pygmy rabbits (Green and Flinders 1980b; Rauscher 1997). Excessive livestock grazing may also cause structural damage to dense stands of older sagebrush. This acts to open the canopies of these sites and potentially makes them less suitable as cover for Columbia Basin pygmy rabbits (Gahr 1993; Rauscher 1997). Currently, it is unclear if light or moderate levels of

livestock grazing may be compatible with pygmy rabbit conservation efforts over the long-term.

There are several past and ongoing studies that have investigated the effects of different livestock grazing strategies on Columbia Basin pygmy rabbits and their habitat (Gahr 1993; WDFW 1995a; Sayler *et al.* 2001; L. Shipley, pers. comm. 2001). Gahr (1993) found that male pygmy rabbits at the Sagebrush Flat site made longer movements during the breeding season, resulting in larger home ranges, in recently grazed areas as opposed to areas that had not been grazed for nearly 40 years. In addition, relative to unit size, there are more pygmy rabbit burrows in the ungrazed areas of Sagebrush Flat than the recently grazed areas (L. Shipley, pers. comm. 2001). Further evaluation of the distribution and availability of appropriate soils across the Sagebrush Flat site will help clarify these results. Nevertheless, they suggest that Columbia Basin pygmy rabbits may be more susceptible to predation in areas used for livestock grazing due to longer movements away from cover and fewer burrows available for escape.

Results of an ongoing study also indicate that Columbia Basin pygmy rabbits occupying grazed sites tend to have a greater proportion of their summer through winter diets composed of sagebrush as opposed to grasses and forbs (L. Shipley, pers. comm. 2001). In addition, the nutritional quality (*e.g.*, less protein and greater fiber content) of the available grasses and shrubs in recently grazed sites tends to be less from fall through spring (L. Shipley, pers. comm. 2002). These results provide support for the contention that livestock may compete directly with pygmy rabbits for available forage during these periods (Green and Flinders 1980b; Rauscher 1997). There is also evidence that cattle can directly damage pygmy rabbit burrow systems through trampling (Rauscher 1997; N. Siegel, WSU, pers. comm. 2001; M. Hallet, pers. comm. 2002). These impacts may be especially critical during the Columbia Basin pygmy rabbits' reproductive period.

Populations of pygmy rabbits have coexisted with various levels of livestock grazing activities throughout their historic range for many years (WDFW 1995a). However, due to the extremely low number and restricted distribution of Columbia Basin pygmy rabbits, any additional mortality or population stress associated with livestock grazing practices represents a significant threat to the security of the wild portion of this population segment.

Due to the combined influences described above, Washington's native shrub steppe habitats, including those considered essential to the long-term security of the Columbia Basin pygmy rabbit, are considered among the least protected areas in the State (Cassidy 1997).

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Pygmy rabbits are often difficult to distinguish from species of cottontail rabbits (*Sylvilagus* spp.) (Garber 1993; WDFW 1995a). Because of this, accidental shooting of Columbia Basin pygmy rabbits may occur in association with hunting of other small game species in Washington (WDFW 1979). Due to their extremely low numbers, restricted distribution, and preference for dense habitats, combined with relatively few small game hunters at the Sagebrush Flat site, the risk from accidental shooting of Columbia Basin pygmy rabbits is currently considered relatively low (WDFW 1995a; D. Hays, pers. comm. 2001). However, in such reduced populations, accidental shooting could become a significant source of mortality if it is not carefully controlled.

Investigations that require trapping, handling, and captivity of pygmy rabbits can result in mortality from several causes, including exposure (due to excessively high or low temperatures); direct injury from entanglement in traps, trap predation, and intra-specific fighting; and capture stress (Bailey 1936; Severaid 1950; Wilde 1978; Gahr 1993; Rauscher 1997). Capture-related mortality rates (including recaptures) reported for pygmy rabbits are roughly 3 percent (Gahr 1993), 5 percent (Wilde 1978), and 13 percent (Rauscher 1997). The mortality rate for one study approached 20 percent when the total number of captured animals was considered (11 deaths of 58 individuals), and all of the mortalities in this study occurred in just one portion of the study area (Rauscher 1997). Trapping methods, daily and seasonal timing, study location, holding facilities and site security, and husbandry techniques may all affect the level of capture-related mortality incurred. In addition, vandalism of captive rearing facilities remains a threat following capture (L. Hardesty, pers. comm. 2002).

Currently, the WDFW is leading efforts to establish a captive breeding population of Columbia Basin pygmy rabbits (*see* Current Management Actions, above). To date, three capture-related deaths have occurred in this program. These deaths represent roughly a 14 percent mortality rate for the captured animals (3 of 21 individuals). While the captive propagation program is necessary to help ensure the long-term survival of the Columbia Basin pygmy rabbit, and we support these efforts, the potential for capture-related mortality to significantly affect the success of this program remains.

Some pygmy rabbit burrows are relatively shallow and may collapse when walked on by humans (Wilde 1978). Investigations of pygmy rabbits often entail the destruction of individual burrows, while measuring of the vegetation community and other site characteristics immediately surrounding burrow systems, and/or disturbance to the general area occupied by the pygmy rabbits (Janson 1946; Bradfield 1974; Green 1978; Wilde 1978; Gahr 1993; Gabler 1997; Rauscher 1997). Furthermore, various ongoing management and maintenance activities of the WDFW at the Sagebrush Flat site (*e.g.*, establishment of firebreaks, species and habitat surveys, fencing removal or construction) have the potential to directly or indirectly affect the Columbia Basin pygmy rabbit.

It is unlikely that any of the above activities alone has played a significant role in the long-term population decline and range reduction of the Columbia Basin pygmy rabbit. However, due to the current vulnerability of both the wild and captive portions of this population segment, any additional source of mortality may now play a significant role and could impair efforts to conserve the Columbia Basin pygmy rabbit.

C. *Disease or predation.* Pygmy rabbits often harbor a high parasite load (Gahr 1993; WDFW 1995a). Some of the parasites of pygmy rabbits, including ticks, fleas, and lice, can be vectors of disease. Episodes of plague and tularemia from these vectors have been reported in populations of a number of other Leporid species and are often fulminant (rapidly spreading) and fatal (Quan 1993). Severe disease epidemics have not been reported in pygmy rabbits, and parasites have not been viewed as a significant threat to the species (Green 1979; Gahr 1993). However, evidence of plague was reported in a coyote taken from the site of one of the recently extirpated subpopulations of Columbia Basin pygmy rabbits (WDFW 2001a). The potential occurrence of plague in this subpopulation is being investigated using blood samples obtained prior to its extirpation (D. Hays, pers. comm. 2001). Additional studies have been proposed to investigate the occurrence of plague and other diseases, and their possible control, in wild and captive

populations of pygmy rabbits (C. Brand, National Wildlife Health Center, pers. comm. 2001). Because so few Columbia Basin pygmy rabbits remain, the potential for disease outbreak represents a significant threat to both the wild and captive portions of this population segment.

Predation is thought to be a major cause of mortality among pygmy rabbits (Green 1979; Wilde 1978). However, pygmy rabbits have adapted to the presence of a wide variety of avian and terrestrial predators that occur throughout their historic distribution (Janson 1946; Gashwiler *et al.* 1960; Green 1978; Wilde 1978; WDFW 1995a). In relatively large, well distributed pygmy rabbit populations, predation is not likely to represent a significant threat to their long-term security. In contrast, due to the extremely small size and localized occurrence of the Columbia Basin pygmy rabbit population, altered predation patterns, or even natural levels of predation, currently represent a significant threat to both the wild and captive portions of this population segment and could impair ongoing conservation efforts.

Due to confirmed evidence of coyote predation on the Columbia Basin pygmy rabbit, the WDFW implemented a predator control program during the fall-winter periods of 1998–1999 and 1999–2000 (WDFW 2000a). Numerous coyotes and several long-tailed weasels were removed, by shooting, traps, or snares, over roughly 52 square kilometers (20 square miles) around and including the Sagebrush Flat site. The level of effort to control terrestrial predators varied among years and areas, and the efficacy of this program to protect the Columbia Basin pygmy rabbit is unknown. There are also a variety of avian predators that may occur at the Sagebrush Flat site. In an effort to help control the occurrence of common ravens and other predatory birds, the WDFW recently removed two obsolete windmills from the area that could have potentially been used as perching or nesting sites (M. Hallet, pers. comm. 2002).

Because of the relatively restricted distribution of the Columbia Basin pygmy rabbit, terrestrial and avian predators may also have a reduced search area and/or increased success rate at the Sagebrush Flat site. To further address the threat of predation on the Columbia Basin pygmy rabbit, additional measures are being considered by the WDFW for this area, such as controlling artificial food sources (*e.g.*, spilled grain, trash, carnivore baits), the removal of unnecessary fencing potentially used as perch sites for avian species, and providing appropriate predator exclusion fencing (M. Hallet, pers. comm. 2002; D. Hays, pers. comm. 2002).

Several measures (*e.g.*, double fencing, monitoring) have been taken to reduce the risk of predation on the captive portion of the Columbia Basin pygmy rabbit population (R. Sayler, WSU, pers. comm. 2001; L. Shipley, pers. comm. 2001). In addition, captive animals are currently being held at multiple facilities, which reduces the risk of catastrophic loss at a single facility (D. Hays, pers. comm. 2002). However, while the risk has been greatly reduced, the potential for certain predators to access cages at the captive rearing facilities remains.

Due to the extremely small size of the Columbia Basin pygmy rabbit population, even low levels of predation represent a significant risk to the immediate security of both the wild and captive portions of this population segment.

D. *Inadequacy of existing regulatory mechanisms.* Washington State classification of the Columbia Basin pygmy rabbit as endangered makes it illegal to attempt to kill, injure, capture, harass, possess, or control individuals of the species (WDFW 1995a). However, illegal or accidental shooting of Columbia Basin pygmy rabbits may occur in association with hunting seasons for other small game species (*see* factor C above). In addition, State designation does not provide regulatory protection of the habitats considered essential to the long-term security of the Columbia Basin pygmy rabbit.

Pursuant to Washington State legislation passed in 1993 (HB 1309), the Washington State Conservation Commission (WSCC) oversaw the development and provided approval of ecosystem standards for State-owned agricultural and grazing lands (WSCC 1995). HB 1309 called for implementation of the ecosystem standards to maintain and restore fish and wildlife habitat within the State by improving overall ecosystem health. The standards developed under HB 1309 are mandated for lands under the jurisdiction of the WDFW and Washington Department of Natural Resources (WDNR). Application of the standards on lands managed by the WDNR must be consistent with the agency's fiduciary obligations.

Currently, we are assisting private landowners with development of a county-wide HCP to protect important plant and animal species on agricultural lands in Douglas County. However, there are no regulatory protections for unlisted species during development of HCPs. Revegetation standards under the CRP promote the improvement of habitats potentially used by the Columbia Basin pygmy rabbit, and the CRP restricts livestock grazing on contract lands except under severe drought conditions (M. Ruud, Farm Service Agency, pers. comm. 2001).

E. *Other natural or human-caused factors affecting the species' continued existence.* The immediate concerns for the Columbia Basin pygmy rabbit are associated with the population's extremely small size, history of fragmentation and extirpation, and the recent, dramatic decline in its distribution and abundance. Small populations are susceptible to random environmental events (*e.g.*, severe storms, prolonged drought, extreme cold spells, volcanic fallout), abrupt changes in cover and food resources, altered predator or parasite populations, disease outbreaks, and fire. Small populations are also more susceptible to demographic and genetic problems (Shaffer 1981). These threat factors, which may act in concert, include natural variation in survival and reproductive success of individuals, chance disequilibrium of sex ratios, changes in gene frequencies due to genetic drift, and lack of genetic diversity caused by inbreeding.

Genetic indices indicate that the Columbia Basin pygmy rabbit had less genetic diversity historically than the remainder of the taxon. In addition, this population segment has undergone further loss of genetic diversity since roughly the mid-1900s. Severe loss of genetic diversity may make the Columbia Basin pygmy rabbit more susceptible to extinction due to inbreeding depression or, assuming inappropriate introduction of other pygmy rabbit genes, swamping of their unique genetic profile. Reduced genetic diversity, and the relatively few family lineages remaining in the Columbia Basin pygmy rabbit population, may also complicate captive breeding strategies conducted to reestablish a minimum effective population size. Ultimately, an appropriate effective population size will help ensure the maintenance and enhancement of the genetic heterogeneity that is still present within this population segment (K. Warheit, pers. comm. 2001, 2002).

In relatively large, well distributed pygmy rabbit populations, the above threats are not likely to represent a significant risk to their long-term security. However, due to the extremely small size and localized occurrence of both the wild and captive portions of the Columbia Basin pygmy rabbit

population, these threats represent a significant risk to the long-term security of this DPS.

Conclusion

Due to the combined influence of the above threats, extirpation of the Columbia Basin pygmy rabbit from the wild may occur at any time (WDFW 2001b). In addition, the risks to the captive portion of the population, and the potential for extinction of the Columbia Basin pygmy rabbit, remain high. We have carefully assessed the best scientific and commercial information available regarding the past, present, and potential future threats faced by the Columbia Basin pygmy rabbit. Based on our evaluation of the five threat factors discussed above, we have determined that the Columbia Basin pygmy rabbit is in danger of extinction. As such, we are listing the Columbia Basin pygmy rabbit as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific area within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analyses of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. We may exclude any area from critical habitat if we determine that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

We find that designation of critical habitat for the Columbia Basin pygmy rabbit is not determinable at this time because information sufficient to perform the required analyses of the impacts of the designation is lacking. We specifically solicited information on potential critical habitat, biological information, and information that would aid our prudency analysis in our proposed rule. We received no comments regarding specific physical or biological features essential to the Columbia Basin pygmy rabbit which provided information that added to our ability to determine critical habitat. In addition, the extent of habitat essential to the conservation of the species has not been identified. When a ''not determinable'' finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent.

We will continue to protect the Columbia Basin pygmy rabbit and its habitat through section 7 consultations to determine whether Federal actions may affect this population segment, through the recovery process, through HCPs and through enforcement of the Act's ''take'' prohibitions (*see* 16 U.S.C. 1538; 50 CFR 17.21).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, prohibitions against certain activities, and development of recovery plans. Recognition through listing results in public awareness and encourages conservation actions by Federal, State, and Tribal agencies, non-governmental conservation groups, and private individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for listed species. The protection required of Federal agencies, and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies, whose actions may require consultation for the Columbia Basin pygmy rabbit include, but are not limited to, those within the jurisdictions of the Service, BLM, Bureau of Reclamation, Natural Resources Conservation Service, and Farm Service Agency. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

We believe that protection and recovery of the Columbia Basin pygmy rabbit will require reduction of the threats from uncontrolled fire, altered predation patterns, excessive livestock grazing, disease outbreaks, mortality associated with the captive propagation and release programs, and loss of genetic viability. These threats should be considered for management actions in habitats currently and potentially occupied by the Columbia Basin pygmy rabbit, and those deemed important for dispersal between their appropriate use areas. Monitoring should also be undertaken for any management actions or scientific investigations designed to address these threats or their potential impacts.

Listing the Columbia Basin pygmy rabbit as endangered provides for the development and implementation of a recovery plan for the population. This plan will bring together Federal, State, tribal, and local efforts for conservation of the species, and will establish a framework for interested parties to coordinate recovery efforts. The plan will set recovery priorities, assign responsibilities, and estimate the costs of the various tasks necessary to achieve conservation and survival of the species. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to the State of Washington for management actions promoting the protection and recovery of this species.

Considerations for management actions and scientific investigations to

address the above threats to the Columbia Basin pygmy rabbit include, but are not limited to:

(1) *Fire*—implementation of agreements between fire-fighting districts and/or agency departments to provide adequate coverage, construction of fire breaks, availability of fire-fighting equipment, fire-fighting techniques, weed control, use of prescribed fire, and removal or restriction of unimproved road access and informal recreational activities;

(2) *Livestock Grazing*—season(s) of use, stocking rate(s) and type(s), location of supplemental water and salt/minerals, loading and transport facilities, exclusion fencing, and removal;

(3) *Habitat Protection and Restoration*—control of exotic and/or invasive plant species, planting types and techniques, soils and hydrologic analyses, land acquisition and connectivity, and control of unauthorized access.

(4) *Predation*—identification of primary predators and predation patterns, development of protocols for fence removal and/or new fence construction, and predator deterrents and/or lethal control of predators to protect the wild and captive portions of the population;

(5) *Disease*—identification and control of potential disease and disease vectors in wild and captive portions of the population;

(6) *Capture, husbandry, and reintroduction*—development of protocols for survey, capture, handling, and husbandry techniques; maintenance and security of multiple holding facilities for captive stock; inventory and evaluation of appropriate release sites; and development of release and site maintenance protocols; and

(7) *Genetics*—identification of additional genetic markers, implementation of appropriate breeding scenarios, and establishment of a minimum effective population for captive breeding and reintroduction efforts.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9 of the Act, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving listed species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practical, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. For the Columbia Basin pygmy rabbit, based upon the best available information, we believe the following actions are unlikely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States of dead specimens of Columbia Basin pygmy rabbits that were collected prior to the date of publication of the emergency listing rule in the **Federal Register**;

(2) Any action authorized, funded, or carried out by a Federal agency that may affect the Columbia Basin pygmy rabbit (*e.g.*, land exchanges, land clearing, prescribed burning, livestock grazing, pest control, utility line or pipeline construction, mineral extraction or processing, housing developments, off-road vehicle use, recreational trail or campground development, road construction, shooting, poisoning, habitat conversion, road construction, water development and impoundment, unauthorized application of herbicides or pesticides in violation of label restrictions) when the action is conducted in accordance with an incidental take statement issued under section 7 of the Act;

(3) Any action carried out for scientific research or to enhance the propagation or survival of the Columbia Basin pygmy rabbit that is conducted in accordance with the conditions of a section 10(a)(1)(A) permit under the Act; and

(4) Any incidental take of the Columbia Basin pygmy rabbit resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under section 10(a)(1)(B) of the Act.

Activities that we believe could potentially result in a violation of section 9 include, but are not limited to:

(1) Unauthorized possession, trapping, handling, collecting, or release of pygmy rabbits within the historic range of the Columbia Basin pygmy rabbit. Research efforts involving these activities will require a permit under section 10(a)(1)(A) of the Act;

(2) Other activities that actually kill or injure a Columbia Basin pygmy rabbit by significantly impairing essential behavioral patterns (such as breeding, feeding or sheltering) through significant habitat modification or degradation (*e.g.*, via land clearing, prescribed burning, habitat conversions, over-grazing or trampling by livestock, pest control, minerals extraction or processing, housing developments, off-road vehicle use, recreational trail or campground development, shooting, intentional poisoning, road construction, water development and impoundment, unauthorized application of herbicides or pesticides in violation of label restrictions). Otherwise lawful activities that incidentally take a Columbia Basin pygmy rabbit will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities risk violating section 9 should be directed to our Upper Columbia Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, including general inquiries regarding prohibitions and issuance of permits under the Act, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

Immediate Effective Date

The emergency listing that protected the Columbia Basin pygmy rabbit for 240 days expired on July 29, 2002. The threats to the species remain imminent and severe. Because of the extremely small size of the only remaining wild population, and the expiration of its interim protection, we find that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined in the National Environmental

Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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 existing OMB control number is 1018–0094 and expires July 31, 2004.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of references cited herein is available upon request from the Upper Columbia Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this final rule is Christopher Warren of the Upper Columbia Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 will continue to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), add the following to the List of Endangered and Threatened Wildlife in alphabetical order under MAMMALS:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Rabbit, Columbia Basin pygmy.	*Brachylagus idahoensis*.	U.S.A. (western conterminous U.S.).	U.S.A. (WA—Douglas, Grant, Lincoln, Adams, Benton Counties).	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: February 20, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–5076 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

RIN 3150–AH10

Source Material Reporting Under International Agreements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations which require licensees to report their holdings of source material (uranium and thorium) to the agency. Currently, licensees are required to file a report with the NRC whenever they receive or transfer uranium or thorium mined outside the United States (U.S). The proposed amendment would require licensees to report the receipt or transfer of source material controlled under any of the various international Agreements for Peaceful Nuclear Cooperation. This change will enable the U.S. Government to maintain the comprehensive national inventory of nuclear materials required under these agreements. This proposed rule will also allow licensees additional flexibility in submitting their annual source material inventory statements. The proposed amendment would permit licensees to submit these statements along with their material status reports for special nuclear material.

DATES: Comments on the proposed rule must be received on or before April 4, 2003.

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

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* You may also provide comments via this Web site by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

Because NRC considers this action noncontroversial and routine and because it is necessary in order to support the U.S. Government's obligations in this area, the NRC is publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on October 1, 2003. However, if the NRC receives significant adverse comments on this direct final rule by April 4, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, 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. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 40 and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2),83, 84, Pub. L. 95–604, 92Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 40.4, the definition of *Foreign obligations* is added to read as follows:

§ 40.4 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

3. In § 40.64, paragraphs (a) and (b) are revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory, in any manner, of uranium or thorium source material with foreign obligations by 1 kilogram or more or who imports or exports 1 kilogram of uranium or thorium source material shall complete a Nuclear Material Transaction Report in computer-readable format in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees''). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Safety, Washington, DC 20555–0001. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which has been previously submitted in paper form.

(b) Except as specified in paragraphs (d) and (e) of this section, each licensee authorized to possess at any one time and location more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under Part 72 or 74, a statement of its source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

4. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

5. In § 150.3, the paragraph designations are removed, the definitions are arranged in alphabetical order, and the definition of *Foreign obligations* is added to read as follows:

§ 150.3 Definitions.

* * * * *

Foreign obligations means the commitments entered into by the U.S. Government under Atomic Energy Act (AEA) section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material.

* * * * *

6. In § 150.17, paragraphs (a) and (b) are revised to read as follows:

§ 150.17 Submission to Commission of source material reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, each person who, pursuant to an Agreement State specific license, transfers or receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material with foreign obligations or who imports or exports 1 kilogram or more of uranium or thorium source material shall complete and submit in computer-readable format Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, ''Personal Computer Data Input for NRC Licensees''). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001. Each person who transfers the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions no later than the close of business the next working day. Each person who receives the material shall submit a Nuclear Material Transaction Report in computer-readable format in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Form 741 which

has been previously submitted in paper form.

(b) Except as specified in paragraph (d) of this section and § 150.17a, each person authorized to possess at any one time and location, under an Agreement State license, more than 1,000 kilograms of uranium or thorium, or any combination of uranium or thorium, shall submit to the Commission within 30 days after September 30 of each year or with the licensee's material status reports on special nuclear material filed under part 74, a statement of the licensee's source material inventory with foreign obligations as defined in this part. This statement must be submitted to the address specified in the reporting instructions (NUREG/BR–0007), and include the Reporting Identification Symbol (RIS) assigned by the Commission to the licensee. Copies of the reporting instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Nuclear Security, Washington, DC 20555–0001.

* * * * *

Dated at Rockville, Maryland, this 21st day of February, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–5169 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. For certain airplanes that are subject to the existing AD, this action would add requirements for a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts with steel bolts. These actions are necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–142–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–142–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–142–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 24, 2002, the FAA issued AD 2002–22–07, amendment 39–12932 (67 FR 66043, October 30, 2002), applicable to certain Boeing Model 767 series airplanes, to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. That action was prompted by an evaluation by the airplane manufacturer that revealed that the titanium bolts on the inboard main flap did not have an acceptable fatigue life or damage-tolerance rating, and a subsequent report indicating that an operator found one missing bolt and two loose bolts out of four bolts at the aft attachment locations on the outboard support of the inboard main flap. The requirements of that AD are intended to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane.

Actions Since Issuance of Previous Rule

In the preamble to AD 2002–22–07, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered to require the new inspection for gaps, the torque check for loose bolts, and the replacement of existing titanium bolts with steel bolts described in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. (The existing AD refers to that service bulletin as an appropriate source of service information for the required actions.) The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002–22–07 to continue to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. These actions would continue to be required to be accomplished per Boeing Alert Service Bulletin 767–27A0176, Revision 1, except as specified under the heading ''Differences Between This AD and Service Bulletin'' in AD 2002–16–05, amendment 39–12844 (67 FR 52401, August 12, 2002). (AD 2002–22–07 superseded AD 2002–16–05.)

For certain airplanes, the proposed AD would add requirements for a new one-time inspection for gaps, a new one-time torque check for loose bolts, corrective actions if necessary, and eventual replacement of existing titanium bolts on the inboard and outboard supports of the inboard main flap with steel bolts. The actions would be required to be accomplished per Boeing Alert Service Bulletin 767–27A0176, Revision 1.

Cost Impact

There are approximately 821 airplanes of the affected design in the worldwide fleet. The FAA estimates that 374 airplanes of U.S. registry would be affected by this proposed AD.

The initial inspection that is currently required by AD 2002–16–05 takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $134,640, or $360 per airplane.

For an affected airplane, the new inspection for gaps that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection is $60 per airplane.

For an affected airplane, the new torque test that is proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed torque test is $360 per airplane.

For an affected airplane, the replacement of bolts that is proposed in this AD action would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,880 per airplane. Based on these figures, the cost impact of this proposed replacement is $2,480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12932 (67 FR 66043, October 30, 2002), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–142–AD. Supersedes AD 2002–22–07, Amendment 39–12932.

Applicability: Model 767 series airplanes, including Model 767–400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–22–07

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after August 27, 2002 (the effective date of AD 2002–16–05, amendment 39–12844), do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the

inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this paragraph.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (g) of this AD.

Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) or (f) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Model 767–400ER Series Airplanes: Initial Inspection and Corrective Actions

(c) For Model 767–400ER series airplanes: Within 90 days after August 27, 2002, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this paragraph.

(2) If any bolt is missing or any gap is found: Do paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

(ii) Within 10 days after the inspections: Submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (i.e., missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Previously Accomplished Inspections and Bolt Replacements

(d) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767–27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(e) Within 90 days after November 14, 2002 (the effective date of AD 2002–22–07, amendment 39–12932): Do the one-time general visual inspection required by paragraph (a) of this AD to determine if any bolt is missing from the inboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (g) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (g) of this AD is accomplished within the compliance time specified in this paragraph.

New Requirements of This AD

Group 1 Airplanes: Follow-On Actions

(f) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If no bolt is missing and no gap is found during the inspections required by paragraphs (a), (a)(1), and (e) of this AD, prior to the accumulation of 5,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, perform a general visual inspection to find any gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 3 of the Accomplishment Instructions of the service bulletin.

(1) If no gap is found, before further flight, do a torque check per Part 4 of the Accomplishment Instructions of the service bulletin.

(i) If, during the torque check, the nut does not turn, remove the nut, clean the bolt and threads, and reinstall the nut per Part 4 and Figure 4 of the service bulletin. Do paragraph (g) of this AD at the time specified in that paragraph.

(ii) If the nut turns, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

(2) If any gap is found, do paragraph (b) of this AD. Then, do paragraph (g) of this AD at the time specified in that paragraph.

Group 1 Airplanes: Replacement of Titanium Bolts

(g) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: Prior to the accumulation of 10,000 total flight cycles, or within 48 months after the effective date of this AD, whichever is later, replace all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin. This action is acceptable for compliance with paragraph (a), (e), and (f) of this AD and eliminates the need for the inspections required by those paragraphs. This action is acceptable for compliance with paragraph (b) of this AD, provided that the replacement of bolts per this paragraph is accomplished at the time specified in paragraph (b) of this AD. Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the corresponding requirements of paragraphs (b) and (c)(2)(i) of this AD.

(3) Alternative methods of compliance, approved previously in accordance with paragraph (c) of AD 2002–16–05, amendment 39–12844, and AD 2002–22–07, amendment 39–12932, are approved as alternative methods of compliance for the requirements for paragraph (g) of this AD.

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–5123 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–02–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require either revising the Airplane Flight Manual (AFM) to require a maximum operating altitude of 25,000 feet; or modifying the flight attendant's seat, or reworking the oxygen bottle kit, as applicable, and revising the AFM to require a maximum operating altitude of 30,000 feet. This action is necessary to prevent the unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, which could result in loss of consciousness of the flight attendant. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–02–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert D. Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–02–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–02–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that investigation has revealed that installation of the forward lavatory on these airplanes has resulted in the relocation of the oxygen dispensing units and masks to a location that cannot be reached by a flight attendant while seated in the attendant seat, when the oxygen masks are automatically deployed due to emergency cabin decompression. (The units and masks had previously been installed at the ceiling or at the wardrobe wall in front of the first double seat of the forward passenger cabin and had been dedicated to the right-hand front row passenger and flight attendant.) The unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, if not corrected, could result in loss of consciousness of the flight attendant.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–25–0264, Change 01, dated July 22, 2002, which describes the following procedures:

- For certain airplanes: Modifying the flight attendant's seat (figure 1) by replacing the shock absorber and installing an oxygen bottle under the seat, including installing placards (figure 2).
- For certain other airplanes: Reworking the oxygen bottle kit (figure

3), including installing placards and attaching the oxygen mask hose to the oxygen bottle.

The DAC classified Change 01 of EMBRAER Service Bulletin 120–25–0264 as mandatory and issued Brazilian airworthiness directive 2001–11–03 R1, dated September 13, 2002, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require either revising the Limitations Section of the Airplane Flight Manual (AFM) to require a maximum operating altitude of 25,000 feet; or modifying the flight attendant's seat, or reworking the oxygen bottle kit, as applicable, and revising the Limitations Section of the AFM to require a maximum operating altitude of 30,000 feet. Modification of the flight attendant's seat, or rework of the oxygen bottle kit, as applicable, are required to be accomplished per EMBRAER Service Bulletin 120–25–0264, Change 01, except as described below.

Clarification of Applicability

The applicability of Brazilian airworthiness directive 2001–11–03 R1 specifies all Model EMB–120 series airplanes equipped with a lavatory installed in the forward part of the passenger cabin. However, paragraph 1.1.1, part I, of Change 01 of the service bulletin limits its effectivity to certain serial numbers of the affected airplane models equipped with a forward toilet and galley and on which the original issue of the service bulletin has not been accomplished. In addition, paragraph 1.1.2, part II, of Change 01 of the service bulletin limits its effectivity to certain serial numbers of the affected airplane models equipped with a forward toilet and galley and on which the original issue of the service bulletin has been accomplished.

The FAA considers that the effectivity of Change 01 of the service bulletin provides a more accurate listing of the specific airplanes that are applicable to the actions required by this proposed AD. For this reason, the applicability of this proposed AD specifies those airplanes as listed in the service bulletin.

Differences Between This Proposed AD and the Brazilian Airworthiness Directive

Operators should note the following differences:

- Part I of the Compliance section of the Brazilian airworthiness directive limits flight operations to 25,000 feet unless the right-hand aisle passenger seat in the front row is reserved for the flight attendant's use during operation above 25,000 feet.
- Part II of the Compliance section of the Brazilian airworthiness directive specifies that, for those airplanes that have accomplished Change 01 of EMBRAER Service Bulletin 120–25–0264, flight operations are limited to 30,000 feet unless the right-hand front row aisle passenger seat is reserved for flight attendant use during flight operations above 30,000 feet.

We have determined that reserving a passenger seat for use by the flight attendant does not adequately address the identified unsafe condition. During an emergency event such as the rapid loss of cabin pressure, it is necessary for the flight attendant to communicate with both the flightcrew and passengers via the airplane communication system. The existing system is located at the flight attendant's seat and is not within reach of the flight attendant if seated in the front row passenger seat. Therefore, in an emergency, the flight attendant would not be able to provide the flightcrew with emergency information about the passengers and airplane condition or to provide the necessary emergency instructions to the passengers. For these reasons, the AFM revisions required by this proposed AD limit flight operations to 25,000 feet, or to 30,000 feet if the actions required by this proposed AD (modification or rework, as applicable) have been accomplished.

We have consulted with the DAC about this difference between the maximum operating altitudes specified in the Brazilian airworthiness directive and the operating altitudes required by this proposed AD. After considering this information, the DAC has agreed with the flight operation limitations required by this proposed AD.

Cost Impact

The FAA estimates that 150 Model EMB–120 series airplanes of U.S. registry would be affected by this proposed AD.

Should an operator be required to revise the AFM (maximum operating altitude of 25,000 feet), it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AFM revision on U.S. operators is estimated to be $60 per airplane.

Should an operator be required to accomplish either the modification or rework action, it would take approximately 8 work hours per airplane to accomplish the proposed modification or rework action, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,960 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $4,440 per airplane.

Should an operator be required to revise the AFM (maximum operating altitude of 30,000 feet), it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AFM revision on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2003–NM–02–AD.

Applicability: Model EMB–120 series airplanes as listed in EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the unavailability of supplemental oxygen to the flight attendant in the event of cabin decompression, which could result in loss of consciousness of the flight attendant, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD.

Airplane Flight Manual (AFM) Revision

(1) Revise the Limitations Section of EMBRAER EMB120 Brasilia Airplane Flight Manual AFM–120/794 to include the following information, and operate the airplane per those limitations (this may be accomplished by inserting a copy of this AD into the AFM):

''Maximum operating altitude is limited to 25,000 feet.''

(2) Accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

Modification

(i) For airplanes listed in paragraph 1.1.1., Part I, of the effectivity of EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002: Replace the shock absorber of the flight attendant's seat with a new part, and install an oxygen bottle kit under the seat (including installing placards); per paragraph 2.1 of the Accomplishment Instructions of that service bulletin.

Rework

(ii) For airplanes listed in paragraph 1.1.2., Part II, of the effectivity of EMBRAER Service Bulletin 120–25–0264, Change 01, dated July 22, 2002: Rework the oxygen bottle kit (including installing placards and attaching the oxygen mask hose to the oxygen bottle), per paragraph 2.2 of the Accomplishment Instructions of that service bulletin.

AFM Revision

(b) Before further flight following the accomplishment of paragraph (a)(2) of this AD: Revise the Limitations Section of EMBRAER EMB120 Brasilia Airplane Flight Manual AFM–120/794 to include the following information, and operate the airplane per those limitations (this may be accomplished by inserting a copy of this AD into the AFM):

''Maximum operating altitude is limited to 30,000 feet.''

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2001–11–03 R1, dated September 13, 2002.

Issued in Renton, Washington, on February 27, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–5122 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 95N–0304]

RIN 0910–AC51

Dietary Supplements Containing Ephedrine Alkaloids; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 30 days the comment period for a proposed rule entitled ''Dietary Supplements Containing Ephedrine Alkaloids'' that published in the **Federal Register** of June 4, 1997 (62 FR 30678) (the June 1997 proposal). In that document, FDA proposed a number of requirements relating to dietary supplements containing ephedrine alkaloids, including a requirement for a warning statement on the product label. Since publication of the June 1997 proposal, new scientific evidence has come to light concerning health risks associated with the use of dietary supplements containing ephedrine alkaloids. FDA is reopening the comment period to receive comment on this new evidence, as well as on the warning statement it is now considering for dietary supplements containing ephedrine alkaloids. FDA also intends to consider, to the extent possible, whether in light of current information FDA should determine that dietary supplements containing ephedrine alkaloids present a ''significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling, or if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use.''

DATES: Submit written or electronic comments April 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Anthony Curry, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2071.

SUPPLEMENTARY INFORMATION:

I. Reopening of Comment Period

In the **Federal Register** of June 4, 1997 (62 FR 30678) (the June 1997 proposal), FDA (''we'' or ''the agency'') proposed to amend our regulations to require the label of dietary supplements containing ephedrine alkaloids to bear a warning statement. The proposed warning statement contained several elements, including cautions that consumers not use the product if they have certain diseases or health conditions or are using certain drugs, and that they stop using the product if they develop certain signs or symptoms. FDA also proposed restrictions on the potency and composition of dietary supplements containing ephedrine alkaloids, including a prohibition on the use of ephedrine alkaloids in dietary supplements with ingredients, or with ingredients that contain substances that have a known stimulant effect, such as caffeine. In addition, the agency proposed several requirements and restrictions relating to labeling claims and directions for use.

We proposed these actions in response to reports of serious illnesses and injuries, including a number of deaths, associated with the use of dietary supplements containing ephedrine alkaloids and the agency's investigations and assessment of these illnesses and injuries.

The comment period for the proposed rule closed on August 18, 1997. On September 18, 1997, FDA reopened the comment period for 75 days until December 2, 1997 (62 FR 48968).

In the **Federal Register** of April 3, 2000 (65 FR 17474), we withdrew the proposed requirements and restrictions concerning potency, labeling claims, and directions for use, but not the proposed warning statement or the proposed prohibition on dietary supplements that combine ephedrine alkaloids with other stimulant ingredients. In the same issue of the **Federal Register** (65 FR 17510), we also announced the availability of adverse event reports and related information that had become available since the June 1997 proposal; we reopened the comment period until May 18, 2000, to receive comments on this new information (Docket No. 00N–1200).

Recently, more scientific evidence has come to light concerning the risks posed by ephedrine alkaloids, including approximately 17,000 adverse event reports received overall by FDA. For example, one study compared the risks of adverse events attributable to ephedra and other herbal products through a comparative case series investigation based upon poison control center reporting (Ref. 1). Another study, a case-controlled investigation, examined the association between the use of ephedra and the risk for hemorrhagic stroke (Ref. 2). One study evaluated the adverse cardiovascular events from the FDA database that were temporally associated with the use of ephedra (Ref. 3). Another study evaluated the pharmacology of ephedrine alkaloids and caffeine after a single dose in humans (Ref. 4). Two studies were double-blind controlled clinical trials that evaluated the efficacy of ephedra in combination with caffeine for weight loss, with treatment durations of 6 weeks (Ref. 5) or 6 months (Ref. 6). Further, the RAND Corporation, under contract with the U.S. Department of Health and Human Services, has conducted an evidence based review of all available sources of information on ephedrine alkaloid containing dietary supplements (Ref. 7).

Comments to the June 1997 proposal stressed the importance of ensuring that consumers were aware of the risks of consuming dietary supplements containing ephedrine alkaloids. Therefore, in light of the new scientific evidence as well as the comments received in response to the June 1997 proposal, FDA is considering the following warning statement for dietary supplements containing ephedrine alkaloids. This statement is consistent with the recent scientific reports referenced in this document.

The following warning statement would appear on the principal display panel of the product:

WARNING: ***Contains ephedrine alkaloids. Heart attack, stroke, seizure, and death have been reported after consumption of ephedrine alkaloids***. Not for pregnant or breast-feeding women or persons under 18. Risk of injury can increase with dose or if used during strenuous exercise or with other products containing stimulants (including caffeine). Do not use with certain medications or if you have certain health conditions. Stop use and contact a doctor if side effects occur. See more information [...].

The following additional information would appear on the outer product label or in product labeling that is an integral part of the outer product packaging such that this information may be read at point of purchase (For example, this information could be contained in the outer information panel, riser backing, panel extension, outsert, etc.):

This product contains ephedrine alkaloids, which can have potentially dangerous effects on the heart and central nervous system.

☛ **Do not use with**

- ✓ a monoamine oxidase inhibitor (MAOI) or for 2 weeks after stopping a MAOI drug;
- ✓ certain drugs for depression, psychiatric, or emotional conditions;
- ✓ drugs for Parkinson's disease;
- ✓ drugs for obesity or weight control;
- ✓ methyldopa.

☛ **Contact a doctor before using this product if you have or ever had**

- ✓ heart disease, high blood pressure, thyroid disease, seizure, diabetes, depression, other mental, emotional or behavioral conditions, glaucoma, or difficulty urinating due to prostate enlargement.

☛ **Stop use and contact a doctor immediately if these side-effects occur**

- ✓ dizziness, severe headache, rapid and/or irregular heartbeat, chest pain, shortness of breath, nausea, loss of consciousness, or changes in emotions or behavior (such as depression, hallucinations or severe mood swings).

☛ **Your risks of serious side-effects from this product can increase**

- ✓ with increased dose, frequency, or duration of use;
- ✓ if you take it with other dietary supplements containing ephedrine alkaloids (such as ephedra, ma huang, Sida cordifolia);
- ✓ if you take it with additional products containing stimulants, such as caffeinated beverages and foods (including dietary supplements containing guarana, kola nut, mate, yohimbine/yohimbe, Citrus aurantium);
- ✓ if you take it with medications containing synephrine, phenylephrine, ephedrine, pseudoephedrine, or phenylpropanolamine;
- ✓ if you use it before or during strenuous exercise.

FDA also intends to consider, to the extent possible, whether in light of current information FDA should determine that dietary supplements containing ephedrine alkaloids present a "significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling, or if no conditions of use are suggested or recommended in the labeling, under ordinary conditions of use" (see 21 U.S.C. 342(f)(1)(A)). Furthermore, FDA

seeks comment on what additional legislative authorities, if any, would be necessary or appropriate to enable FDA to address this issue most effectively.

For interested parties who would like to submit comments on these issues or additional data from any well-conducted scientific studies, we are reopening the comment period of the June 1997 proposal for 30 days. If, after evaluating the comments received on this document, FDA believes that a warning statement on the labels of dietary supplements containing ephedrine alkaloids is necessary to protect the health of individuals consuming such products, the agency will move quickly to publish a final rule requiring the appropriate warning statement and to take any other action we determine to be appropriate.

II. How to Submit Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Identify all comments with the docket numbers found in brackets in the heading of this document. You may review received comments in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Bent, S., T. N. Tiedt, M. C. Odden, and M. G. Shlipak, ''The Relative Safety of Ephedra Compared with Other Herbal Products,'' published in the *Annals of Internal Medicine*, March 2003, vol. 138, number 6.

2. Morgenstern, L. B., C. M. Viscoli, W. N. Kernan, L. M. Brass, J. P. Broderick, E. Feldmann, J. L. Wilterdink, T. Brott, and R. I. Horwitz, ''Use of Ephedra-Containing Products and Risk for Hemorrhagic Stroke,'' published in the *Journal of Neurology*, 2003; vol. 60: pp. 132–135.

3. Samenuk, D., M. S. Link, M. K. Homoud, R. Contreras, T. C. Theohardes, P. J. Wang, Estes NA 3d., ''Adverse Cardiovascular Events Temporally Associated With ma huang, an Herbal Source of Ephedrine,'' *Mayo Clinic Proceedings*, 2002, vol. 77(1):12–6.

4. C. A., Haller, P. Jacob 3rd, N. L. Benowitz, ''Pharmacology of Ephedra Alkaloids and Caffeine After Single-dose Dietary Supplement Use,'' *Clinical Pharmacology and Therapeutics*, 2002, June, vol. 71(6), pp. 421–432.

5. Boozer, C. N., J. A. Nasser, S. B. Heymsfield, V. Wang, G. Chen, J. L. Solomon, ''An Herbal Supplement Containing Ma Huang-Guarana for Weight Loss: A Randomized, Double-blind Trial,'' *International Journal of Obesity and Related Metabolic Disorders*, 2001;25(3):316–24.

6. Boozer, C. N., P. A. Daly, P. Homel, J. L. Solomon, D. Blanchard, J. A. Nasser, et. al. ''Herbal Ephedra/Caffeine for Weight Loss: a 6-month Randomized Safety and Efficacy Trial,'' *International Journal of Obesity Related and Metabolic Disorders*, 2002, vol. 26(5): pp. 593–604.

7. Shekelle, P. G, M. L. Hardy, M. Maglione, S. C. Morton, ''Ephedra and Ephedrine for Weight Loss and Athletic Performance Enhancement: Clinical Efficacy and Side Effects,'' Agency for Healthcare Research and Quality (in press).

Dated: February 27, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–5072 Filed 2–28–03; 3:30 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AB86

National Forest Service Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of public comment period.

SUMMARY: Notice is hereby given that the public comment period for the proposed rule for National Forest System Land and Resource Management Planning, published in the **Federal Register** on December 6, 2002 (67 FR 72770), is being extended. The original comment period end date was March 6, 2003.

DATES: Comments on the proposed rule must be received in writing, on or before the new deadline of April 7, 2003.

ADDRESSES: Comments may be sent to USDA FS Planning Rule, Content Analysis Team, PO Box 8359, Missoula, MT 59807; via email to *planning_rule@fs.fed.us;* or by facsimile to Planning Rule Comments at (406) 329–3556. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Jody Sutton, Content Analysis Team Program Coordinator, Forest Service, (801) 517–1023.

SUPPLEMENTARY INFORMATION: The Diversity Options Workshop was held February 18–20, 2003, to discuss the approaches to implementing the National Forest Management Act (NFMA) diversity requirement in the proposed rule; address strengths and weaknesses of the two diversity options in the proposed rule; and to discuss any additional options for implementing the NFMA diversity requirement. Proceedings from the Diversity Options Workshop are expected to be posted on World Wide Web at *www.fs.fed.us/emc/nfma* by March 17, 2003.

Dated: February 26, 2003.

Bov B. Eav,

Acting Chief.

[FR Doc. 03–5116 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1243–P]

RIN 0938–AM41

Medicare Program; Proposed Change in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient Prospective Payment System

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we are proposing to change the methodology for determining payments for extraordinarily high-cost cases (cost outliers) made to Medicare-participating hospitals under the acute care hospital inpatient prospective payment system.

Under the existing outlier methodology, the cost-to-charge ratios from hospitals' latest settled cost reports are used in determining a fixed-loss amount cost outlier threshold. We have become aware that, in some cases, hospitals' recent rates of charge

increases greatly exceed their rates of cost increases. This disparity results in their cost-to-charge ratios being set too high, which in turn results in an overestimation of their current costs per case. Therefore, we need to make revisions to our outlier payment methodology to correct those situations in which hospitals would otherwise receive overpayments for outlier cases due to excessive charge increases.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 4, 2003.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–1243–P, PO Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building.

A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

In commenting, please refer to file code CMS–1243–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Centers for Medicare & Medicaid Services,

Office of Strategic Operations and Regulatory Affairs, Division of Regulations and Issuances, PRA Reports Clearance Office, 7500 Security Boulevard, Baltimore, MD 21244–1850, *Attn.:* Julie Brown, CMS 1243–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, *Attn.:* Brenda Aguilar, CMS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number: (410) 786–9994.

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. Description of the Acute Care Hospital Inpatient Prospective Payment System (IPPS)

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. This payment system is referred to as the acute care hospital inpatient prospective payment system (IPPS). Under the IPPS, each case is categorized into a diagnosis-related group (DRG). Each DRG has a payment weight assigned to it, based on the average resources used to treat Medicare patients in that DRG.

The base payment rate is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located, and if the hospital is located in Alaska or Hawaii, the nonlabor-related share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If the hospital treats a high-percentage of low-income patients, it receives a percentage add-on payment applied to the DRG-adjusted base payment rate. This add-on payment, known as the disproportionate share hospital (DSH) adjustment, provides for a percentage increase in Medicare payment for hospitals that qualify under either of two statutory formulas designed to identify hospitals that serve a disproportionate share of low-income patients. For qualifying hospitals, the amount of this adjustment may vary based on the outcome of the statutory calculation.

Also, if the hospital is an approved teaching hospital it receives a percentage add-on payment for each case paid through the IPPS. This add-on payment, known as the indirect medical education (IME) adjustment, varies depending on the ratio of residents-to-beds under the IPPS for operating costs and according to the ratio of residents-to-average daily census under the IPPS for capital costs.

Additional payments may be made for cases that involve new technologies that have been approved for special add-on payments. To qualify, a new technology must demonstrate that it is a substantial clinical improvement over technologies otherwise available, and that, absent an add-on payment, it would be inadequately paid under the regular DRG payment.

Finally, for particular cases that are unusually costly, known as outlier cases (discussed below), the IPPS payment is increased. This additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases. Any outlier payment due is added to the DRG-adjusted base payment rate, plus any DSH, IME, and new technology add-on adjustments.

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services ''in accordance with a prospective payment system established by the Secretary.'' The basic methodology for determining

capital prospective payments is set forth in our regulations at §§ 412.308 and 412.312. Under the capital prospective payment system, payments are adjusted by the same DRG for the case as they are under the operating IPPS. Similar adjustments are also made for IME and DSH as under the operating IPPS. Hospitals also may receive an outlier payment for those cases that qualify.

B. Payment for Outlier Cases

1. General

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for cases incurring extraordinarily high costs. To qualify for outlier payments, a case must have costs above a fixed-loss cost threshold amount (a dollar amount by which the costs of a case must exceed payments in order to qualify for outliers).

Hospital-specific cost-to-charge ratios are applied to the covered charges for the case to determine whether the costs of the case exceed the fixed-loss outlier threshold. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold. For Federal fiscal year (FY) 2003, the existing fixed-loss outlier threshold is $33,560.

The actual determination of whether a case qualifies for outlier payments takes into account both operating and capital costs and DRG payments. That is, the combined operating and capital costs of a case must exceed the fixed-loss outlier threshold to qualify for an outlier payment. The operating and capital costs are computed separately by multiplying the total covered charges by the operating and capital cost-to-charge ratios. The estimated operating and capital costs are compared with the fixed-loss threshold after dividing that threshold into an operating portion and a capital portion (by summing the operating and capital ratios and determining the proportion of that total comprised by the operating and capital ratios, and then applying these percentages to the fixed-loss threshold). The thresholds are also adjusted by the area wage index (and capital geographic adjustment factor) before being compared to the operating and capital costs of the case. Finally, the outlier payment is equal to 80 percent of the combined operating and capital costs in excess of the fixed-loss threshold (90 percent for burn DRGs).

The following example simulates the outlier payment for a case at a generic hospital that receives IME and DSH payments in San Francisco, California (a large urban area). The patient was discharged after October 1, 2002, and the hospital incurred Medicare-covered charges of $150,000. The DRG assigned to the case was DRG 286, Adrenal and Pituitary Procedures, with a FY 2003 relative weight of 2.0937. There is no new technology add-on payment for the case.

Step 1: Determine the Federal operating and capital payment with IME and DSH adjustment based on the following values:

Operating Portion	
National Large Urban Standardized Amounts	
Labor-related	$3,022.60
Nonlabor-related	1,228.60
San Francisco MSA Wage Index	1.4142
IME Operating Adjustment Factor	0.0744
DSH Operating Adjustment Factor	0.1413
DRG 286 Relative Weight	2.0937
Labor-Related Portion	0.711
Nonlabor-Related Portion	0.289

Federal Payment for Operating Costs = DRG Relative Weight × [(Labor-Related Large Urban Standardized Amount × San Francisco MSA Wage Index) + Nonlabor-Related National Large Urban Standardized Amount] × (1 + IME + DSH): 2.0937 × [($3,022.60 × 1.4142) + $1,228.60] × (1 + 0.0744 + 0.1413) = $14,007.26

Capital Portion	
Federal Capital Rate	$407.01
Large Urban Add-On	1.03
San Francisco MSA Geographic Adjustment Factor	1.2679
IME Capital Adjustment Factor	0.0243
DSH Capital Adjustment Factor	0.0631

Federal Payment for Capital Costs = DRG Relative Weight × Federal Capital Rate × Large Urban Add-On × Geographic Adjustment Factor × (1 + IME + DSH): 2.0937 × $407.01 × 1.03 × 1.2679 × (1 + 0.0243 + 0.0631) = $1,210.12.

Step 2: Determine operating and capital costs from billed charges by applying the respective cost-to-charge ratios.

Billed Charges	$150,000
Operating Cost-to-Charge Ratio	0.50
Operating Costs = (Billed Charges × Operating Cost-to-Charge Ratio) ($150,000 × .50)	75,000
Capital Cost-to-Charge Ratio	0.06
Capital Costs = (Billed Charges × Capital Cost-to-Charge Ratio) ($150,000 × .06)	9,000

Step 3: Determine outlier threshold.

Fixed Loss Threshold	$33,560
Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio .. (Operating Cost-to-Charge Ratio) / (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) (.50)/(.50 + .06)	0.8929

Operating Outlier Threshold = {[Fixed Loss Threshold × ((Labor-Related portion × San Francisco MSA Wage Index) + Nonlabor-Related portion)] × Operating Cost-to-Charge Ratio to Total Cost-to-Charge Ratio] + Federal Payment with IME and DSH: [$33,560 × [(0.711 × 1.4142) + 0.289] × 0.8929} + $14,007.26 = $52,797.78

Capital Cost-to-Charge-Ratio to Total Cost-to-Charge Ratio = [(Capital Cost-to-Charge Ratio)/(Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio)]:{(.06)/(.50 + .06)} = 0.1071

Capital Outlier Threshold = (Fixed Loss Threshold × Geographic Adjustment Factor × Large Urban Add-On × Capital CCR to Total CCR) + Federal Payment with IME and DSH: ($33,560 × 1.2679 × 1.03 × 0.1071) + $1,210.12 = $5,904.02

Step 4: Determine outlier payment.

Marginal Cost Factor = 0.80

Outlier Payment = (Costs—Outlier Threshold) × Marginal Cost Factor

Operating Outlier Payment = ($75,000—$52,797.78) × 0.80 = $17,761.78

Capital Outlier Payment = ($9,000—$5,904.02) × 0.80 = $2,476.78

2. Cost-to-Charge Ratios

Under existing regulations at § 412.84(h), the operating cost-to-charge

ratio and, effective with cost reporting periods beginning on or after October 1, 1991, the capital cost-to-charge ratio used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report.

In the September 30, 1988 final rule with comment period published in the **Federal Register** (53 FR 38503), we initiated the use of hospital-specific cost-to-charge ratios to determine hospitals' costs for assessing whether a case qualifies for payment as a cost outlier. Prior to that change, we determined the cost of discharges based on a nationwide cost-to-charge ratio of 60 percent. We indicated at the time that the use of hospital-specific cost-to-charge ratios is essential to ensure that outlier payments are made only for cases that have extraordinarily high costs, and not merely high charges.

Currently, cost-to-charge ratios are determined using the most recent settled cost report for each hospital. At the end of the cost reporting period, Medicare charges from all claims are accumulated through the Provider Statistical and Reimbursement Report (PS&R). The PS&R contains data such as the number of discharges and the actual charges from each hospital. The hospital also submits a cost report to its fiscal intermediary, which is used to determine total allowable inpatient Medicare costs. Once all these data are available, the fiscal intermediary then determines the cost-to-charge ratio for the hospital by using charges from the PS&R and costs from the cost report.

Statewide average cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. CMS sets forth these parameters and the statewide cost-to-charge ratios in the annual notices of prospective payment rates that are published by August 1 of each year in accordance with § 412.8(b). For FY 2003, those parameters are set at operating cost-to-charge ratios lower than 0.194 or greater than 1.258, or capital cost-to-charge ratios lower than 0.012 or greater than 0.163. These ranges represent 3.0 standard deviations (plus or minus) from the geometric mean of cost-to-charge ratios for all hospitals.

The Congress intended that outlier payments would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under our existing outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted.

Recent analysis indicates that some hospitals have taken advantage of two vulnerabilities in our methodology to maximize their outlier payments. One vulnerability is the time lag between the current charges on a submitted bill and the cost-to-charge ratio taken from the most recent settled cost report. The second vulnerability, in some cases, is that hospitals may increase their charges so far above costs that their cost-to-charge ratios fall below 3 standard deviations from the geometric mean of cost-to-charge ratios and a higher statewide average cost-to-charge ratio is applied. In this proposed rule, we are proposing to implement new regulations to ensure outlier payments are paid only for truly high-cost cases.

Because the fixed-loss threshold is determined based on hospitals' historical charge data, hospitals that have been inappropriately maximizing their outlier payments have caused the threshold to increase dramatically for FY 2003. As illustrated by the table below, the cost outlier threshold increased by 80 percent from $9,700 in FY 1997 to $17,550 in FY 2001. In addition, the cost outlier threshold increased by 91 percent from $17,550 in FY 2001 to $33,560 in FY 2003. The table also demonstrates, for the 3 most recent years, the level at which the threshold would have to have been set in order to result in outlier payments equal to 5.1 percent of total DRG payments (absent further behavioral responses by hospitals).

Fiscal year	Outlier percentage	Payments in excess of target of 5.1%* (in billions of dollars)	Outlier threshold	Threshold that would have paid out 5.1%
1997	5.5	0.3	$9,700	****
1998	6.5	1.0	11,050	****
1999	7.6	1.8	11,100	****
2000	7.6	1.8	14,050	$21,825
2001	7.7	1.9	17,550	26,200
2002	6.9	1.6	21,025	30,525
2003	5.1	N/A	33,560	****

*All payments are estimated and reflect operating payments only (not capital payments).

II. Provisions of this Proposed Rule

A. Updating Cost-to-Charge Ratios

Currently, we use the most recent settled cost report when determining cost-to-charge ratios for hospitals. The covered charges on bills submitted for payment during FY 2003 are converted to costs by applying a cost-to-charge ratio from cost reports that began in FY 2000 or, in some cases, FY 1999. These covered charges reflect all of a hospital's charge increases to date, in particular those that have occurred since FY 2000 and are not reflected in the FY 2000 cost-to-charge ratios. If the rate-of-charge increases since FY 2000 exceeds the rate of the hospital's cost increases during that time, the hospital's cost-to-charge ratio based on its FY 2000 cost report will be too high, and applying it to current charges will overestimate the hospital's costs per case during FY 2003. Overestimating costs may result in some cases qualifying for outlier payments that, in actuality, are not high cost cases.

Using the Medicare Provider Analysis and Review (MedPAR) file data from FY 1999 to FY 2001, we found 123 hospitals whose percentage of outlier payments relative to total DRG payments increased by at least 5 percentage points over that period, and whose case-mix (the average DRG relative weight value for all of a hospital's Medicare cases) adjusted charges increased at a rate at or above the 95th percentile rate of charge increase for all hospitals (46.63 percent) over the same period. We adjusted for case-mix because a hospital's average charges per case would be expected to change from one year to the next if the

hospital were treating new or different types of cases.

Because we use settled cost reports to compute hospitals' cost-to-charge ratios, the recent dramatic increases in charges for these hospitals are not reflected in their cost-to-charge ratios. For example, among these 123 hospitals, the mean rate of increase in charges was 70 percent. Meanwhile, cost-to-charge ratios for these hospitals, which were based upon cost reports from prior periods, declined by only 2 percent.

Because a hospital has the ability to increase its outlier payments during this time lag through dramatic charge increases, in this proposed rule we are proposing new regulations at § 412.84(i)(1) that would allow fiscal intermediaries to use more up-to-date data when determining the cost-to-charge ratio for each hospital. As mentioned above, currently fiscal intermediaries use the hospital's most recent settled cost report. We are proposing to revise our regulations to specify that fiscal intermediaries will use either the most recent settled or the most recent tentative settled cost report, whichever is from the later cost reporting period.

Hospitals must submit their cost reports within 5 months after the end of their fiscal year. CMS makes a decision to accept a cost report within 30 days. Once the cost report is accepted, CMS makes a tentative settlement of the cost report within 60 days. The tentative settlement is a cursory review of the filed cost report to determine the amount of payment to be paid to the hospital if an amount is due on the as-filed cost report. After the cost report is tentatively settled, it can take 12 to 24 months, depending on the type of review or audit, before the cost report is final-settled. Thus, using cost-to-charge ratios from tentative settled cost reports, as we are proposing in this proposed rule, would reduce the time lag for updating cost-to-charge ratios by a year or more.

However, even the later ratios calculated from the tentative settled cost reports would overestimate costs for hospitals that have continued to increase charges much faster than costs during the time between the tentative settled cost report period and the time when the claim is processed. That is, even though we are proposing to reduce the lag in time by proposing to revise the regulations to use the latest tentative settled cost report, rather than the latest settled cost report, if it is from a later cost reporting period, there would still be a lag of 1 to 2 years during which a hospital's charges may still increase faster than costs. Therefore, we are proposing to add a new provision to the regulations at § 412.84(i). Under this proposed provision, in the event more recent charge data indicate that a hospital's charges have been increasing at an excessive rate (relative to the rate of increase among other hospitals), CMS would have the authority to direct the fiscal intermediary to change the hospital's operating and capital cost-to-charge ratios to reflect the high charge increases evidenced by the later data. In addition, we are proposing to allow a hospital to contact its fiscal intermediary to request that its cost-to-charge ratios, otherwise applicable under § 412.84(i), be changed if the hospital presents substantial evidence that the ratios are inaccurate. Any such requests would have to be approved by the CMS Regional Office with jurisdiction over that fiscal intermediary.

B. Statewide Averages

As hospitals raise their charges faster than their costs increase, over time their cost-to-charge ratios will decline. If hospitals continue to increase charges at a faster rate than their costs increase over a long period of time, or if they increase charges at extreme rates, their cost-to-charge ratios may fall below the range considered reasonable under the regulations (0.194 for operating cost-to-charge ratios and 0.012 for capital cost-to-charge ratios in FY 2003 (67 FR 50125)), and, per current regulations at § 412.84(h), their fiscal intermediaries will assign a statewide average cost-to-charge ratio. These statewide averages are generally considerably higher than the threshold. Therefore, under existing regulations, these hospitals benefit from an artificially high ratio being applied to their already high charges. Furthermore, hospitals can continue to increase charges faster than costs, without any further downward adjustment to their cost-to-charge ratios.

For example, in a 3-year span, one hospital was found to have an increase in charges of 60 percent from FY 1999 to FY 2000, 35 percent from FY 2000 to FY 2001, and 13 percent from FY 2001 to FY 2002. This hospital's actual operating cost-to-charge ratio for FY 2003 was 0.093. Because this number is below the threshold of 0.194, the fiscal intermediary assigned this urban California hospital the statewide average cost-to-charge ratio of 0.328 (from Table 8A of the August 1, 2002 final rule, 67 FR 50263). In this case, receiving the statewide average cost-to-charge ratio increased the hospital's estimated costs per case far above the estimate using the actual ratio, leading to substantially higher outlier payments to the hospital as a result of this policy.

In December 2002, we issued Program Memorandum A–02–122 requesting that fiscal intermediaries identify all hospitals receiving the statewide average operating or capital cost-to-charge ratio because their cost-to-charge ratios fell below the floor of reasonable parameters. We received a list of 43 hospitals that were assigned the statewide average operating cost-to-charge ratio and 14 hospitals that were receiving the statewide average capital cost-to-charge ratio. Three hospitals were found on both lists. Prior to application of the statewide average cost-to-charge ratios, the average actual operating cost-to-charge ratio for the 43 hospitals was 0.164, and the average actual capital cost-to-charge ratio for the 14 listed hospitals was 0.008. In contrast, the statewide average operating cost-to-charge ratio for the 43 hospitals was 0.3425 and the statewide average capital cost-to-charge ratio for the 14 hospitals was 0.035.

Because of hospitals' ability to increase their charges to lower their cost-to-charge ratios in order to be assigned the statewide average, we are proposing to remove the current requirement in our regulations specifying that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below the floor. We are proposing that hospitals would receive their actual cost-to-charge ratios, no matter how low their ratios fall.

We are proposing that statewide average cost-to-charge ratios would still apply in those instances in which a hospital's operating or capital cost-to-charge ratio exceeds the upper threshold. Cost-to-charge ratios above this range are probably due to faulty data reporting or entry, and should not be used to identify and pay for outliers. In addition, hospitals that have not yet filed their first Medicare cost reports with their fiscal intermediaries would still receive the statewide average cost-to-charge ratios.

C. Reconciling Outlier Payments Through Settled Cost Reports

Under the IPPS, hospitals submit a bill for each Medicare patient stay for which they expect a payment from Medicare. The bill includes information needed to: (1) Classify the case to a DRG; (2) determine whether the case was a transfer; (3) identify whether a new technology eligible for add-on payments was involved; and (4) calculate the costs of a case to determine whether it is eligible for an outlier

payment or a new technology add-on payment. This latter calculation is based on the covered charges reported on the bill, which, as discussed above, are also used to estimate the covered costs of the case by applying the cost-to-charge ratio.

The information from the bill is processed through the fiscal intermediary's claims processing system to determine the payment amount for each case. Unless a hospital qualifies for periodic interim payments under § 412.116(b), payment is made on the basis of the actual amount determined for each bill processed. For hospitals that qualify for periodic interim payments, the fiscal intermediary estimates a hospital's IPPS payments and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. However, outlier payments are not made on an interim basis, but are made on a claim-by-claim basis (even for hospitals that qualify for interim payments under § 412.116(b)), and generally represent final payment (§ 412.116(e)).

An exception to this finality is the provision for medical review of a sample of outlier cases and for adjustments to be made to covered charges for any services that are found to be noncovered (§ 412.84(d)). In situations where a pattern of inappropriate utilization by a hospital is found, all outlier cases from that hospital may be subject to prepayment medical review (§ 412.84(e)).

CMS has generally limited the situations in which outlier payments may be reopened. This is in contrast to payments under the IME adjustment and the DSH adjustment, both of which are routinely adjusted when hospitals' cost reports are settled to reflect updated data such as the number of residents or patient days during the actual cost reporting period. With respect to outliers, it has been CMS's policy that payment determinations are made on the basis of the best information available at the time a claim is processed and are not revised, upward or downward, based upon updated data.

As stated earlier in this preamble, we are increasingly aware that some hospitals have taken advantage of the current outlier policy by increasing their charges at extremely high rates, knowing that there would be a time lag before their cost-to-charge ratios would be adjusted to reflect the higher charges. The steps we are proposing in this proposed rule to direct fiscal intermediaries to update cost-to-charge ratios using the most recent tentative settled cost reports (and in some cases, even later data) and using actual rather than statewide average ratios for hospitals that have cost-to-charge ratios that are more than 3.0 standard deviations below the geometric mean cost-to-charge ratio, would greatly reduce the opportunity for hospitals to manipulate the system to maximize outlier payments. However, they would not completely eliminate all such opportunity. A hospital would still be able to dramatically increase its charges by far above the rate of increase in costs during any given year. This possibility is of great concern, given the recent findings that some hospitals that have been able to receive large outlier payments by doing just that.

Therefore, we are proposing to add a provision to our regulations to provide that outlier payments will become subject to adjustment when hospitals' cost reports are settled (proposed § 412.84(i)(2)). Payments would be processed throughout the year using operating and capital cost-to-charge ratios based on the best information available at that time. When the cost report is settled, any reconciliation of outlier payments by fiscal intermediaries would be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

This process would require some degree of recalculating outlier payments for individual claims. It is not possible to distinguish, on an aggregate basis, how much a hospital's outlier payments would change due to a change in its cost-to-charge ratios. This is because, in the event of a decline in a ratio, some cases would no longer qualify for any outlier payments while other cases would qualify for lower outlier payments. Therefore, the only way to accurately determine the net effect of a decrease in cost-to-charge ratios on a hospital's total outlier payments is to assess the impact on a claim-by-claim basis. We are still assessing the procedural changes that would be necessary to implement this change.

Because, under our proposal, outlier payments would now be based on the relationship between the hospital's costs and charges at the time a discharge occurred, the proposed methodology would ensure that when final outlier payments are made they would reflect an accurate assessment of the actual costs the hospital incurred. Nevertheless, a final vulnerability remains. Even though the final payment would reflect a hospital's true cost experience, there would still be the opportunity for a hospital to manipulate its outlier payments by dramatically increasing charges during the year in which the discharge occurs. In this situation, the hospital would receive excessive outlier payments, which, although the hospital would incur an overpayment and have to pay the money back when the cost report is settled, would allow the hospital to obtain excess payments from the Medicare Trust Fund on a short-term basis.

Under section 1886(d)(5)(A)(iii) of the Act, the amount of any outlier payment should ''approximate the marginal cost of care'' in excess of the DRG payment and the fixed-loss threshold. Accordingly, because a hospital would have had access to any excess outlier payments until they are repaid to the Trust Fund (or, in the case of an underpayment, would not have had access to the appropriate amount during the same period), it may be necessary to adjust the amount of the final outlier payment to reflect the time value of the funds for that time period. Therefore, we are proposing to add § 412.84(m) to provide that when the cost report is settled, outlier payments would be subject to an adjustment to account for the value of the money during the time period it was inappropriately held by the hospital. This adjustment would also apply in cases where outlier payments were underpaid to the hospital. In those cases, the adjustment would result in additional payments to hospitals. Any adjustment would be based upon a widely available index to be established in advance by the Secretary, and would be applied from the midpoint of the cost reporting period to the date of reconciliation (or when additional payments are issued, in the case of underpayments). This adjustment to reflect the time value of a hospital's outlier payments would ensure that the outlier payment received by the hospital at the time its cost report is settled appropriately reflects the hospital's true costs of providing the care.

This adjustment is also intended to account for the unique susceptibility of outlier payments to manipulation. Hospitals set their own level of charges and are able to change their charges, without review by their fiscal intermediaries. As outlined above, changes in charges directly affect the level of outlier payments. This lack of fiscal intermediary review of a factor affecting a hospital's payments is in contrast to other IPPS adjustments, such as the IME adjustment or the DSH adjustment, where the fiscal intermediary must agree to a change to the determining factor (the resident-to-

bed ratio or the share of low-income patients, respectively).

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less then 5 percent nor more than 6 percent of the total estimated operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Despite the fact that each individual hospital's outlier payments may be subject to adjustment when the cost report is settled, we continue to believe that the fixed-loss outlier threshold should be based on projected payments using the latest available historical data without retroactive adjustments, either mid-year or at the end of the year, to ensure that actual outlier payments are equal to 5.1 percent of total DRG payments. That is, the above proposed change is intended only to allow for use of the actual cost-to-charge ratio from the cost reporting period that corresponds to the discharges for which the outlier payments are made. This adjustment would be made irrespective of whether the nationwide percentage of outlier payments relative to total operating DRG payments is equal to the outlier offset that is applied to the average standardized amounts (generally, 5.1 percent).

Outlier payments are intended to recognize the fact that hospitals occasionally treat cases that are extraordinarily costly and otherwise not adequately compensated under an average-based payment system. However, we can only estimate actual costs based on the charges for a case because charges are the only data available that indicate the resource usage for an individual case. Therefore, our ability to identify true outlier cases is dependent on the accuracy of the cost-to-charge ratios. To the extent some hospitals may be motivated to maximize outlier payments by taking advantage of the lag in updating the cost-to-charge ratios, the payment system remains vulnerable to overpayments to individual hospitals. Therefore, we believe the only way to eliminate the potential for such overpayments is to provide a mechanism for final settlement of outlier payments using actual cost-to-charge ratios from final, settled cost reports.

However, the fixed-loss outlier threshold is an important aspect of the prospective nature of the IPPS. The outlier payment policy is designed to alleviate any financial disincentive hospitals may have against providing any medically necessary care their patients may require, even those patients who become very sick and require extraordinary resources. The preestablished threshold allows hospitals to approximate their Medicare payment for an individual patient while that patient is still in the hospital. Because we are proposing to base outlier payments on the hospital's actual cost-to-charge ratios during the contemporaneous cost reporting period, the hospital should still be in a position to make this approximation. Hospitals have immediate access to the information needed to determine what their cost-to-charge ratio will be when their cost report is settled. Even if the final cost-to-charge ratio is likely to be different from the ratio used initially to process and pay the claim, as noted above, hospitals not only have the information available to estimate their cost-to-charge ratio, but also have the ability to control it, through the structure and levels of their charges.

If we were to make retroactive adjustments to outlier payments to ensure total payments are 5.1 percent of DRG payments (by retroactively adjusting outlier payments), we would be removing this important aspect of the prospective nature of the IPPS. Because such an across-the-board adjustment would either lead to more or less outlier payments for all hospitals, hospitals would no longer be able to reliably approximate their payment for a patient, while the patient is still hospitalized. We believe it would be neither necessary nor appropriate to make such an aggregate retroactive adjustment.

Furthermore, we do not believe it would be consistent with the intent of the language at section 1886(d)(5)(A)(iv) of the Act to do so. This section calls for the Secretary to ensure that outlier payments are equal to or greater than 5 percent and less than or equal to 6 percent of projected or estimated (not actual) DRG payments. We believe this language reflects Congress's intent regarding the prospectivity of the IPPS. However, we do not believe it prevents settling outlier payments based on hospitals' actual cost-to-charge ratios during the period when the discharge occurs.

D. Fixed-loss Outlier Threshold

As noted above, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total estimated operating DRG payments plus outlier payments; and section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the average standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

In the August 1, 2002 final rule, we established the FY 2003 outlier fixed-loss threshold at $33,560 (67 FR 50122). This was a nearly 60 percent increase over the FY 2002 threshold of $21,025. The primary reason for this dramatic increase was a change in our methodology to use the rate of increase in charges rather than the rate of increase in costs to determine the threshold. That is, because we use FY 2001 cases to project the threshold for FY 2003, it is necessary to inflate the charges on the FY 2001 bills to approximate the charges on a similar claim for FY 2003. Prior to the calculation of the FY 2003 outlier threshold, we used the rate-of-cost increase from the most recent cost reports available to inflate actual charges on the prior year's bills to estimate what the charges would be in the upcoming year.

Our analysis indicated hospitals' charges were increasing at a much faster rate than costs. Therefore, in the August 1, 2002 final rule, we changed our methodology to inflate charges (67 FR 50122). Rather than using the observed rate of increase in costs from the cost reports, we inflated the FY 2001 charges by a 2-year average annual rate of change in actual charges per case from FY 1999 to FY 2000, and from FY 2000 to FY 2001, to estimate what the charges would be in FY 2003 for a similar claim.

This proposed rule would make several changes to better target outlier payments to the most costly cases. As a result, if our present proposals are implemented as part of our final policy, outlier payments to the hospitals that have been most aggressively increasing their charges to maximize outlier payments would be dramatically reduced. However, we are concerned that unrestrained charge increases may continue to occur during FY 2003 prior to the implementation of these proposed changes as final, and possibly may result in outlier payments in excess of the 5.1 percent offset established by the August 1, 2002 final rule. For example, hospitals intending to maximize outlier payments during FY 2003 could continue to do so by increasing charges enough to outpace the increase in the threshold. In fact, given the public attention on this behavior over the past

few months and the potential for other hospitals to begin to aggressively increase their charges, and consequently their outlier payments, it is possible this type of aggressive gaming of the outlier policy has become more widespread in recent months.

Because of the extreme uncertainty regarding the effects of aggressive hospital charging practices on FY 2003 outlier payments to date, we are proposing no change to the FY 2003 fixed-loss threshold at this time. The threshold would remain at $33,560. However, we note that data for the first quarter of FY 2003 inpatient claims will be available soon, and these data may allow us to evaluate the current threshold and whether outlier payments to date appear to be approximately 5.1 percent of the total DRG payments.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

As discussed below, we are soliciting comment on the recordkeeping requirements, as referenced in the proposed amendments to § 412.84 discussed in this proposed rule. Under the proposed amendments to § 412.84(h), a hospital may request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. The burden imposed by this section is the time it takes to write the request. We estimate that 120 hospitals would make this request per year and that it would take each one 8 hours for a total annual burden of 960 hours.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn: Reports Clearance Officer, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Julie Brown, CMS–1243–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IV. Impact Analysis

A. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined that this proposed rule is a major rule as defined in 5 U.S.C. 804(2). Therefore, we have prepared the quantitative analysis presented in section IV.G. of this preamble.

C. Regulatory Flexibility Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either based on their nonprofit status or by having revenues of $5 million to $25 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity. As stated above, we are presenting a quantitative analysis at section IV.G. of this preamble.

D. Effects on Rural Hospitals

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule (and subsequent final rule) that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the IPPS, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this proposed rule would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and that the effects on some hospitals might be significant. Therefore, the discussion in section IV.G. of this preamble, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule (or a final rule, which has been preceded by a proposed rule) that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not result in any unfunded mandates for State, local, or tribal governments or the private sector, as defined by section 202.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule in light of Executive Order 13132 and have

determined that it would not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

G. Quantitative Analysis

As described above, the changes we are proposing would better target outlier payments to the most costly cases. First, by proposing to use the cost-to-charge ratios from the latest tentative settled cost reports at the time the claim is processed, instead of the latest settled cost reports, the lag time between the cost-to-charge ratio used to adjust charges to costs and the charges on the claim will be reduced by a year or more. Second, we are proposing that fiscal intermediaries would no longer assign the statewide average cost-to-charge ratio in place of the actual cost-to-charge ratio when the hospital's actual ratio is more than 3 standard deviations below the geometric mean cost-to-charge ratio. Finally, we are proposing that outlier payments may be subject to reconciliation when the cost report corresponding with the outlier cases is settled, using the actual cost-to-charge ratio calculated from the final settled cost report rather than the cost-to-charge ratio from the latest tentative settled cost report at the time the claim is processed.

We anticipate these proposed changes will redistribute outlier payments away from hospitals that have been aggressively gaming the existing outlier payment methodology by manipulating their charges toward those hospitals with truly high-cost cases. For some hospitals, the effects of this redistribution may be quite dramatic. For example, as noted previously, we have identified 123 hospitals that appear to have been most aggressively gaming the current policy. On average, current outlier payments for these hospitals comprise 24 percent of their total DRG payments. The changes we are proposing would be likely to greatly reduce the level of outlier payments for these hospitals.

However, as we also noted above, it is not currently possible to assess the extent to which other hospitals may have begun to engage in similar practices, particularly given the public attention that has focused on this problem. Therefore, hospitals that may not previously have been aggressively gaming the policy, and that would otherwise appear to benefit from the redistribution of outlier payments, may in fact also be negatively impacted by these proposed changes. At this time, however, data are not available to assess fully the degree to which other hospitals began this practice during FY 2002, and no data are yet available for FY 2003.

Therefore, we are unable to quantify the likely impacts of these proposed changes. We anticipate that by the time we prepare the final rule, more data will be available to better assess the winners and losers of these proposed changes. If so, we will include a quantitative impact analysis at that time.

H. Alternatives Considered

For purposes of analysis, we considered several alternatives to the proposed changes discussed above. One alternative would be to not make any changes to the current outlier policy. However, we believe that in light of the evidence that hospitals have been manipulating our current outlier policy, it is important to change the current policy to ensure these payments go to truly expensive cases. Therefore, we do not believe that retaining our current policy is a viable option.

We also considered establishing a policy that hospitals' cost-to-charge ratios would be based on their rates of increase in charges as an alternative to reconciling outlier payments on the cost reports. However, we believe this approach would be extremely complex. In addition, this approach would require us to make assumptions about the relationship between costs and charges that may not apply in particular circumstances. Therefore, this alternative would be likely to lead to inequitable treatment of some hospitals.

We considered eliminating the application of statewide average cost-to-charge ratios altogether. However, it is necessary to have some ratio to assign to new hospitals that have not yet filed their first cost report. Also, we believe it remains appropriate to assign the statewide average cost-to-charge ratio in cases where a hospital's cost-to-charge ratio exceeds 3 standard deviations from the geometric mean.

I. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''**DATES**'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Change of the Required 60-Day Comment Period to a 30-Day Comment Period

Section 1871 of the Social Security Act provides that the Secretary shall provide for notice of any proposed regulation in the **Federal Register** and a period of not less than 60 days for public comment before issuing a regulation in final form. However, this notice-and-comment procedure may be waived if the agency, for good cause, finds that the notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and the reasons for it into the notice issued.

We believe there is good cause to waive the 60-day comment period. In light of the importance of the outlier issue and the extensive changes being proposed, however, we believe it is also important to provide a public comment period on the proposed policies, not because it is required, but as a matter of good public policy. Accordingly, in order to balance these competing interests, we are voluntarily providing a 30-day period for the submission of public comments.

The Congress intended that outlier payments would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under our existing outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted. In addition, if these proposed changes are not implemented expeditiously, additional hospitals will likely begin to increase their charges to take advantage of the vulnerabilities of the current system, and those hospitals that already have engaged in this activity will continue to do so. This has the undesirable impact not only of further distorting the distribution of outlier payments, but it also has negative impacts on other insurers and the public. In the case of other insurers, Medicare's payments often serve as a benchmark for establishing their payments to individual hospitals. To the extent Medicare continues to pay excessive outlier payments to some hospitals, this may have spillover effects to private insurance companies. In the case of the public, particularly those without health insurance, they face the prospect of being expected to pay these exorbitant hospital charges when they

become hospitalized at an institution that has engaged in these practices. Extending the duration of these payment inequities would be contrary to the public interest and could adversely affect the provision of services to Medicare beneficiaries.

We believe that providing a 30-day comment period for the proposed policies in this document allows hospitals and the general public sufficient opportunity to address any concerns or issues that they may have, and at the same time, allows CMS to address the issue of excessive outlier payments within the current fiscal year (FY 2003). Hospitals are already familiar with the existing outlier payment policies and should be able to readily assess the impact that the proposed changes may have on their programs and respond to the proposed changes in the outlier payment methodology.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this proposed rule, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 412 as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.84 is amended by—

A. Revising paragraph (h).

B. Redesignating paragraphs (i), (j), and (k) as paragraphs (j), (k), and (l), respectively.

C. Adding a new paragraph (i).

D. In redesignated paragraph (k), removing the phrase ''paragraph (k) of this section'' and adding in its place ''paragraph (l) of this section.''

E. In redesignated paragraph (l), removing the phrase ''paragraph (j) of this section'' and adding in its place ''paragraph (k) of this section.''

F. Adding a new paragraph (m).

The revisions read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(h) For discharges occurring before the effective date of the final rule, the operating and capital cost-to-charge ratios used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report. Statewide cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. CMS sets forth the reasonable parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published under § 412.8(b).

(i)(1) For discharges occurring on or after the effective date of the final rule, the operating and capital cost-to-charge ratios applied at the time a claim is processed are based on either the most recent settled or the most recent tentative settled cost report, whichever is from the latest cost reporting period (unless otherwise specified by CMS based on later available data). A hospital may also request that its fiscal intermediary use a different (higher or lower) cost-to-charge ratio based on substantial evidence presented by the hospital. Such a request must be approved by the CMS Regional Office. If a fiscal intermediary is unable to determine an accurate operating or capital cost-to-charge ratio for a hospital in one of the following circumstances, it may use a statewide average cost-to-charge ratio:

(i) New hospitals that have not yet submitted their first Medicare cost report. (For this purpose, a new hospital is defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18 of this chapter.)

(ii) Hospitals whose operating or capital cost-to-charge ratio is in excess of three standard deviations above the corresponding national geometric mean. This mean is recalculated annually by CMS and published in the annual notice of prospective payment rates published under § 412.8(b).

(iii) Other hospitals for whom the fiscal intermediary determines accurate data upon which to calculate either an operating or capital cost-to-charge ratio (or both) are not available.

(2) For discharges occurring on or after the effective date of the final rule, any reconciliation of outlier payments will be based on operating and capital cost-to-charge ratios calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

* * * * *

(m) Effective for discharges occurring on or after the effective date of the final rule, at the time the cost report is settled, outlier payments may be adjusted to account for the time value of any underpayments or overpayments. Any adjustment will be based upon a widely available index to be established in advance by the Secretary, and will be applied from the midpoint of the cost reporting period to the date of reconciliation.

§ 412.116 [Amended]

3. In § 412.116(e), the second sentence is removed.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 24, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 6, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–5121 Filed 2–28–03; 12:03 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03J–1]

Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: On November 8, 2002, the Federal Communications Commission requested that the Federal-State Joint Board on Universal Service ''review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.'' In particular, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier is providing services, as well as the Commission's rules regarding support for second lines. The Commission also asked the Joint Board to examine the process for designating ETCs. In this document, the Joint Board invite public comment on whether these rules continue to fulfill their intended purposes, whether

modifications are warranted, and if so, how the rules should be modified.

DATES: Comments are due on or before May 5, 2003. Reply comments are due on or before June 3, 2003.

ADDRESSES: Send comments to 445 12th Street, SW., Washington DC 20554. See **SUPPLEMENTARY INFORMATION** section for more information on where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney, Telecommunication Access Policy Division, Wireline Competition Bureau or Paul Garnett, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On November 8, 2002, the Federal Communications Commission (Commission) requested that the Federal-State Joint Board on Universal Service (Joint Board) ''review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled.'' In particular, the Commission asked the Joint Board to review the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier (ETC) is providing services, as well as the Commission's rules regarding support for second lines. The Commission also asked the Joint Board to examine the process for designating ETCs. By this Public Notice, the Joint Board initiates its review. As set forth below, we invite public comment on whether these rules continue to fulfill their intended purposes, whether modifications are warranted, and if so, how the rules should be modified.

Issues for Comment

1. We seek comment on whether changes to the Commission's rules relating to high-cost universal service support in study areas in which a competitive ETC is providing services and the Commission's rules regarding support for second lines are warranted, and if so, how those rules should be modified. We also seek comment regarding the process for designating ETCs. With respect to each of these issues, we ask that commenters specifically address how any proposed modifications will further, or impede, the Act's goals of maintaining universal service and fostering competition. We also ask commenters to address the effect of any rule changes on incentives to invest in and upgrade the network and on incentives to provide supported services in high-cost areas. In addition, commenters should address how any proposed modifications to the high-cost loop support mechanism for rural carriers would affect the specific conclusions adopted in the *Rural Task Force Order*, 66 FR 34603 (June 29, 2001), as well as its five-year time frame.

A. State of the Marketplace and Universal Service Fund

2. We seek to establish a complete record on the development of competition in high-cost areas, the effect of the Commission's current policies on such development, and how line growth in high-cost areas may impact the universal service fund. To the extent possible, we request that commenters provide detailed data on competition and line growth in high-cost areas. The more specific data that we receive, the better able we will be to tailor our recommendations to meet the Act's goals of maintaining universal service and fostering competition.

3. Based on Universal Service Administrative Company (USAC) data, a total of approximately 1,400 ETCs received approximately $803 million in high-cost support disbursed in the third quarter of 2002 for service to approximately 31 million lines. Of these ETCs, 45 were competitive ETCs, of which 15 were mobile wireless providers, and 30 were competitive LECs. The competitive ETCs received approximately $14 million for service to 1.2 million lines for the same time period, representing approximately 1.8 percent of the total amount of high-cost support provided to ETCs. In contrast, in the first quarter of 2001, competitive ETCs received approximately $2 million out of approximately $638 million in high-cost support, or approximately 0.4 percent of total high-cost support.

4. To what extent will support for competitive ETCs likely grow over time? Is the growth rate of support for competitive ETCs over the last eighteen months indicative of what one would expect to see in the future? How does the growth in support for competitive ETCs compare to the growth in support for other ETCs (i.e., incumbent LECs)?

5. According to the Commission's most recent *Local Telephone Competition* report, 93 percent of United States households are located in zip codes where there is at least one competitive local exchange carrier. In some states, however, entry is occurring in only a limited number of zip codes. According to the Commission's most recent *CMRS Competition* report, 94 percent of the total United States population lives in counties with access to three or more different mobile telephone service operators (including cellular, broadband Personal Communications Services, and/or digital Specialized Mobile Radio providers). What percentage of consumers in rural and high-cost areas have access to competitive alternatives for services provided by incumbent LECs? What economic and business factors affect competitive entry in rural and high-cost areas? To what extent, if any, is there a relationship between competitive entry and receipt of high-cost support by competitive ETCs?

6. In addition, we encourage commenters to provide the Joint Board with data on the number of telephone connections in high-cost areas, and to also indicate the type of technological platform providing the telephone connections. Is there line growth in high cost areas, and if so, how much of the line growth is due to services being provided by wireline, wireless, and other technology platforms? To what extent does such growth represent secondary lines, and to what extent does it represent new end users? Where are such lines located? To what extent are such lines eligible for high-cost support, i.e., provided by ETCs? How many currently receive support?

7. To what extent does wireless or other technology represent the addition of complementary service rather then substitution for traditional wireline in rural and high-cost areas? We note that, according to the Commission's most recent *Telephone Subscribership in the United States* report, as of November 2001, 1.2 percent of households in the United States indicated that they had only wireless phones. Is it reasonable to assume that this statistic on household wireless substitution nationwide is indicative of the degree of substitution occurring in high-cost areas? To what extent have customers of mobile wireless competitive ETCs substituted wireless for wireline service?

B. Methodology for Calculating Support in Competitive Study Areas

8. We seek comment regarding the methodology for calculating support for ETCs in competitive study areas. Under the Commission's current rules, per-line support for all ETCs is based on the support that the incumbent LEC would receive for the same line. This means that support to the competitive ETC is based on a variety of factors directly related to the incumbent's operations.

9. We seek comment on the policy goals of portable support. Does providing universal service support for multiple ETCs in high-cost areas result

in inefficient competition and impose greater costs on the universal service fund? Do the current rules promote competitive neutrality and properly balance the statutory goals of competition and universal service? Do the current rules promote efficient competition in high-cost areas? Do they operate in a competitively neutral manner? Do they remove or create barriers to entry? Do the current rules have the effect of supporting the costs of two or more networks serving the same area concurrently? If so, is that consistent with the purpose of section 254 of the Act?

10. To what extent do the costs of competitive ETCs differ from the costs of incumbents? Do the Commission's rules create an unfair advantage for ETCs with lower costs? Should support vary depending on an ETC's technology platform? What is the effect of competitive entry in rural and non-rural study areas on the amount of support that an incumbent ETC receives?

11. We also seek comment on alternative methodologies for calculating support for competitive ETCs. For example, should the Commission calculate support for a competitive ETC based on its own costs? What would be the competitive effects of paying different amounts per ''customer'' or per ''line'' to each ETC? To the extent competitive ETCs were to receive support based on their own costs, what costs would be appropriately included in determining support? Under such an approach, should support be based on competitive ETCs' forward-looking economic costs or embedded costs? Should the methodology used to calculate competitive ETC support be the same as the methodology used to calculate support for the incumbent? We note that the Commission's forward-looking cost model is designed to model the costs of a wireline network, and that competitive ETCs are not subject to the same regulatory and reporting requirements as incumbent LECs. Also, several ETCs now provide service using wireless technology. What reporting requirements would be necessary in order to implement a requirement that support for each competitive ETC be based on its own costs? Under such an approach, would it be appropriate to calculate support for competitive ETCs on a per-line basis? If so, should per-line support amounts reflect solely the competitive ETC's line count, or some combination of the line counts reported by all area ETCs? What are the alternatives to calculating support on a per-line basis?

12. In addition, we seek comment on other methods of determining high-cost support for ETCs in competitive study areas. For example, should support in competitive areas be based on the lowest-cost provider's costs, in order to promote efficiency? For example, if a fixed wireless carrier can serve an area at lower cost, should support to all carriers serving that area be based on the cost of the fixed wireless service? How should the Commission determine the lowest cost of service and to what extent should quality of service be considered when making such a determination? To the extent the costs of competitive ETCs are lower than the costs of incumbent LECs, what effect would such rules have on incumbent providers?

13. We also seek comment on whether and how auctions might be utilized to award support. For example, should high-cost support be awarded to the ETC with the lowest bid for support in a designated service area for a set period of time? Under such a system, how would the geographic units of the auction be determined, what criteria should determine when an ETC or ETCs receive support, what regulatory authority should administer the process, and how frequently should auctions be conducted? What responsibilities should be imposed on the ETC that receives high-cost support? Should such an ETC be required to assume quality of service obligations? How would auctions be implemented in light of section 214(e)(2) of the Act, which requires states to determine through the ETC process whether designation of a competitive ETC in a given service area would serve the public interest? What other laws should be considered when determining the suitability of auctions as a mechanism for directing support to rural or non-rural service areas? What would be the effect of auctions on the objective of fostering competition and the principle of competitive neutrality in high-cost areas? Specifically, what impact would auctions have on investment by incumbents and competitors in high-cost areas? What sort of measures could be adopted to encourage auction winners, as well as losers, to continue investing in high-cost areas? What level of competition should be present prior to auctions being conducted in a given service area? Under an auction system, would adequate incentives exist to ensure each carrier would provide its lowest bid?

14. In addition, we seek comment on the Commission's rules governing calculation of high-cost support for competitive ETCs utilizing UNEs. Currently, a competitive ETC that provides supported services utilizing UNEs receives the lesser of the UNE price or the per-line support amount available to the incumbent LEC. Some competitive UNE-based ETCs serving high-cost areas may receive support equal to the full price of the UNEs they purchase from the incumbent LEC. As a result, these competitive ETCs have no net UNE cost, and may pay only non-UNE costs such as customer service support, administrative costs, and network costs ancillary to the UNE costs. Also, the geographic area for which support is calculated for competitive ETCs may be different from the area for which UNE prices are calculated by the state commission. Should the Commission revise its rules? If so, how? For example, should the Commission require a competitive ETC to qualify for high-cost support based on its cost associated with the purchase of UNEs? What costs do competitive ETCs have in addition to the cost of purchasing UNEs? Under such an approach, how should these additional costs be considered in determining whether to provide support to a competitive ETC that utilizes UNEs? How should such costs be determined? Are modifications to the Commission's rules warranted in order to clarify how incumbents report loops sold as UNEs to competitive ETCs?

15. With respect to any proposed alternative methodologies, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens entailed. In particular, we seek a comprehensive assessment of the reporting obligations and the frequency of such reporting, and the necessity for either regular Commission review of embedded costs or development and update of models. Commenters should quantify the burden of any proposed reporting obligations and any necessary embedded cost or model review. Commenters should also address how any proposed alternative methodologies would affect competition and competitive neutrality, and how they would serve the principles of section 254 of the Act. In addition, commenters should address the relationship between carrier of last resort obligations and the proposed alternative methodology. To the extent a commenter's proposal would result in a change in the amount of support paid to an ETC, that commenter should also explain whether the change should occur as soon as possible, be phased in, or be deferred to hold existing ETCs harmless from the change.

16. Furthermore, we seek comment on whether the support available to competitive ETCs in high-cost areas should be subject to limitations similar

to those imposed on support for incumbent LECs. Under the Commission's current rules, high-cost loop support for competitive ETCs is not capped, whereas the Commission's rules limit the overall amount of rural high-cost loop support available to incumbent LECs. Should the maximum amount of support available to a single competitive ETC have some relation to the total amount of high-cost support available to the incumbent in the same area? Should the total amount of funding available to all ETCs in a geographic area be capped in some manner? Commenters should address the potential benefits and costs of modifying these rules on the stability, predictability, and sufficiency of the fund, as well as their potential effects on competition.

17. In addition, we seek comment regarding the specific concerns raised by the Rural Task Force relating to excessive growth in the fund if incumbent rural carriers lose a significant number of lines to competitive ETCs. The Rural Task Force stated, for example, that as a rural incumbent LEC ''loses'' lines to a competitive ETC, the rural incumbent LEC must recover its fixed costs from fewer lines, thus increasing its average per-line costs. With higher average per-line costs, the rural incumbent LEC could receive greater per-line support, which would also be available to the competitive ETC for each of the lines that it serves. In response to these concerns, the Commission sought comment on whether to freeze per-line support amounts available to the rural incumbent LEC and any competitive ETC in competitive study areas served by rural carriers. We invite commenters to update the record and provide alternative proposals that may be appropriate to address this issue. Commenters should support their responses with data or other empirical information regarding loss of lines by rural carriers to competitive ETCs. We request that such empirical information be categorized by customer class or service, including residential and business, single and multi-line business, special access, etc.

18. We also seek comment regarding the methodology for determining the location of a line served by a mobile wireless provider, and whether modifications are warranted. Currently, competitive ETCs providing mobile wireless service use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area. In the Rural Task Force Order, the Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes, although it could be subject to abuse. The Commission also stated that it might revisit this approach ''[a]s more mobile wireless carriers are designated as eligible to receive support[.]'' We invite commenters to address the reasonableness of the Commission's current approach and whether it should be reevaluated. To the extent commenters assert this approach has led to unintended consequences, they should describe such situations with specificity. We ask commenters to provide suggestions regarding alternative methods of determining the location of lines served by a mobile wireless service provider. Commenters should specifically address the administrative burdens entailed by any proposed approaches.

C. Scope of Support

19. Under the Commission's current rules, all residential and business connections provided by ETCs are eligible for high-cost support. In its 1996 recommendations to the Commission regarding universal service, the Joint Board recommended that support be limited to the provision of a single connection to a subscriber's primary residence and to businesses with only a single connection. The Joint Board also recommended that support not be provided to second residences. In declining to adopt this recommendation, the Commission stated that it shared the Joint Board's concern regarding this matter, but it would continue to evaluate this recommendation as it further developed a support mechanism based on forward-looking economic costs.

20. As noted above, currently incumbent LECs and competitive ETCs collectively serve a total of 32.2 million lines in high-cost areas. What percentage of these lines, or lines in any particular geographic area, are second lines? To the extent possible, commenters should provide detailed empirical information and should address whether the percentage of lines that should be deemed ''second lines'' varies in any way between incumbent LECs and competitive ETCs.

21. We seek comment regarding whether the goals of section 254 would be better served if support were limited to a single connection to the residential or single-line business end-user—whether provided by the incumbent or a competitive ETC. Would limiting support to primary lines be consistent with the universal service principle stating that access in rural and high-cost areas should be ''reasonably comparable'' to urban areas? How would a primary line restriction affect the implementation of federal support mechanisms based on embedded or forward-looking costs? How would such a restriction affect the implementation of the Commission's interstate access reform goals adopted in the *CALLS Order*, 65 FR 57739, September 26, 2000 and *MAG Order*, 66 FR 59719, November 30, 2001? Commenters also should address the significance of carrier of last resort obligations to these issues. What would be the impact of primary line restrictions on consumers, ETCs, and an ETC's ability to provide universal service?

22. If support were limited to a single connection, how would it be determined which line receives support? Is it administratively feasible to distinguish primary from second lines? Commenters should address whether and how primary lines should be defined. Should the end user be defined as a household, or a single individual? How would a rule limiting support to a single residential end user affect households in which two or more unrelated individuals reside? The Commission previously acknowledged the administrative difficulties associated with applying different primary and non-primary residential SLC rates. Would similar problems arise if the Commission were to limit high-cost support to primary lines? Would such problems be magnified in a multi-carrier environment? Would limiting support to primary lines reduce incentives to construct second lines in high-cost areas or create a negative financial effect on the incumbent? If the Commission limited support to primary lines, would the Commission also need to revise how it determined the amount of support per line? If so, how should the level of support be determined?

23. If support were limited to a single connection, should the end user designate the line to be supported, and if so, how would this rule be administered? How would consumers be affected by such action? How would this affect the price of services for single line subscribers and multi-line subscribers? Under such an approach, should support depend on the type of line designated by the end user?

24. Should support be provided to second residences, and if not, how would second residences be defined? Alternatively, should the number of connections eligible for high-cost support be limited in some manner other than a primary line restriction?

25. We also ask commenters to discuss whether any proposed rule modifications would advance the goals of section 254, would be competitively neutral, and would promote more efficient competition in competitive study areas. How would a limit on the number of lines that receive support affect incumbent LECs' and competitive ETCs' incentives to compete for all lines? Would a limit on the number of lines that receive support be a barrier to entry? In addition, to what extent would any proposed modifications affect the size of the universal service fund?

D. Process for Designating ETCs

26. In order to receive universal service support, carriers must obtain ETC designation from the relevant state commission, or the Commission in cases where the state commission lacks jurisdiction. Before designating an additional ETC for an area served by a rural telephone company, the state commission or the Commission must find that the designation is in the public interest. We seek comment regarding the system for resolving requests for ETC designations under sections 214(e)(2) and 214 (e)(6) of the Act. Is there a need to clarify the standards for ETC designations under the Act? What factors should the Commission consider when it performs ETC designations pursuant to section 214(e)(6)? In particular, what factors should the Commission consider in determining whether designation of more than one ETC is consistent with the public interest, convenience, and necessity? What additional factors, if any, should be considered when considering whether to designate an ETC in a rural carrier study area?

27. We also seek specific comment on ETC designations performed by states pursuant to section 214(e)(2) of the Act. Is it advisable to establish permissive federal guidelines for states to use in designating ETCs pursuant to section 214(e)(2), and if so, what should be included in such guidelines? Should the Commission encourage states to have similar standards for the designation of ETCs? In considering this issue, commenters should also address the impact of the Fifth Circuit's decision regarding the Commission's ability to prohibit states from imposing additional eligibility criteria on ETCs. In addition, what effect, if any, does the current ETC designation system have on the emergence of competition? We also seek comment on the public interest finding that must be made before any competitive carrier can be designated as an ETC in a rural telephone company's study area. What sort of factors do state commissions currently consider when evaluating whether the designation is in the public interest? If greater consistency among the states in performing the public interest evaluation is desirable, should the Commission provide guidance regarding the factors a state commission's public interest analysis should consider? To what extent are similar universal service obligations or quality of service obligations not imposed on incumbent LECs and competitive ETCs? Should any Commission guidelines differ depending upon whether or not the rural exemption has been lifted in the area for which ETC status is sought?

28. In the *Rural Task Force Order*, the Commission determined that rural carriers should be permitted to disaggregate and target per-line high-cost universal service support into geographic areas below the study area level. The Commission concluded that such action would ensure that support is ''distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service.'' The Commission also determined that rural incumbent LECs must submit maps that clearly specify the boundaries of the designated disaggregation zones of support. Do the Commission's reporting requirements adequately ensure that competitors have sufficient information about the geographic scope of incumbent disaggregation zones? We invite commenters to address whether the Commission should clarify its requirements. Further, the Commission concluded in the *Rural Task Force Order* that the level of disaggregation of support should be considered in determining whether to certify new ETCs for a service area other than a rural carrier's entire study area. In light of the Commission's finding that disaggregation zones encourage efficient market entry, what weight should states and the Commission place on the presence of such zones when determining whether the designation of a competitive ETC below the study area level is in the public interest?

29. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before May 5, 2003, and reply comments on or before June 3, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and CC Docket No. 96–45. Parties also may submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and 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.

30. All paper filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties who choose to file by paper also should send three copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, parties who choose to file by paper must send copies of their comments on diskette to the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Such submissions should be on a 3.5-inch diskette formatted in an IBM-compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, CC Docket No. 96–45, the type of pleading (comment or reply comment), the date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

31. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

BILLING CODE 6712–01–P

APPENDIX A

Percentage of Zip Codes with Competitive Local Exchange Carriers

(As of June 30, 2002)

State	Number of CLECs								
	Zero	One - Three	Four	Five	Six	Seven	Eight	Nine	Ten or More
Alabama	39 %	46 %	12 %	2 %	2 %	0 %	0 %	0 %	0 %
Alaska	76	24	0	0	0	0	0	0	0
Arizona	28	33	7	10	9	9	4	1	0
Arkansas	69	31	0	0	0	0	0	0	0
California	15	42	7	7	7	6	6	4	6
Colorado	26	52	4	2	7	9	0	0	0
Connecticut	1	42	34	16	6	0	0	0	0
Delaware	0	100	0	0	0	0	0	0	0
Dist. of Columbia	15	19	26	22	19	0	0	0	0
Florida	9	28	8	6	5	5	6	5	27
Georgia	26	29	4	6	7	6	5	3	15
Hawaii	60	40	0	0	0	0	0	0	0
Idaho	45	55	0	0	0	0	0	0	0
Illinois	35	36	4	4	4	2	3	5	8
Indiana	45	46	5	3	0	0	0	0	0
Iowa	38	62	1	0	0	0	0	0	0
Kansas	60	33	6	1	0	0	0	0	0
Kentucky	79	21	0	0	0	0	0	0	0
Louisiana	26	45	7	4	4	7	7	0	0
Maine	34	66	0	0	0	0	0	0	0
Maryland	0	49	12	14	13	11	0	0	0
Massachusetts	1	40	23	11	11	5	5	3	0
Michigan	1	31	18	15	8	6	6	6	10
Minnesota	34	46	7	5	4	4	1	0	0
Mississippi	10	88	2	0	0	0	0	0	0
Missouri	49	30	6	6	3	3	3	0	0
Montana	93	7	0	0	0	0	0	0	0
Nebraska	67	28	5	0	0	0	0	0	0
Nevada	54	46	0	0	0	0	0	0	0
New Hampshire	3	82	14	0	0	0	0	0	0
New Jersey	2	40	18	16	11	8	4	0	0
New Mexico	85	15	0	0	0	0	0	0	0
New York	6	23	8	8	9	8	7	7	25
North Carolina	18	55	6	4	3	2	2	2	7
North Dakota	67	33	0	0	0	0	0	0	0
Ohio	37	39	7	5	4	2	3	3	0
Oklahoma	44	31	7	8	6	3	0	0	0
Oregon	51	30	10	7	3	0	0	0	0
Pennsylvania	19	35	8	7	5	5	4	4	13
Puerto Rico	81	19	0	0	0	0	0	0	0
Rhode Island	1	43	36	19	0	0	0	0	0
South Carolina	31	40	6	6	5	7	5	0	0
South Dakota	68	32	0	0	0	0	0	0	0
Tennessee	42	32	8	10	6	2	0	0	0
Texas	17	23	5	3	3	3	5	5	36
Utah	36	53	11	0	0	0	0	0	0
Vermont	14	86	0	0	0	0	0	0	0
Virginia	28	48	6	6	6	4	1	0	0
Washington	42	38	6	3	4	4	4	0	0
West Virginia	99	1	0	0	0	0	0	0	0
Wisconsin	32	54	6	5	3	0	0	0	0
Wyoming	45	55	0	0	0	0	0	0	0
Nationwide	33 %	38 %	7 %	5 %	4 %	3 %	2 %	2 %	6 %

[FR Doc. 03–5155 Filed 3–4–03; 8:45 am]
BILLING CODE 6712–01–C

Notices

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–021–1]

Tropical Soda Apple; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control of tropical soda apple, *Solanum viarum* Dunal (Solanaceae). The environmental assessment considers the effects of, and alternatives to, the release of a nonindigenous beetle, *Gratiana boliviana* Spaeth (Coleoptera: Chrysomelidae), into the environment as a biological control agent to reduce the severity of infestations of tropical soda apple in Florida and other infested States in the continental United States. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 4, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–021–1, 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. 03–021–1. 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. 03–021–1'' on the subject line.

You may read any comments that we receive on the environmental 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: Dr. Tracy A. Horner, Ecologist, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1236; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering an application from a researcher at the University of Florida for a permit to release a nonindigenous beetle, *Gratiana boliviana* Spaeth (Coleoptera: Chrysomelidae), into the environment to reduce the severity of infestations of tropical soda apple, *Solanum viarum* Dunal (Solanaceae) in Florida and other infested States in the continental United States.

Tropical soda apple is a perennial shrub that belongs to the plant family Solanaceae, section Acanthophora, genus *Solanum,* and subgenus *Leptostemonum.* A plant with foliage unpalatable to livestock, tropical soda apple can infest a pasture or rangeland in 1 to 2 years, resulting in lower stocking rates. It is native to Brazil and Argentina but has become a weed in other areas of South America and in Africa, India, Nepal, the West Indies, Honduras, Mexico, and the United States. Tropical soda apple was originally detected in the United States in Florida in 1988. The pasture land infested in 1992 was estimated to be approximately 150,000 acres; 10 years later, the infested area had increased to more than 1 million acres of improved pastures, citrus groves, sugar cane fields, ditches, vegetable crops, sod farms, forestlands, and natural areas. Tropical soda apple was placed on the Federal Noxious Weed List in 1995, and it is listed as one of the most invasive species in Florida by the Florida Exotic Pest Plant Council. In addition to Florida, the plant has been reported in Alabama, Georgia, Mississippi, Louisiana, Texas, North Carolina, South Carolina, Tennessee, and Pennsylvania. Researchers believe that it has the potential to expand its range even further in the United States.

Three types of controls are currently being used to limit the spread of tropical soda apple: chemical, mechanical, and regulatory. Chemical control involves the use of herbicides. Mechanical control is attempted by mowing to a three- to four-inch height to prevent the plants from producing fruit and seeds. Several southern States are trying to prevent the spread of tropical soda apple by means of regulatory control, regulating the movement of cattle, hay, sod, manure, lots of seed, and soil from infested areas to areas free of infestation. Unfortunately, herbicides and mowing only provide temporary weed suppression, and in addition to being expensive, they are not always practical in inaccessible areas. Moreover, herbicides can have negative environmental effects, which include leaving undesirable chemical residues in the ecosystem and in commodities and adversely affecting non-target organisms.

The biological control agent *G. boliviana,* a nonindigenous tortoise beetle in the insect family Chrysomelidae, has the potential to reduce the severity of infestations of tropical soda apple in Florida and other infested States in the continental United States. Adults and larvae feed on tropical soda apple leaves, restricting the vigor and growth rate of the plants and potentially reducing the competitive advantage this invasive weed has over native vegetation. APHIS has completed an environmental assessment that considers the effects of, and alternatives to, the release of *G. boliviana* into the environment as a biological control agent for tropical soda apple.

APHIS' review and analysis of the potential environmental impacts associated with releasing *G. boliviana*

into the environment are documented in detail in an environmental assessment entitled ''Field Release of a Nonindigenous Beetle, *Gratiana boliviana* (Coleoptera: Chrysomelidae), for Biological Control of Tropical Soda Apple, *Solanum viarum* (Solanaceae)'' (February 2003). We are making this environmental 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 environmental assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by following the link for ''Document/Forms Retrieval System,'' then clicking on the triangle beside ''6-Permits-Environmental Assessments'' and selecting document number 0033. You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC this 28th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–5134 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—National Hunger Clearinghouse Survey

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FNS' intention to request renewal of Office of Management and Budget (OMB) approval of the National Hunger Clearinghouse Survey.

DATES: Comments on this notice must be received by May 5, 2003.

ADDRESSES: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Pam Phillips, Director, Consumer and Community Affairs, Office of Communications and Governmental Affairs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 912, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Pam Phillips, (703) 305–2298. Copies of this information collection can be obtained from Martha Newton at the address listed above.

SUPPLEMENTARY INFORMATION:

Title: National Hunger Clearinghouse Survey.

OMB Number: 0584–0474.

Expiration Date: 2/28/03.

Type of Request: Renewal of OMB approval.

Abstract: Section 26(d) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769g(d)), which was added to the Act by section 123 of Pub. L. 103–448 on November 2, 1994, mandated that FNS enter into a four-year contract with a non-governmental organization to establish and maintain an information clearinghouse (named ''USDA National Hunger Clearinghouse'' or ''Clearinghouse'') for groups that assist low-income individuals or communities regarding nutrition assistance programs or other assistance. FNS awarded the contract to World Hunger Year (WHY), Inc. on September 29, 1995; the contract ended on September 30, 1999.

Section 26(d) was amended by section 112 of Pub. L. 105–336 on October 31, 1998 to extend funding for the Clearinghouse (now called ''National Hunger Clearinghouse'' or ''Clearinghouse'') through fiscal year 2003. FNS awarded the five-year contract to World Hunger Year on September 29, 1999; it expires on September 30, 2003.

The Clearinghouse includes a database of non-governmental, grassroots programs that work in the areas of hunger and nutrition, as well as a mailing list of relevant local governmental agencies. Under the original contract, Clearinghouse staff established the database by reviewing relevant programs of organizations contained in several existing mailing lists. Program and mailing information about organizations culled from these lists were collected and entered into the database once each contract year (years one through four of the original contract and years one through four so far of the existing contract) through a series of electronically-processed survey questionnaires sent through the United States Postal Service. Clearinghouse staff followed up by phone or facsimile to ensure the highest possible return rate on the questionnaires. Surveys could also be completed on the World Wide Web. Returned surveys were scanned and data entered into the database.

Survey questionnaires will be sent out one more time (year five) in the current contract. For this information collection, the following information was determined:

Estimate of the Burden: Public reporting burden for this collection of information is estimated to average five minutes for the survey (the survey includes one two-page instrument).

Respondents: The respondents are non-governmental organizations that have grassroots food and nutrition programs.

Estimated Number of Respondents: 1,750.

Estimated Number of Responses per Respondent: One response per respondent.

Estimated Total Annual Burden on Respondents: 146 hours.

Dated: February 27, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 03–5114 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; FNS–245, Negative Case Action Review Schedule; FNS–247, Statistical Summary of Sample Disposition; and FNS–248, Status of Sample Selection and Completion

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed revision to the burden for information collection for the FNS–245, Negative Case Action Review Schedule and the FNS–248, Status of Sample Selection and Completion. The FNS–247, Statistical Summary of Sample Disposition, is being eliminated since the information on this form is available through the Food Stamp Quality Control System (FSQCS). The proposed collection is a revision of collection currently approved under OMB No. 0584–0034.

DATES: Written comments must be submitted on or before May 5, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Send comments and requests for copies of this information collection to: Dan Wilusz, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. You may FAX comments on this rule to (703) 305–0928. Copies of the FNS–245, FNS–247, and FNS–248 forms may be downloaded at *http://www.fns.usda.gov/fsp/qc/default.htm.* An electronic version of this notice may be downloaded at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm.* Comments may be submitted via the Internet at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Dan Wilusz, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Quality Control Negative Case Action Review Schedule; Statistical Summary of Sample Disposition; Status of Sample Selection and Completion.

OMB Number: 0584–0034.

Form Number: FNS–245, FNS–247, & FNS–248.

Expiration Date: 02/28/03.

Type of Request: Revision of a currently approved collection.

Abstract: The FNS–245, Negative Case Action Review Schedule, is designed to collect quality control (QC) data and serve as the data entry form for negative case action QC reviews in the Food Stamp Program. State agencies complete the FNS–245 for each negative case in their QC sample. The FNS–248, Status of Sample Selection and Completion, tracks a State's progress in sample selection and case completion on a monthly basis. We are eliminating the FNS–247, Statistical Summary of Sample Disposition report, which summarized the data obtained from a State's active and negative QC samples over the course of each annual reporting period. Data on this report is currently available through FSQCS so the report is no longer necessary. The total reporting and recordkeeping estimate for the eliminated report was one hour.

FNS–245

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53.

Number of Responses Per Respondent: 760.

Estimated Reporting Time per Response: 3.0236 Hours.

Estimated Reporting Annual Burden: 121,736.

Estimated Recordkeeping Time per Response: .0236 Hours.

Number of Recordkeepings Per Respondent: 760.

Estimated Time per Recordkeeping: 0.0236 Hours

Estimated Recordkeeping Annual Burden: 950 Hours.

Total Annual Reporting and Recordkeeping Burden: 122,686 Hours.

FNS–248

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53.

Number of Responses Per Respondent: 12.

Estimated Reporting Time per Response: 0.5236 Hours.

Estimated Reporting Annual Burden: 333 Hours.

Number of Recordkeepings Per Respondent: 12.

Estimated Time per Recordkeeping: 0.0236 Hours.

Estimated Recordkeeping Annual Burden: 15 Hours.

Total Annual Reporting and Recordkeeping Burden: 348 Hours.

Dated: February 27, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–5115 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to remove one standard and issue four revised conservation practice standards in Section IV of the FOTG. The revised standards are: Diversion (362), Stream Habitat Improvement and Management (395), Waste Water Treatment Strip (635), and Watering Facility (614). The standard we intend to remove from the FOTG is Bedding (310). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, (317) 290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: February 11, 2003.

Travis Neely,

Acting State Conservationist, Indianapolis, Indiana.

[FR Doc. 03–5085 Filed 3–4–03; 8:45 am]

BILLING CODE 3410–16–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, March 11–12, 2003, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, March 11, 2003

1:30–5 p.m.—Passenger Vessels Ad Hoc Committee (closed session).

Wednesday, March 12, 2003

9–10:30 a.m.—Public Rights-of-Way Ad Hoc Committee (closed session).
10:30–11:30 a.m.—Planning and Budget Committee.
11:30–12:30 p.m.—Technical Programs Committee.
2–3:30 p.m.—Board meeting.

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

Open Meeting

- Approval of the January 15, 2003, Board meeting minutes;
- Technical Programs Committee Report;
- Planning and Budget Committee Report;
- Election of officers.

Closed Meeting

- Passenger Vessels Accessibility Guidelines;
- Public Rights-of-Way Accessibility Guidelines.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Elizabeth A. Stewart,

Deputy General Counsel.

[FR Doc. 03–5117 Filed 3–4–03; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Ohio Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, March 20, 2003, at the University of Cincinnati School of Law, Clifton Avenue and Calhoun Street, Cincinnati, Ohio 45221. The purpose of the meeting is to discuss civil rights events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Lynwood L. Battle, Jr., 513–281–4330, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 27, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–5139 Filed 3–4–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on April 16, 2003, at the Westin Hotel, 1900 5th Avenue, Seattle, Washington 98101. The purpose of the meeting is to plan future activities and discuss civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, (213) 894–3437 (TDD (213) 894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 27, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–5140 Filed 3–4–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the emergency clearance procedures of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Survey of Minority Commercial Broadcast Owners.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 250.

Number of Respondents: 500.

Average Hours Per Response: 30 minutes.

Needs and Uses: The Minority Telecommunications Development Program (MTDP), National Telecommunications and Information Administration has developed a survey

instrument to collect information for its periodic minority commercial broadcast ownership report. The survey will be the principal method of systematically gathering information about the experiences of minority entrepreneurs entering the broadcast industry or expanding their operations. The report will provide a basis for national policies to increase minority participation in broadcasting, as well as Administration initiatives to promote economic opportunity for minority-owned businesses.

Affected Public: Business or other for-profit organizations.

Frequency: Biennially, or annually if resources permit.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by contacting Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent by March 19, 2003 to David Rostker, OMB Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–5078 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Information and Communications Technology Business Development Mission

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies and relevant parties to participate in the overseas business Development Mission described below. For a more complete description of the mission, obtain a copy of the mission statement from the contact officer indicated below.

Undersecretarial Business Development Mission, Belfast, Northern Ireland and Dublin, Republic of Ireland, April 6–11, 2003

Department of Commerce technology-sector leaders will convene a senior-level business development mission to Belfast, Northern Ireland (N.I.) and Dublin, Republic of Ireland (R.O.I.) The focus of the mission will be to help U.S. companies explore business opportunities in both Northern Ireland and the Republic of Ireland. The delegation will include approximately 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing the information and communications technology (ICT) sector. Additional opportunities may exist for non-government organizations and academic representatives to accompany the mission. Recruitment closes on March 12, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Nuala O'Connor Kelly, Chief Counsel for Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4835, Washington, DC 20230, telephone 202–482–1984, fax 202–482–0253, or visit *www.commerce.gov.*

SUPPLEMENTARY INFORMATION:

Goals for the Mission: The Business Development Mission will further both U.S. commercial policy objectives and advance specific U.S. business interests in the ICT sector. It is focused on: introducing U.S. companies to the markets of Northern Ireland and the Republic of Ireland and promoting expanded commercial opportunities in these areas; assisting small and new-to-market U.S. firms in evaluating the market potential for their products and to gain an understanding of how to operate successfully in the markets of Northern Ireland and the Republic of Ireland; highlighting the accessibility of the market and the successes of U.S. businesses in the markets of Northern Ireland and the Republic of Ireland; and fostering dialogue between policy makers and academics in the technology arena in the United States, Northern Ireland, and the Republic of Ireland.

Scenario for the Mission: The business Development Mission will provide participants with exposure to high-level business and government contacts and an understanding of market and technology trends and the commercial environment of Northern Ireland and the Republic of Ireland. U.S. Embassy and U.S. Consulate General officials will provide detailed briefings on the economic, commercial and political climates, and participants will receive individual counseling on their specific interests from local U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Representational events also will be organized to provide mission participants with opportunities to meet Northern Ireland's and the Republic of Ireland's business and government representatives, as well as U.S. business people living and working in Northern Ireland and the Republic of Ireland.

The tentative trip itinerary is as follows:

April 6—Arrive Belfast, Northern Ireland; evening events and briefing

April 7—One-on-One business Meetings in Belfast; group policy meetings

April 8—Business and Policy Meetings in Northern Ireland; Travel to Dublin, Republic of Ireland

April 9—One-on-One business Meetings, group policy meetings, mission events, and briefings in Dublin

April 10—One-on-One business Meetings, group policy meetings, mission events, and briefings in Dublin

April 11—Departure for the United States

The precise schedule will depend in part on the availability of local government and business officials and the specific goals of the mission participants.

Criteria for Participation of Companies

Recruitment

The recruitment of mission members will be conducted in an open and public manner utilizing Commercial Service Export Assistance Centers, International Trade Administration industry teams, and Technology Administration and National Telecommunications and Information Administration teams. Promotion will include publication of notice of the event in the **Federal Register,** direct mailing, e-mailing, broadcast fax, press releases to appropriate media, posting on the Commerce Department trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet websites, promotion at domestic exhibitions and conferences, and publicized announcements through a network of business organizations. Companies will be selected according to the criteria set out below. Approximately 10–15 companies will be selected.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate only if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent

of the value of the finished good or service.

Selection Criteria

Company participation will be determined on the basis of:

- Level of seniority of designated company representatives and consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Potential for business activity in Northern Ireland and the Republic of Ireland as applicable;
- Timely receipt of a completed application and participation agreement signed by a company officer and the participation fee; and
- Provision of adequate information on the company's products and/or services, and communication of the company's primary objectives to facilitate appropriate matching with potential business partners.

In addition, the Department may consider whether the company's overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the mission's objectives. Any partisan political activities of an applicant, including political contributions, will be entirely irrelevant to the selection process.

Time Frame for Applications

Applications for the Business Development Mission to Northern Ireland and the Republic of Ireland will be made available on February 24, 2003. The fee to participate in the mission will be between $2,500.00 and $3,500.00 and will not cover travel or lodging expenses. For additional information on the Business Development Mission or to obtain an application, businesspersons should be referred to Nuala O'Connor Kelly, Chief Counsel for Technology, U.S. Department of Commerce, (202) 482–1984. Applications should be submitted to the Chief Counsel for Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4835, Washington, DC 20230, (or via facsimile at 202–482–0253) by March 12, 2003, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Ms. Nuala O'Connor Kelly, U.S. Department of Commerce, telephone 202–482–1984.

Dated: February 26, 2003.

Nuala O'Connor Kelly,

Chief Counsel for Technology, U.S. Department of Commerce.

[FR Doc. 03–5077 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary antidumping duty determination of sales at less than fair value.

EFFECTIVE DATE: March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

Scope of the Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus.* The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 [1] (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[1] The petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term 'sole' to describe Vietnamese basa and tra.

Background

On January 29, 2003, An Giang Fisheries Import and Export Joint Stock Company (''Agifish''), Vinh Hoan Company Limited (''Vinh Hoan''), Nam Viet Company Limited (''Nam Viet'') and Can Tho Agricultural and Animal Products Import Export Company (''CATACO''), hereinafter collectively referred to as ''Mandatory Respondents,'' timely filed allegations that the Department made ministerial errors in the preliminary determination.

On February 3, 2003, Catfish Farmers of America (''CFA'') and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as ''Petitioners,'' timely filed allegations that the Department made ministerial errors in the preliminary determination.

Amendment of Preliminary Determination

On January 24, 2003, the Department of Commerce (''the Department'') preliminarily determined that certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(a) of the Tariff Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (''Preliminary Determination'')* 68 FR 4986 (January 31, 2003).

The Department is amending the *Preliminary Determination* in the antidumping investigation of certain frozen fish fillets from the Socialist Republic of Vietnam.

Significant Ministerial Error

A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a

weighted-average dumping margin of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g).

Ministerial Error Allegations from the Mandatory Respondents

Comment 1: U.S. Price to Normal Value Comparison

The Mandatory Respondents argue that in calculating the company-specific dumping margins for the *Preliminary Determination,* the Department applied an incorrect U.S. price for Mandatory Respondents' sales of glazed frozen fish fillets (coated with water, then frozen). The Mandatory Respondents claim that for sales involving glazed fillets, Mandatory Respondents reported in the field ''NETPRIU,'' the per-unit price for glazed fillets based on the actual sales quantity (minus the weight of the glaze). In addition, the Mandatory Respondents also reported the corresponding net sales quantity (minus the weight of the glaze) in the filed labeled ''QTYNETU.''

The Mandatory Respondents argue that the Department inadvertently relied upon a price for glazed sales reported in the field ''GRSUPRU.'' However, the Mandatory Respondents argue, the prices reported in this field for glazed fillets do not reflect the actual per-unit prices of glazed products. The Mandatory Respondents note that the per-unit prices reported in ''GRSUPRU'' field are based on gross sales quantities, including the weight of the glaze. The Mandatory Respondents claim that the Department did not intend to use the gross-weight prices for glazed sales reported in this field in the margin calculations. Therefore, the Mandatory Respondents argue, the Department must rely upon the per-unit price for glazed products reported in the field ''NETPRIU.''

Department's Position

We agree with the Mandatory Respondents. In our *Preliminary Determination,* we overlooked that the Mandatory Respondents' factor utilization rates, and hence normal values, were calculated based on weights net of glazing water. Therefore, when calculating the dumping margin, we compared each Mandatory Respondent's normal value based on net weight to U.S. prices based on gross weight. This resulted in a distortion which we are correcting.

During the course of the investigation, each Respondent explained that some customers purchased subject merchandise that was water glazed. In addition, the Mandatory Respondents stated that the water and other inputs used to produce glazed products were reported in the factors of production data. Therefore, in the numerator, the Mandatory Respondents included those factors of production used to produce subject merchandise inclusive of water glazing. However, the denominator used by the Mandatory Respondents represents the weight of the frozen fish products without the excess water weight associated with glazing. Consequently, the consumption ratio of each factor of production reported by the Mandatory Respondents was calculated by using the factors of production (including glazing) as the numerator and the weight of the frozen fish products without the excess water weight associated with glazing as the denominator. As a result, the consumption ratios used to calculate the normal value are based on a weight net of water.

For every U.S. sale, the Mandatory Respondents reported a gross and net price (adjusted for net weight) and a gross and net weight (net of water content associated with glazing). In our *Preliminary Determination,* we based our U.S. starting prices on gross price and weighted the average price per control number (CONNUM) by the gross weight.

To calculate the dumping margins, in the *Preliminary Determination,* we compared the U.S. starting gross price to the normal value calculated on a net basis, inadvertently creating a distorted comparison. For this amended preliminary determination, we have corrected the U.S. sales starting price by replacing the gross price with the net price and have averaged the dumping margins by the net weight in order to achieve a net normal value for a comparison to the net U.S. price. We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of 38.09% for Nam Viet and 31.45% for Agifish, while the margins of the remaining Mandatory Respondents do not change significantly as noted below. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination.* Accordingly, the error regarding the use of net weight and net price alleged by the Mandatory Respondents is a significant ministerial error within the meaning of 19 CFR 351.224(g) with regard to Nam Viet and Agifish.

However, we note that the correction of this error in combination with the correction of the others does not fulfill the requirement of a significant ministerial error within the meaning of 19 CFR 351.224(g) for CATACO and Vinh Hoan. Therefore, we are not amending our *Preliminary Determination* with regard to CATACO's and Vinh Hoan's U.S. price to normal value comparisons. For a more detailed analysis, please see the company-specific analysis memorandums.

Comment 2: ByProduct Offset

Citing the factors valuation memorandum that accompanied the *Preliminary Determination,* the Mandatory Respondents argue that the Department clearly stated that ''for each of the companies in this investigation, the Department has offset the cost of manufacturing by the value of the reported by-products.'' *See Memorandum to the File from Alex Villanueva, Lisa Shishido, Joseph Welton, and Paul Walker, through Edward C. Yang and James C. Doyle: Factors Valuations for Agifish, Vinh Hoan, Nam Viet and CATACO (''Factor Memo''),* dated January 24, 2003 at 7. However, the Mandatory Respondents argue, in the company-specific margin calculations, the Department did not follow its stated methodology and, instead, applied each company's byproduct credit as an offset to the final normal value, rather than as a deduction to the cost of manufacturing. According to the Mandatory Respondents, the Department's *Factor Memo* indicates that the Department fully intended to deduct each company's byproduct offset from the cost of manufacturing. The Mandatory Respondents assert that it is the Department's normal practice to treat income generated from the sale of byproducts as an offset to production costs and that the cost associated with the production of byproducts are reflected in the costs of the primary products generated in the production process. Thus, the Mandatory Respondents argue, the Department erred in deducting each company's by-product credits from normal value and must reconfigure the preliminary dumping margin calculations to ensure that the company-specific byproduct offsets are correctly deducted from the cost of manufacturing.

Department's Position

We agree with the Mandatory Respondents that the Department incorrectly deducted the byproduct credit from normal value. The *Factor Memo* clearly stated that for each of the companies in this investigation, the Department would offset the cost of manufacturing by the value of the reported byproducts. We note, however,

that the company-specific analysis memorandums provided the programming language demonstrating the byproduct offset was being deducted from the total normal value. In addition, our *Preliminary Determination* clearly stated that the by-product offset would be taken from normal value. ''Where applicable, we deducted from each respondent's normal value the value of byproducts sold during the POI.''[2] *See Preliminary Determination,* 68 FR at 4994. However, given the conflicting statements on the record, the fact that this is our normal practice, and that there was no explanation in the *Preliminary Determination* regarding the change, we agree that deducting the by-products from the total normal value represents an error. Therefore, for this amended preliminary determination, we are deducting each Mandatory Respondent's byproduct offset from the cost of manufacturing and not from normal value. We note that the Department will carefully revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of for 38.09% for Nam Viet and 31.45% for Agifish, while the margins of the remaining Mandatory Respondents do not change significantly, as noted below. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination.* Accordingly, the error regarding the correction of the byproduct offset alleged by the Mandatory Respondents is a significant ministerial error within the meaning of 19 CFR 351.224(g) for Nam Viet and Agifish.

We note that the correction of this error does not fulfill the requirement of a significant ministerial error within the meaning of 19 CFR 351.224(g) for CATACO and Vinh Hoan. Therefore, we are not amending our *Preliminary Determination* with regard to CATACO's and Vinh Hoan's byproduct offset. For a more detailed analysis, please see the company-specific analysis memorandums.

Comment 3: Agifish's Fish Waste Offset

Agifish argues that the Department incorrectly calculated Agifish's factor input for fish waste re-introduced in the production of the subject merchandise. Agifish asserts that rather than using the total amount of fish waste re-introduced in the company's first two production stages, the Department used only the amount of fish waste re-introduced at one of the production stages. According to Agifish, the Department's error drastically reduced the fish waste to subject merchandise ratio. Agifish argues that this is an apparent inadvertent ministerial error because the Department, in calculating dumping margins for the other three mandatory Mandatory Respondents, used the amount of fish waste reported for all production stages.

Department's Position

We agree with Agifish that the Department incorrectly calculated Agifish's factor input for fish waste re-introduced in the production of the subject merchandise. Specifically, on January 17, 2003, Agifish submitted supplementary information indicating the amount of fish waste generated and sent to make fish feed which is re-introduced into the production process. Based on the factors of production data, we noted that the amount of fish waste generated and sent to make fish feed that Agifish indicated in its January 17, 2003 response was significantly lower than the actual amount used to make fish feed during the POI. Therefore, for the *Preliminary Determination,* we capped the amount of the fish waste offset at the actual amount of fish waste re-introduced as fish feed during the POI.

We note, however, that in capping the offset as described above, the Department neglected to give Agifish credit for a byproduct described in the calculation database as ''fish flour.'' As the claim for this byproduct exists in the database and as there was no information on the record at the time of the preliminary determination casting doubt on the appropriateness of this claim, the Department will grant this claim. In order to value the fish flour byproduct, the Department is applying the surrogate value for fish flour. We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of 31.45% for Agifish. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination.* Accordingly, the error regarding the correction of the fish waste offset alleged by Agifish is a significant ministerial error within the meaning of 19 CFR 351.224(g).

Therefore, we are amending our *Preliminary Determination* with regard to Agifish's fish waste offset. For a more detailed analysis, please see the company-specific analysis memorandums.

Comment 4: CATACO's Coal Consumption Ratio

CATACO argues that the Department incorrectly calculated CATACO's coal consumption ratio in the *Preliminary Determination.* According to CATACO, the coal consumption ratio used by the Department includes coal used in both the farming and processing stages. CATACO argues that the Department should apply CATACO's coal consumption ratio specific to only the processing stage of the production process.

Department's Position

We agree with CATACO. In our *Preliminary Determination,* we used a coal consumption ratio that was slightly higher than the coal consumption ratio that CATACO reported for the processing stage. Specifically, the coal consumption ratio we used in the *Preliminary Determination* included the amount of coal used in a stage preceding the processing stage. Consequently, the coal consumption used by the Department in the *Preliminary Determination* was overstated. Therefore, we have replaced the coal consumption ratio used in the *Preliminary Determination* with the correct coal consumption ratio reported by CATACO that is specific to only the processing stage of the production process. We note that the Department will revisit all aspects of this issue in the final determination.

However, we note that the correction of this error in combination with the other alleged errors does not change the margin by a significant amount as required by 19 CFR 351.224(g). Therefore, we are not amending our *Preliminary Determination* with regard to CATACO's coal consumption ratio.

Ministerial Error Allegations from the Petitioners

Comment 1: Agifish's and Vinh Hoan's Fish Oil Offset

The Petitioners argue that the Department erred in calculating Agifish's and Vinh Hoan's fish oil by-product offset. The Petitioners note that the Department stated that, in accordance with its policy, it would only grant byproducts credits for the amount of fish oil generated and sold by the Mandatory Respondents. *See Memorandum from Alex Villanueva to the File regarding the Analysis of the Preliminary Determination of Certain Frozen Fish Fillets from the Socialist*

[2] Period of Investigation.

Republic of Vietnam: Agifish, dated January 24, 2003 at 3, and *Memorandum from Lisa Shishido to the File regarding the Analysis of the Preliminary Determination of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Vinh Hoan,* dated January 24, 2003 at 3. According to the Petitioners, both Agifish and Vinh Hoan sold more fish oil during the POI than they actually generated during the POI. Therefore, the Petitioners argue, based on the Department's stated policy, the Department should only have granted byproduct credits for the amount of fish oil both generated and sold during the POI, which was smaller than the amount of fish oil sold.

Department's Position

We agree with the Petitioners that the Department erred in calculating Agifish's and Vinh Hoan's fish oil byproduct offset. The Petitioners correctly note that the Department stated that, in accordance with our practice, we would only grant byproducts credits for the amount of fish oil generated and sold by the Respondent companies. Both Agifish's and Vinh Hoan's January 17, 2003 supplemental responses revealed that the amount of fish oil sold during the POI was significantly more than the total amount of fish oil generated during the same period. In our *Preliminary Determination,* we did not cap the amount of the fish oil byproduct offset at the amount of fish oil generated and sold during the POI. Therefore, we have recalculated the amount of fish oil byproduct offset used in the *Preliminary Determination* and capped that offset at the amount of fish oil generated and sold during the POI. For a more detailed explanation, please see Agifish's and Vinh Hoan's analysis memorandums. We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the correction of the other errors would result in a margin of 31.45% for Agifish. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination.* Accordingly, the error regarding the correction of the fish oil offset alleged by Agifish is a significant ministerial error within the meaning of 19 CFR 351.224(g).

However, the correction of this error in combination with the correction of the other errors would not result in a significant ministerial error within the meaning of 19 CFR 351.224(g) for Vinh Hoan. Accordingly, we are not amending our *Preliminary Determination* with regard to Vinh Hoan's fish oil offset.

Comment 2: Nam Viet's International Freight Expense

The Petitioners argue that to value freight costs incurred by Nam Viet, on sales shipped by non-market economy carriers, the Department calculated the average rate incurred on shipments made by the market economy carriers. However, the Petitioners argue, in making the calculation, the Department incorrectly included sales values which did not incur freight costs in the denominator of its average. According to the Petitioners, by including these sales, the Department understated the ocean freight costs to be applied to those sales which were shipped on non-market economy carriers.

Department's Position:

We agree with the Petitioners that, when valuing freight costs incurred by Nam Viet on sales shipped by non-market economy carriers, the Department incorrectly included sales which did not incur freight costs in calculating the average rate incurred on shipments made by the market economy carriers. Consequently, the average freight rate used by the Department in the *Preliminary Determination* was understated. Therefore, we have recalculated the average freight costs used in the *Preliminary Determination,* excluding those sales made by Nam Viet that were identified as FOB sales. We note that the Department will revisit all aspects of this issue in the final determination.

The correction of this error in combination with the other errors would result in a margin of 38.09% for Nam Viet. This is more than five percentage points different from and more than 25 percent of the weighted-average dumping margin calculated in the *Preliminary Determination.* Accordingly, the error regarding the correction of freight costs alleged by the Petitioners is a significant ministerial error within the meaning of 19 CFR 351.224(g). Therefore, we are amending our *Preliminary Determination* with regard to Nam Viet's average freight costs. For a more detailed analysis, please see the company-specific analysis memorandums.

As a result, we are amending the *Preliminary Determination* of the antidumping duty investigation of certain frozen fish fillets from the Socialist Republic of Vietnam to reflect the correction of the above-cited ministerial errors. The revised final weighted-average dumping margins are as follows:

The weighted-average dumping margins are as follows:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/manufacturer/exporter	Prelim margin	Amended prelim margin
Agifish	61.88	31.45
Vinh Hoan	37.94	37.94
Nam Viet	53.96	38.09
CATACO	41.06	41.06
Afiex	49.16	36.76
CAFATEX	49.16	36.76
Da Nang	49.16	36.76
Mekonimex	49.16	36.76
QVD	49.16	36.76
Viet Hai	49.16	36.76
Vietnam-Wide Rate	63.88	63.88

Suspension of Liquidation

We will instruct U.S. Customs Service to continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated above. With respect to Nam Viet and the parties receiving the Vietnam-wide rate, the Department will direct the U.S.

Customs Service to continue to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after November 2, 2002, the date which is 90 days prior to the date of publication in the **Federal Register** of our original preliminary determination in this investigation in accordance with section 733(d) of the Act . With respect to Agifish, Vinh Hoan and CATACO, the Department will direct the U.S. Customs Service to continue to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of our original preliminary determination in this investigation (*i.e.*, January 31, 2003) in accordance with section 733(d) of the Act.

We note that the effective date of the suspension of liquidation for Afiex, CAFAEX, Da Nang, Mekonimex, QVD and Viet Hai continues to be January 31, 2003, because we have not determined whether critical circumstances exists for these companies. As noted in our preliminary determination, we will publish our preliminary critical circumstances decision with respect to Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai at a later date. Therefore, with respect to Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai, the Department will direct the U.S. Customs Service to continue to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of our original preliminary determinations in these investigations (*i.e.*, January 31, 2003) in accordance with section 733(d) of the Act. These instructions to be issued to the U.S. Customs Service following publication of this amended preliminary determination will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: February 26, 2003.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–5185 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–451–801]

Final Results of Inquiry Into Lithuania's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changed Circumstances Review of the Solid Urea Order Against Lithuania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: George Smolik, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1843.

Background: The Department has treated Lithuania as a non-market economy (''NME'') country in past antidumping duty investigations and administrative reviews. *See, e.g.*, Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value, 52 FR 19557 (May 26, 1987); and, Solid Urea from the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment, 57 FR 28828 (June 29, 1992). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act.

On May 15, 2002, the Department received a letter from the Embassy of Lithuania requesting a review of Lithuania's status as NME country. On June 5, 2002, the GOL submitted a document supporting its request for market economy status. On August 20, 2002, the Department received a letter from the Embassy of Lithuania requesting that the Department review Lithuania's NME status under a changed circumstances review of the solid urea order against Lithuania. In response to this latter request, the Department initiated an inquiry into Lithuania's status as an NME in the context of a changed circumstances review of the solid urea order against Lithuania pursuant to sections 751(b) and 771(18)(C)(ii) of the Act.

On September 10, 2002, the Department published a Notice in the **Federal Register** requesting comments from the public concerning this matter. See Notice of Initiation of Inquiry Into the Status of Lithuania as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changed Circumstances Review of the Solid Urea Order Against Lithuania, 67 FR 57393, September 10, 2002. The comments due date was extended to November 8, 2002. Rebuttal comments were due no later than December 9, 2002.

SUMMARY: The Government of Lithuania (''GOL'') has implemented comprehensive economic and institutional reforms aimed at establishing a market economy since 1991. See memorandum to Faryar Shirzad from Barbara Mayer *et al, Decision Memorandum Regarding Lithuania's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Law under a Changed Circumstances Review of the Solid Urea Order Against Lithuania* (February 28, 2003). Lithuania's currency, the litas, is fully convertible for trade purposes and effectively convertible for investment purposes. Wages are freely negotiated between employees and management. Workers have the right to unionize and engage in collective bargaining, and employers are free to transfer or fire workers. Foreign direct investment has been encouraged by the GOL in almost all sectors of the economy. Foreign investors compete on a level playing field with domestic investors. Lithuania's efforts toward privatizing the economy have been wide-spread and effective. Seventy-five percent of Lithuania's gross domestic product is in the hands of the private sector with only a few large state-owned enterprises remaining. Land, including land for agricultural use, is under private ownership, and foreigners are permitted to purchase land for non-agricultural use. The GOL has eliminated its previous role as an allocator of resources by completely privatizing the commercial banking sector and eliminating price controls. Additionally, Lithuania has been a member of the World Trade Organization since May 2001 and is slated to join the European Union at the beginning of 2004.

Notwithstanding, several areas of Lithuania's economy require additional

reform. Foreign direct investment remains relatively low and the commercial banking sector does not play a significant role in lending to the private sector. In particular, small- and medium sized enterprise growth is currently hampered by the reluctance of banks to provide credit.

Overall, however, Lithuania has made far-reaching changes in the structure of the economy. Therefore, based on the evidence on reforms in Lithuania to date, analyzed as required under section 771(18)(B) of the Act, the Department determines that (1) revocation of Lithuania's NME country status under section 771(18)(A) is warranted, and (2) Lithuania has operated as a market-economy country since January 1, 2003. Lithuania producers and exporters will be subject, therefore, to the antidumping rules applicable to market economies with respect to the analysis of transactions occurring after January 1, 2003. In addition, the U.S. countervailing duty law will apply now to Lithuania where the proceeding at issue involves an adequate period of investigation after this effective date.

Dated: February 27, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–5187 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–447–801]

Final Results of Inquiry Into Estonia's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Laws Under a Changed Circumstances Review of the Solid Urea Order Against Estonia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: George Smolik, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1843.

Background: The Department has treated Estonia as an non-market economy (''NME'') country in past antidumping duty investigations and administrative reviews. *See, e.g.*, Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value, 52 FR 19557 (May 26, 1987); and, Solid Urea from the Union of Soviet Socialist Republics—Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment, 57 FR 28828 (June 29, 1992). A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C)(i) of the Act.

On July 10, 2003, the Department received a letter from the Republic of Estonia Ministry of Foreign Affairs requesting a review of Estonia's status as a NME country. In the letter, the Government of Estonia submitted documentation supporting its request for market economy status. The Department subsequently received a letter from the Ambassador of Estonia to the United States dated September 20, 2002, requesting a review of Estonia's NME status under a changed circumstances review of the antidumping duty order on solid urea from Estonia. In response to this latter request, the Department initiated a changed circumstances review in order to examine whether Estonia is still a NME country for purposes of the antidumping and countervailing duty laws, pursuant to sections 751(b) and 771(18)(C)(ii) of the Act.

On October 16, 2002, the Department published a Notice in the **Federal Register** requesting comments from the public concerning this matter. See Notice of Initiation of a Changed Circumstances Review of the Antidumping Duty Order on Solid Urea From Estonia, 67 FR 63886, October 16, 2002. Comments were due no later than December 2, 2002 and rebuttal comments were due January 02, 2003. The Government of Estonia (''GOE'') submitted comments supporting its request to revoke Estonia's NME status. No comments were received by the Department opposing the GOE's request.

SUMMARY: The GOE has implemented economic and institutional reforms since regaining its independence in 1991. The reforms initiated by the GOE specifically relating to the factors examined by the Department under section 771(18)(B) are comprehensive. See memorandum to Faryar Shirzad from Shauna Lee-Alaia *et al, Decision Memorandum regarding Estonia's Status as a Non-Market Economy Country for Purposes of the Antidumping and Countervailing Duty Law under a Changed Circumstances Review of the Solid Urea Order Against Estonia* (February 28, 2003).

The Estonian kroon, established in 1992, is freely convertible for both current and capital account purposes. There are no restrictions on repatriation of earnings. The central bank sets monetary policy and regulates private-sector banks, independent of the government. Wages are freely negotiated between employees and management. The right to unionize and bargain collectively is guaranteed by law. Foreign and domestic investors are treated equally. In fact, Estonia enjoys one of the highest foreign direct investment per capita rates in the region. Privatization of most medium-sized and large industrial enterprises is complete, with 80 percent of gross domestic product in the hands of the private sector. Private property rights are respected in Estonia. Both foreigners and Estonians are able to own agricultural and non-agricultural land. Entrepreneurship is encouraged by the GOE and adequately protected *de jure* and *de facto*. The financial sector, predominately foreign owned and completely privately owned, acts as a financial intermediary between investors and savings. Consumer prices were liberalized in 1992. As of mid 2002, Estonia had closed 26 of 31 chapters of the acquis communitaire and is expected to accede to the European Union in 2004. Estonia has been a member of the World Trade Organization since November 1999.

Overall, Estonia has made far-reaching changes in the structure of its economy resulting in a successful transition to a market economy. Under section 771(18)(B) of the Act, the U.S. Department of Commerce determines that (1) revocation of Estonia's NME country status under section 771(18)(A) is warranted, and (2) Estonia has operated as a market-economy country since January 1, 2003. Estonia producers and exporters will be subject, therefore, to the antidumping rules applicable to market economies with respect to the analysis of transactions occurring after January 1, 2003. In addition, the U.S. countervailing duty law will apply now to Estonia where the proceeding at issue involves an adequate period of investigation after this effective date.

Dated: February 27, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–5188 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Notice of Initiation of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of countervailing duty new shipper review.

SUMMARY: On December 17, 2002, the Department of Commerce received a request to conduct a new shipper review of the countervailing duty order on certain pasta from Italy. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Cho or Craig Matney, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3798 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department received a request from Pastificio Carmine Russo S.p.A. (''Pastificio Russo''), to conduct a new shipper review of the countervailing duty order on certain pasta from Italy, issued July 24, 1996 (61 FR 38544). This order has a January semi-annual anniversary month. Pastaficio Russo's request was made pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), for new shipper reviews of the countervailing duty order on certain pasta from Italy. On February 24, 2003, the Department received additional submission from Pastificio Russo in which Pastificio Russo provided information to the Department describing how Pastificio Russo was formed as a new corporate entity through a corporate buy-out of Carmine Russo, S.p.A. We will further review this change-in-ownership as part of the new shipper review of the countervailing duty order.

Initiation of Review

In accordance with 19 CFR 351.214(b)(2) of the Department's regulations, Pastificio Russo provided certification that: (1) It did not export subject merchandise to the United States during the period of investigation (''POI''), and (2) that, since the investigation was initiated, it never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. Also, in accordance with 19 CFR 351.214(b)(2), Pastificio Russo submitted documentation establishing: (1) The date subject merchandise was first entered, or withdrawn from warehouse, for consumption, or if the exporter or producer could not establish the date of first entry, the date on which they first shipped the subject merchandise for export to the United States; (2) the volume of the first and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States. In addition, the company provided a certification stating that it has informed the Government of Italy that it will be required to provide a full response to the Department's countervailing duty questionnaire.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214, we are initiating a new shipper review of the countervailing duty order on certain pasta from Italy. Pursuant to 19 CFR 351.214(h)(i), we intend to issue the preliminary results of this review not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to Pastificio Russo throughout the duration of this new shipper review.

In a countervailing duty proceeding, the standard period of review (''POR'') in a new shipper review is the same as the period specified in 19 CFR 351.213(e)(2) for an administrative review. Therefore, the POR for this new shipper review is January 1, 2002 through December 31, 2002 and we will review the subsidies received by the company during that period.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by the company listed above.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation notice is in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: February 21, 2003.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–5186 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022103E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils (Councils), in cooperation with NMFS's Southeast Fisheries Science Center, will hold a series of data workshops as part of the Southeast Data Assessment and Review (SEDAR) process.

DATES: The data workshops will be held in March 2003. See **SUPPLEMENTARY INFORMATION** for specific times and dates.

ADDRESSES: The meeting will be held at the Florida Marine Research Institute, 100 Eighth Avenue, Southeast, St. Petersburg, FL 33701–5095; telephone: 727–896–8626.

Copies of documents are available from the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL, 33619.

FOR FURTHER INFORMATION CONTACT: Phil Steele, National Marine Fisheries Service, Southeast Regional Office, 9721 North Executive Center Drive, St. Petersburg, FL, 33702; telephone 727–570–5305; fax 727–570–5583; e-mail: *Phil.Steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Councils, in cooperation with NMFS's Southeast Fisheries Science Center, will hold a series of data workshops as part of the SEDAR process. The purpose of these data workshops will be to convene a select panel of scientists, industry representatives, and other knowledgeable persons to review available fishery data of all types on particular species, provide additional data that may not be presently known,

and recommend data needs required for future stock assessments. Also, approaches to gather additional needed data will be identified.

Meeting Times

There will be three data workshops for each of the three species that are currently of interest to at least two of the Councils. The first data workshop will consider data for yellow tail snapper, which involves all three Councils. It will be held from 1 p.m. March 3, 2003, to 5 p.m. March 4, 2003. The second data workshop will be for goliath grouper and will also involve all three Councils. It will be held from 8 a.m. from March 5, 2003, to 12 noon on March 6, 2003. The third data workshop will be for vermilion snapper and will involve the Gulf of Mexico and Caribbean Fishery Management Councils. It will be held from 1 p.m. on March 6, 2003, to 5 p.m. March 7, 2003.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 25, 2003.

Dated: February 27, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–5069 Filed 2–27–03; 3:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Statutory Invention Registration.

Form Number(s): PTO/SB/94.

Agency Approval Number: 0651–0036.

Type of Request: Extension of a currently approved collection.

Burden: 29 hours annually.

Number of Respondents: 73 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take 24 minutes (0.4 hours) to submit a Statutory Invention Registration request. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: 35 U.S.C. 157, administered by the USPTO through 37 CFR 1.298–1.297, authorizes the USPTO to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, providing the applicant meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the USPTO, and pays all application, publication, and other processing fees. This collection includes information needed by the USPTO to review and approve and/or deny such requests. The applicant may petition the USPTO to review final refusal to publish or to withdraw a request to publish a statutory invention registration prior to the date of the notice of the intent to publish.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before April 4, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: February 25, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–5135 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed application entitled: AmeriCorps Promise Fellows 2003 Continuation Request Instructions. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by May 5, 2003.

ADDRESSES: Send comments to the Corporation for National and Community Service, Ms. Shelly Ryan, Program Coordinator, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Ms. Shelly Ryan at (202) 606–5000, ext. 549 or *sryan@cns.gov.*

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Corporation publishes application guidelines and notices of funding availability that include information about the funding and requirements. The application instructions provide the information, instructions and forms that potential applicants need to complete an application to the Corporation for funding.

The Corporation has developed an electronic grants system to meet the requirements of Pub. L. 106–107. As part of the development process, the Corporation is redesigning its application forms and instructions to reflect the electronic system design.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application instructions.

Type of Review: Reinstatement, with change.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Promise Fellows Continuation Request Instructions.

OMB Number: 3045–0073.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 41.

Frequency: Once per year.

Average Time Per Response: 25 hours.

Estimated Total Burden Hours: 1,025 hrs.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 26, 2003.

Nancy Talbot,

Director, Program Planning and Development.

[FR Doc. 03–5068 Filed 3–4–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children With Disabilities

AGENCY: Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS), DOD.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92–463, as amended (5 U.S.C. app. II), the Federal Advisory Committee Act, notice is hereby given that a meeting of the Domestic Advisory Panel on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities is scheduled. The meeting is open to the public.

The purpose of the meeting is to (1) Review the responses to the panel's recommendations from its December 2002 meeting; (2) review and comment on data and information provided by Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS); and (3) establish subcommittees as necessary.

DATES: April 29–30, 2003 from 8:30 a.m. to 3:30 p.m. each day.

ADDRESSES: The meeting will be held in the District Central Office at Building 855, 855 Stone Street, Camp Lejeune, NC 28547.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Chen, (678) 364–8010.

SUPPLEMENTARY INFORMATION: Persons desiring to attend the meeting or desiring to make oral presentation or submit written statements for consideration by the panel must contact Dr. Cynthia Chen at (678) 364–8010 by April 15, 2003.

Dated: February 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5064 Filed 3–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests.

DATES: March 20, 2003, from 8 a.m. to 5 p.m., and March 21, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Lodge on the Desert in Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than March 10, 2003.

Dated: February 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5065 Filed 3–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on March 24, 2003 at Institute for Defense Analyses, Alexandria, VA.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons security.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: February 24, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5066 Filed 3–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent No. 6,371,384: Aqueous Foam Generating System and Method for Generating Foam Having Long Wet-to-Dry Transition Times.//U.S. Patent No. 6,380,888: Self-Contained, Self-Surveying Differential GPS Base Station and Method of Operating Same.//U.S. Patent No. 6,381,352: Method of Isolating Relevant Subject Matter in an Image.//U.S. Patent No. 6,386,086: Line Charge Sympathetic Detonation Arrestor.//U.S. Patent No. 6,408,847: Rebreather System That Supplies Fresh Make-Up Gas According to a User's Respiratory Minute Volume.//U.S. Patent No. 6,420,803: System for Improving Vehicle Safety in Crash Situations.//U.S. Patent No. 6,421,469: Image Data Manipulation for Improved Image Visualization and Analysis.//U.S. Patent No. 6,422,170: Hydrofoil Angular Alignment Tool.//U.S. Patent No. 6,431,508: Adaptable and Universal System for Attachments.//U.S. Patent No. 6,445,647: Wideband-to-Narrowband Conversion Method and Apparatus.//U.S. Patent No. 6,447,115: Dive Mask With Integrated Monitoring System.//U.S. Patent No. 6,449,566: Acoustic Scattering Measurement and Processing for Determining Variances in Multiple Features.//U.S. Patent No. 6,463,925: Hot Water Heater for Diver Using Hydrogen Catalytic Reactions.//U.S. Patent No. 6,463,942: Apparatus for Confined Underwater Cryogenic Surface Preparation.//U.S. Patent No. 6,468,358: Confined Underwater Cryogenic Surface Preparation.//U.S. Patent No. 6,470,246: Method for Controlling Lateral Position of an Underwater Towed Body.//U.S. Patent No. 6,470,805: Fire Retardant Bio-Friendly Practice Munition.//U.S. Patent No. 6,471,366: Depth-Compensated Underwater Light.//U.S. Patent No. 6,473,364: High Frequency Acoustic Float for the Versatile Mine System.//U.S. Patent No. 6,476,610: Magnetic Anomaly Sensing System and Methods for Maneuverable Sensing Platforms.//U.S. Patent No. 6,484,660: Underwater Nuclear Material Reconnaissance System.//U.S. Patent No. 6,494,035: Towing Rocket Motor Assembly.//U.S. Patent No. 6,503,115: Flexible Buoy Assembly.//U.S. Patent No. 6,505,574: Vertical Motion Compensation for a Crane's Load.//

ADDRESSES: Requests for copies of the patents cited should be directed to Coastal Systems Station, Dahlgren Division, NSWC, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646.

Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: February 27, 2003.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–5126 Filed 3–4–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following patents are available for licensing: U.S. Patent No. 5,880,552: Diamond or Diamond Like Carbon Coated Chemical Sensors and a Method of Making Same, Navy Case No. 77,845.//U.S. Patent No. 6,208,752: System for Eliminating or Reducing Exemplar Effects in Multispectral or Hyperspectral Sensors, Navy Case No. 78,735.//U.S. Patent 6,320,295: Diamond or Diamond Like Carbon Coated Chemical Sensors and a Method of Making Same, Navy Case No. 79,589//U.S. Patent No. 6,336,368: Method and Apparatus for Energy Efficient Tracking of Resonant Devices, Navy Case No. 79,877.//U.S. Patent Application Serial No. 09/433,367: Hyperspectral Visualization Extensible Workbench (Hyview), Navy Case No. 79,087.//U.S. Patent Application Serial No. 09/492,071: Fabrication of Patternable Electrically Conductive Thin Films for Chemiresistor Chemical Sensor Applications with Layer Evaporation Technique, Navy Case No. 79,708.//U.S. Patent Application Serial No. 10/080,403: Functionalized Small Molecules for Sensor Applications, Navy Case No. 80,053.//U.S. Patent Application Serial No. 10/046,298: Novel Chemoselective Dendritic Polymers for Chemical Sensor Applications, Navy Case No. 80,055.//U.S. Patent Application Serial No. 09/895,292: Linear and Branched Chemoselective Carbosilanes and Polysilanes for Chemical Sensor Applications, Navy Case No. 80,056.//U.S. Patent Application Serial No. 09/895,293: Linear and Branched Chemoselective Poly (siloxane)s for Chemical Sensor Applications, Navy Case No. 80,123.//U.S. Patent Application Serial No. 10/091,024: Hyperbranched Chemoselective Silicon-Based Polymers for Chemical Sensor Applications, Navy Case No. 83,517.//Navy Case No. 82,971: Device and Method for Pneumatic Gas Sampling for Gas Sensors.//Navy Case No. 83,418: Fabrication of Conductive/Non-Conductive Nanocomposites by Laser Evaporation.//Navy Case No. 84,285: Hyperbranched Chemoselective Silicon-Based Polymers for Chemical Sensor Applications.//Navy Case No. 84,508: A Miniature Biocollector and Processing Technique for Biological Agent Detection Applications.

ADDRESSES: Requests for copies of the patents or inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: February 27, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–5127 Filed 3–4–03; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

[Number DE–PS07–03ID14489]

Plant Wide Assessments

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is soliciting the submission of proposals for plant-wide assessments. A plant-wide assessment is a systematic approach to assess plant energy efficiency and identify opportunities for energy reduction in industrial facilities. For a relatively low initial investment, prior experience has shown that companies can identify very significant reductions in annual energy costs from a combination of energy efficiency and productivity improvements and waste reductions. The objective of this solicitation is to continue partnership with energy intensive industries to identify new assessment approaches and methodologies that will lead to substantial improvements in industrial energy efficiency, enhanced competitiveness and reduced environmental impacts.

DATES: The issuance date of Solicitation Number DE–PS07–03ID14489 will be on or about February 28, 2003. The deadline for receipt of applications will be approximately on May 29, 2003.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov.* The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS ''User Guide for Contractors'' can be obtained on the IIPS Homepage and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*

FOR FURTHER INFORMATION CONTACT: Trudy Harmel, Contract Specialist, *harmelta@id.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE anticipates making up to 10 cooperative agreement awards depending on availability of funds. Individual awards will not exceed $100,000 of DOE funding, and the project timeframe will be no more than one year. The DOE Industrial Technologies Program requires a minimum of fifty per cent (50%) non-federal cost-share for this solicitation to ensure industrial involvement in each of the proposals. There will be no waivers of this cost share requirement. The statutory authority for this program is the U.S. Department of Energy Organization Act (Pub. L. 95–91). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on February 26, 2003.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 03–5150 Filed 3–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). 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, March 13, 2003, 8:30 a.m. to 5:30 p.m.; Friday, March 14, 2003, 8:30 a.m. to 1 p.m.

ADDRESSES: Hamilton Crowne Plaza Hotel, 14th and K Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Melea Baker, Office of Advanced Scientific Computing Research; SC–30/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone (301) 903–7486 (E-mail: *Melea.Baker@science.doe.gov*).

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the advanced scientific computing research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, March 13, 2003

Introduction
Remarks from the Director, Office of Science
Advanced Scientific Computing Research Program Budget Discussion
Briefings on Major Facilities by Laboratory Personnel
Public Comment

Friday, March 14, 2003

Scientific Discovery through Advanced Computing Update and Project Report
Subcommittee Update on Charge to Office of Science Advisory Committees Regarding New/Upgraded Facilities
Report on High Performance Computing Joint Research Activities with Other Agencies
New Business
Advisory Committee Open Discussion of Issues
Public Comment

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 Melea Baker via FAX at 301–903–4846 or via e-mail *(Melea.Baker@science.doe.gov).* 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. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

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 February 27, 2003.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 03–5147 Filed 3–4–03; 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, March 20, 2003 5:30 p.m.—9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

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; Introductions; Approve February Minutes; Review Agenda
6:10 p.m. DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m. Ex-officio Comments
6:40 p.m. Public Comments and Questions
6:50 p.m. Review of Action Items
7:05 p.m. Break
7:15 p.m. Presentation
- Information to be Presented at Chairs Meeting
- Sewer Rehabilitation Update

8 p.m. Public Comments and Questions
8:10 p.m. Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:40 p.m. Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9 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 above 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 comment 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 February 27, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–5148 Filed 3–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

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), Idaho National Engineering and Environmental Laboratory. 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: Tuesday, March 18, 2003, 8 a.m.–6 p.m.; Wednesday, March 19, 2003, 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, March 18, 2003, 12:15–12:30 p.m, 5:45–6 p.m.; Wednesday, March 19, 2003, 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Red Lion Hotel in the Teton/Bonneville Rooms, 475 River Parkway, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/.*)

- The Environmental Management Program and the implementation of the Performance Management Plan
- The budget allocation for the Environmental Management Program for Fiscal Year 2003
- Budget priorities for the Fiscal Year 2004 environmental management budget request
- Grouting and plans for use of grouting at the INEEL
- Environmental permitting for the Idaho Nuclear Technology and Engineering Center
- Resolution of the Notice of Violation
- High-level radioactive waste tank closure activities
- Resolution of the lawsuit involving waste incidental to reprocessing (if possible)
- Science and technology strategies for the Water Integration Project
- Proposed LaSalle Nuclear Fuel Project and the ramifications for the INEEL
- Plans for deactivation and decommissioning surplus facilities at the INEEL
- Final INEEL Strategic Plan and the results of the Laboratory Consolidation Study
- New Office of Legacy Management and how the reorganization will affect the INEEL
- Follow-up activities related to the Site Specific Advisory Board Transuranic Waste Workshop
- Preparations for the upcoming Site Specific Advisory Board Chairs Meeting

- Discussion of the role of the CAB with the site Manager

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or tele-phone number listed above. Request 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, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

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 through Friday except Federal holidays. Minutes will also be available by writing to Ms. Penny Pink, INEEL CAB Administrator, North Wind Environmental, Inc., PO Box 51174, Idaho Falls, ID 83405 or by calling (208) 528–8718.

Issued at Washington, DC, on February 27, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–5149 Filed 3–4–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–60–000]

Aquila Merchant Services, Inc.; Notice of Filing

February 27, 2003.

Take notice that on February 24, 2003, Aquila Merchant Services, Inc. (AMS) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33. AMS seeks authorization and approval to assign a call option agreement to Duke Energy Trading and Marketing, L.L.C. pursuant to an assignment agreement dated February 17, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5109 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–52–000]

Colorado Interstate Gas Company; Notice of Application

February 27, 2003.

Take notice that on February 19, 2003, Colorado Interstate Gas Company (CIG), PO Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–52–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for a certificate of public convenience and necessity authorizing the construction, ownership and operation of facilities to enhance the natural gas storage injection capabilities of its Fort Morgan Gas Storage Field (Fort Morgan) located in Morgan County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

CIG states that the proposed enhancement is necessary to satisfy the end-of-season storage field injection needs, and to provide operational flexibility to respond to customers' changing summertime usage patterns of Fort Morgan.

CIG states that it is proposing to construct and operate a 1,151 horsepower (ISO) compressor unit that will be used in staged-compression with existing compressor units. Such a unit, according to CIG, will increase the installed site horsepower to 6,551 (ISO), and the end-of-season injection capabilities by a minimum of 30 MMcf/d, with actual injection capability depending upon system operating conditions. CIG states that no increase in withdrawal capacity or total storage capacity of Fort Morgan will accompany the proposed compression addition.

CIG states that the total cost of the proposed facilities is estimated to be $2,928,500 and that CIG states that it will assume the costs associated with the proposed facilities until the next general rate case. CIG also states it is proposing rolled-in treatment for the proposed project.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Gas Company, P. O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 667–7534; or to Judy A. Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, PO Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–4829 or fax (719) 520–4898.

There are two ways to become involved in the Commission's review of

this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: March 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5108 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–296–000]

Flying Cloud Power Partners, LLC; Notice of Issuance of Order

February 27, 2003.

Flying Cloud Power Partners, LLC (Flying Cloud) filed an application requesting authority to transact at market-based rates along with the accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity and energy at market-based rates and for the resale of transmission rights. Flying Cloud also requested waiver of various Commission regulations. In particular, Flying Cloud requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Flying Cloud.

On January 24, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Flying Cloud should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 10, 2003.

Absent a request to be heard in opposition by the deadline above, Flying Cloud is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Flying Cloud, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Flying Cloud's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5112 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–51–000]

North Hartland LLC; Notice of Filing

February 27, 2003.

Take notice that on February 26, 2003, North Hartland LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) a Request for Declaratory Order to Resolve a Controversy of Obligation to Pay Interconnection Cost. North Hartland LLC objects to the use charge. It argues that Central Vermont, the interconnecting utility, is not entitled to a 10% after tax rate of return on the project's investment in interconnection facilities, and the calculated use charge is fatally flawed.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5110 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–52–000]

Public Service Company of New Mexico Complainant, v. Arizona Public Service Company Respondent; Notice of Complaint

February 27, 2003.

Take notice that on February 26, 2003, Public Service Company of New Mexico (PNM), 2401 Aztec Road, NE., Albuquerque, New Mexico, 87107, filed with the Federal Energy Regulatory Commission a complaint against Arizona Public Service Company (APS) regarding APS' rejection of PNM's attempts to exercise rights of first refusal related to two separate long-term point-to-point transmission service agreements on APS' transmission system.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–5111 Filed 3–4–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7458–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Juanita Stewart and the Louisiana Environmental Action Network, represented by the Tulane Environmental Law Clinic: *Stewart* v. *Whitman,* No. 02–1030–C–M1 (M.D. La.). On or about October 31, 2002, plaintiffs filed a complaint seeking to compel Christine Todd Whitman, in her official capacity as Administrator of the EPA, to respond to an administrative petition to object to a state operating permit issued by the Louisiana Department of Environmental Quality (''LDEQ''). Under the terms of the proposed settlement agreement, EPA will respond to the petition by May 9, 2003. Within thirty days of EPA's response to the petition, plaintiffs will file a motion for voluntary dismissal of the complaint, with prejudice to its refiling.

DATES: Written comments on the proposed settlement agreement must be received by April 4, 2003.

ADDRESSES: Written comments should be sent to Cecilia Kim, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed settlement are available from Phyllis J. Cochran, (202) 564–7606.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA a 45-day period to review and object to, as appropriate, Title V operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this 45-day review period to object to state operating permits if EPA has not done so. Plaintiffs filed an administrative petition to object to a state operating permit issued by LDEQ to the Georgia-Pacific Corporation for a pulp and paper mill near Port Hudson, East Baton Rouge, Louisiana. The lawsuit alleges that EPA has a nondiscretionary duty to grant or deny the petition within 60 days, and seeks to compel EPA to respond to the petition.

The settlement agreement provides that, within ten days after execution by the parties, the parties will file a joint motion with the court requesting the lawsuit be stayed. Plaintiffs may request the court to lift the stay of the lawsuit, and establish a schedule for further proceedings if EPA fails to sign a response to the petition by May 9, 2003.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: February 24, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 03–5191 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0334; FRL–7296–3]

Exposure Modeling Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Exposure Modeling Work Group will hold a one-day meeting on March 19, 2003. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Wednesday, March 19, 2003, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Office of Pesticide Programs (OPP), Environmental Protection Agency, Crystal Mall #2, Room 1126 (Fishbowl), 1921 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Michael R. Barrett, Environmental Fate and Effects Division (7507C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6391; fax number: (703) 308–6309; e-mail address: *barrett.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal, Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0334. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

On a quarterly interval, the Exposure Modeling Work Group (EMWG) meets to discuss current issues in modeling pesticide fate, transport, and exposure to pesticides in support of risk assessment in a regulatory context.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Tentative Agenda

This section provides tentative agenda topics for the one-day meeting:

1. Welcome and introductions.
2. Old action items.
3. Brief updates.
i. EU activities.
ii. USDA/EXAMS Model.
iii. Rice modeling.
iv. WARP model.
v. Spray Drift Task Force Progress.
vi. Temperature routine question in PRZM.
vii. Using the entire distribution to estimate drinking water exposure.
viii. EXAMINER.
ix. PLUS.
4. Major topics.
i. EFED Water Quality Priorities.
ii. PRZM/EXAMS EFED Shell Update.
iii. PE QA/QC Issues Update.
iv. Water Erosion Prediction Project (WEPP) Model.
v. Prospective ground water database.
vi. Pesticide behavior in thatch.
vii. Pesticide runoff simulations on turf.
viii. History of modeling.
5. Wrap-up and action items.

List of Subjects

Environmental protection, Pesticides, Pests, Modeling.

Dated: February 21, 2003.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 03–5035 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0014; FRL–7288–4]

Norflurazon; Completion of Comment Period for Tolerance Reassessment Progress and Interim Risk Management Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, concludes the comment period for the Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for norflurazon. No comments were submitted.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5400; fax number: (703) 308–8041; e-mail address: *edwards.beth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insectidice, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug,

and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0014. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the closing of the comment period for the norflurazon TRED. This decision has been developed as part of the public participation process that EPA and the U.S. Department of Agriculture (USDA) are using to involve the public in the reassessment of pesticide tolerances under FFDCA. EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard of the new law.

In reviewing these tolerances, the Agency must consider, among other things, aggregate risks from non-occupational sources of pesticide exposure, whether there is increased susceptibility to infants and children, and the cumulative effects of pesticides with a common mechanism of toxicity. The tolerances are considered reassessed once the safety finding has been made that aggregate risks are not of concern. A reregistration eligibility decision (RED) was completed for norflurazon in June 1996, prior to FQPA enactment, and therefore, needed an updated assessment to consider the provisions of the Act.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this TRED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient (a.i.), ''the Administrator shall determine whether pesticides containing such a.i. are eligible for reregistration,'' and either reregister products or take ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticide tolerances.

Dated: January 17, 2003.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–5033 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0029; FRL–7290–4]

Benomyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order requested by Hi-Yield Chemical Company for their registration of the pesticide product containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl, and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a September 9, 2002, notice of receipt of request for the above mentioned voluntary registration cancellation. In that notice, EPA requested comments on the proposed cancellation and indicated that it would issue an order confirming the cancellation. Any distribution, sale, or use of canceled benomyl products is permitted only in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellation is effective March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: *fuller.demson@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use benomyl products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0029. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at *http://www.epa.gov/pesticides/reregistration/status.htm*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

II. Receipt of Request to Cancel Registrations

A. Background

Benomyl is a benzimidazole carbamate and systemic foliar fungicide which was registered for use on a variety of fruit and vegetable crops. The technical registrant, E.I. du Pont de Nemours & Company (DuPont), met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for products containing benomyl. DuPont stated that this decision was based on business reasons. Following a public comment period on the proposed cancellations and consideration of comments received, the cancellation order was published in the **Federal Register** and became effective on August 8, 2001 (66 FR 41589) (FRL–6794–9).

In addition, the Agency also received letters from the following registrants requesting voluntary cancellation of all their products containing benomyl: American Mushroom Institute, Amvac Chemical Corp., Pursell Industries, Inc., the Scotts Company, Value Garden Supply LLC, and Voluntary Purchasing Groups, Inc.

In their letter dated July 31, 2002, Hi-Yield (represented by their agent, Brazos Associates Inc.) stated that they no longer manufacture or distribute the end use product that contained benomyl and there are no inventories of remaining stocks.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced receipt of the request from Hi-Yield Chemical Company in a **Federal Register** notice published on September 9, 2002 (67 FR 57726) (FRL–7197–5). In that notice, EPA provided a 30–day comment period. The registrant requested the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(c), and EPA granted this request. No public comments were received during the 30–day comment period.

B. Requests for Voluntary Cancellation of Products

Pursuant to FIFRA section 6(f)(1)(A), Hi-Yield Chemical Company has submitted a request for voluntary cancellation of registration for their product containing benomyl. The registration for which the cancellation was requested is identified in the following table.

PRODUCT REGISTRATION CANCELLATION REQUEST

Company	Registration No.	Product
Hi-Yield Chemical Company	34911–27	Hi-Yield Benomyl

III. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA is approving the requested cancellation. Accordingly, EPA orders that the registration identified in the table in Unit II.B., is hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in the table above in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this document will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation.

A. Distribution or Sale by the Registrant

Cancellation orders generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. However, the registrant has stated that they no longer manufacture or distribute end use products that contain benomyl.

In addition, the distribution of benomyl products in the channels of trade ended on December 31, 2002, prohibiting the sale of these products. Therefore, the distribution or sale of existing stocks by the registrant is not lawful under FIFRA after March 5, 2003 except for the purposes of returns and shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

B. Distribution and Sale by Other Persons

Sale or distribution by any person of existing stocks of the product identified in the table in Unit II.B. is not lawful under FIFRA after March 5, 2003. The legal sale and distribution of benomyl products ended on December 31, 2002.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 6, 2003.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–4777 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0009; FRL–7291–2]

Pyrimethanil; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0009, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2003–0009. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public

docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0009. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0009. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–20032–0009.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0009. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer Corporation

2F6439 and 9E6054

EPA has received pesticide petitions (2F6439) from Bayer Crop Science, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.518 by establishing tolerances for residues of pyrimethanil (4,6-dimethyl-*N*-phenyl-2-pyrimidinamine) in or on the Raw Agricultural Commodities (RAC): Tree nut, nutmeat, group at 0.25 parts per million (ppm), tree nut, hulls, group at 12 ppm, fruit, pome, group at 0.20 ppm, apple, wet pomace at 0.75 ppm, fruit, stone, group at 3.0 ppm, grape at 3.0 ppm, grape, dry pomace at 20 ppm, grape, wet pomace at 7.0 ppm, grape, raisin waste at 50 ppm, grape, raisin at 5.0 ppm, vegetable, bulb, group at 2.0 ppm, vegetable, tuberous and corm, subgroup at 0.05 ppm, strawberry at 3.0 ppm, tomato at 0.50 ppm, wheat, rotational at 0.05 ppm, cattle, meat at 0.1 ppm, cattle, meat byproducts at 0.1 ppm, and milk at 0.03 ppm. EPA also received a pesticide petition (9E6054) from AgrEvo USA Company, now owned by Bayer Crop Science, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.518 by establishing a tolerance for residues of pyrimethanil in or on the RAC: Banana at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolic profile of pyrimethanil has been investigated following application to five different crops (apple, carrots, grapes, lettuce and tomatoes) and is well understood. In plants, pyrimethanil is the only significant residue ranging from essentially all of the Total Radioactive Residues (TRR) in carrots and tomatoes to 44% in lettuce. Limited metabolism of pyrimethanil occurs with minor amounts (less than 10%) of the phenyl and pyrimidyl hydroxylated metabolites (AE C614276, AE C614277, AE C614278, and AE C621312) being released after acid hydrolysis. Analysis of the foliage from apples and carrots confirmed that the metabolism of pyrimethanil in plants proceeded primarily via hydroxylation of the aromatic ring structures as well as the methyl groups.

2. *Analytical method*. The plant metabolism studies indicated that analysis for the parent compound, pyrimethanil was sufficient to enable the assessment of the relevant residues in crop commodities. Following a dichloromethane surface wash and extraction of the crop matrix and sample cleanup, the analytical enforcement method relies on the use of NMR, High Performance Liquid Chromotography (HPLC), or Thin Layer Chromotography (TLC) for determination of the residue levels and metabolite identification. These methods allow detection and measurement of residues in or on agricultural commodities at or above the proposed tolerance level.

3. *Magnitude of residues*. Magnitude of residue trials were conducted for pyrimethanil on almonds, apples, apricots, grapes, onions, peaches, pears, plums, potatoes, strawberries, and tomatoes. Trials were conducted in the various required regions across the United States. Samples were collected at harvest according to good agricultural practices. The preharvest interval (PHI) ranged from 1–day to 72 days depending on the crop. Samples harvested at maturity were analyzed with a method having a level of quantitation (LOQ) of 0.05 ppm pyrimethanil. Residues in the RAC samples (range, maximum and average) are given below.

i. *Tree nuts (almonds, pistachios, beechnuts, chestnuts, and chinquapins)*. Six trials were conducted on almonds during 2001. An end use formulation containing 400 g/l or 3.34 lbs active ingredient/gallon of pyrimethanil was applied three times as a broadcast application at a maximum rate of 0.70 lbs active ingredient/acre. Applications were made approximately every 7 days. In almond hull RAC samples collected, the maximum residues were 10.2 ppm for pyrimethanil at a 30 ± 1–day preharvest interval. In almond nutmeat RAC samples collected, the maximum residues were 0.135 ppm for pyrimethanil at a 30 ± 1–day preharvest interval. According to Agency standard operating procedure 2000.1, residue trials on almonds will support the use of this product on pistachios, beechnuts, chestnuts and chinquapins.

ii. *Bulb vegetables (onions, green onions, dry bulb onions, welsh onions, garlic, great-headed garlic, leeks, and shallots)*. Dry bulb and green onions were treated with pyrimethanil, a 400 g/l or 3.34 lbs active ingredient/gallon end use product. Nine trials were established for the study, three in California, two in Texas and one each in, New York, Michigan, Colorado, and Oregon. Each trial was conducted under typical cropping practices for its location. Pyrimethanil was applied to onion plants three times prior to harvest. Applications were made at a nominal rate of 0.71 lb active ingredient/acre, with 7 days between applications, the last application being made 7 days prior to harvest. A control (non-treated) plot was included in each trial. Mean pyrimethanil residue levels found in or on the non-decline trial samples ranged from 0.10 ppm to <LOQ for dry bulb onions and 1.62 ppm to 0.26 ppm for green onions. Pyrimethanil residues declined rapidly in dry bulb onions, with residues of 0.168 at 0 day PHI, 0.074 ppm at 7–day PHI (normal harvest), and <LOQ at 10–day PHI and thereafter. These trials will support registrations on the entire bulb vegetable crop groups.

iii. *Grapes*. Grapes were treated with pyrimethanil, a 400 g/l or 3.34 lb active ingredient/gallon formulation. Twelve RAC residue trials were established for the study, 8 in California, 2 in New York, and 1 each in Washington and Oregon. Pyrimethanil was applied to the grape vines two times, once at 35 days and once at 7 days prior to harvest. Applications were made at a nominal rate of 0.71 lb active ingredient/acre. Mean pyrimethanil residue levels found in or on the grapes sampled at 7 days PHI ranged from 0.13 ppm to 0.47 ppm. At the decline trial, mean pyrimethanil residues declined from 0.51 ppm at 1–day PHI to 0.20 ppm at 28 days PHI. Ground applications of pyrimethanil at a nominal rate of 1 kg active ingredient/hectare at flowering, grape closure, color change and 21 days prior to harvest results in residues of 0.51 ppm in the whole fruit. Processing of the fruit into

commodities results in residues of 0.34 ppm in the juice, 1.18 ppm in wet pomace, 3.31 ppm in dry pomace, 0.80 ppm in raisins, and 9.25 ppm in raisin waste. No concentration of the residue occurs in the juice, a 2.3 fold concentration occurs in the wet pomace, a 6.5 fold concentration occurs in the dry pomace, a 1.6 fold concentration occurs in the raisins, and an 18.1 fold concentration occurs in raisin waste.

iv. *Stone fruits (apricots, nectarines, peaches, plums, chickasaw plums, damson plums, japanese plums, plumcots, and prunes) (except cherries).* Five RAC residue trials were established on apricots, four in California, and one in Washington. Pyrimethanil was applied to the apricot trees three times prior to harvest. Applications were made at a nominal rate of 0.71 lb active ingredient/acre, approximately 69, 9, and 2 days prior to normal harvest. Mean pyrimethanil residue levels found in or on the apricot fruit from the non-decline trials ranged from 0.60 ppm to 1.66 ppm. Mean pyrimethanil residue levels found in or on the fruit from the decline trial ranged, from 1.39 ppm at 0 day PHI to 0.74 ppm at 21 days PHI. In addition, RAC residue trials were established on peaches in Pennsylvania, Georgia, South Carolina, North Carolina, Virginia, Arkansas, Michigan, Oklahoma, and California (four trials). Pyrimethanil was applied to the peach trees times times prior to harvest. Applications were made at a nominal rate of 0.71 lb ai/acre, 69, 9, and 2 days prior to normal harvest. Mean pyrimethanil residue levels found in or on the peach fruit from the non-decline trials ranged from 0.38 ppm to 1.63 ppm. At the decline trial mean pyrimethanil residue levels found in or on the peach fruit ranged from 2.61 ppm at 2 days to 0.95 at 21 days PHI. The apricot and peach trials are sufficient to support registrations on all stone fruits with the exception of cherries.

v. *Pome fruit (apples, pears, oriental pears, crabapples, loquats, mayhew, and quince).* Twelve trials were established for this study, 3 in Washington, 2 in New York, and 1 each in Pennsylvania, Virginia, Michigan, Ohio, Colorado, California, and Idaho. Pyrimethanil was applied to the apple trees four times prior to harvest. Applications were made at a nominal rate of 0.40 lb ai, with 7 days between applications. Mean pyrimethanil residue levels found in or on the apple fruit ranged from less than the 0.05 ppm LOQ to 0.16 ppm. No decline of the residue was seen between 65 and 93 days PHI at the decline trial. A single trial was established in Washington as a processing study. Pyrimethanil was applied to apple trees four times prior to harvest. Applications were made at a nominal rate of 2.0 lb ai/acre, with 7 days between applications. This rate is approximately five times the proposed label application rate. Mean pyrimethanil residue levels found in or on the samples were: Whole apple fruit 0.17 ppm, wet pomace 0.69 ppm, and juice 0.06 ppm. No pyrimethanil-derived residue concentrated from the whole fruit into the apple juice. However, the pyrimethanil residues concentrated from the whole apples into the wet pomace by a factor of 4.

vi. *Tuberous and corm vegetables (potatoes, sweet potatoes, arracacha, arrowroot, artichokes, Chinese artichokes, Jerusalem artichokes, edible canna, cassava, bitter cassava, sweet cassava, chayote root, chufa, dasheen, ginger, leren, tanier, tumeric, yam bean, true yam).* Sixteen trials were established for the study, 4 in Idaho, 2 in Washington, and 1 each in New York, Pennsylvania, North Carolina, Wisconsin, Ohio, Michigan, Minnesota, California, Florida, and Colorado. Pyrimethanil was applied to potato plants five times prior to harvest. Applications were made at a nominal rate of 0.27 lb active ingredient/acre, with 7 days between applications. No pyrimethanil residues at or above the 0.05 ppm LQO of the analytical method were found in or on any samples in the study. Thus, no decline could be determined from the samples taken from the decline trials. A single trial was established in Idaho for the purposes of conducting a potato processing study. Pyrimethanil was applied to the potato plants five times prior to harvest. Applications were made at a nominal rate of 1.34 lb active ingredient/acre, with 7 days between applications. This rate is approximately five times the proposed label application rate. It is also the theoretical concentration factor for potatoes. No pyrimethanil-derived residues (0.05 ppm LOQ) were detected in or on the whole tuber samples. Therefore, it can be stated that no concentration of residues would occur into the processed fractions. For this reason, the processed fractions were not analyzed. According to the crop subgrouping 1C, potatoes will support the use of this product on additional minor crops mentioned above.

vii. *Strawberries.* Eight trials were established for the strawberries RAC residue study. Three trials in California, and one each in Pennsylvania, Wisconsin, Oregon, New Jersey, and Florida. Pyrimethanil was applied to strawberry plants three times prior to harvest. Applications were made at a nominal rate of 0.80 kg active ingredient/hectare (approximately 0.71 lb active ingredient/acre) with 7 days between applications, the last application being made 1–day prior to harvest. Mean pyrimethanil residue levels found in or on the non-decline trial samples ranged from 0.36 ppm (3 days PHI) to 2.33 ppm (1–day PHI). Mean pyrimethanil residue levels in or on samples from the decline trial ranged from 1.33 ppm (1 day PHI) to 0.19 ppm (21 days PHI).

viii. *Tomatoes.* Sixteen trials were established for the tomato RAC residue study, 11 in California, 2 in Florida, and 1 each in Pennsylvania, North Carolina, and Ohio. Pyrimethanil was applied to tomato plants five times prior to harvest, with 7 days between applications. Applications were made at a nominal rate of 0.27 lb active ingredient/acre, the last application being made 1 day prior to harvest. Mean pyrimethanil residue levels found in or on samples from the non-decline trials ranged from less than the 0.05 ppm LOQ of the analytical method to 0.37 ppm. Mean pyrimethanil residue levels found in or on samples from the decline trials ranged from less than the 0.05 ppm LOQI of the analytical method to 0.37 ppm. One trial was conducted in California for the purposes of establishing tomato processing commodities residues. Pyrimethanil was applied to the tomato plants five times prior to harvest. Applications were made at a nominal rate of 1.34 lbs ai/acre, with 7 days between applications, the last application being made 1–day prior to harvest. The mean uncorrected pyrimethanil derived residue in or on the unwashed tomatoes from the trial was 1.35 ppm. The mean uncorrected pyrimethanil derived residue in the tomato puree was 0.45 ppm and 1.57 ppm in the tomato paste. Concentration factors relative to the unwashed tomatoes were 0.33 and 1.16 for the puree and paste respectively. These factors are significantly less than the theoretical concentration factors of 1.4 for the puree and 5.5 for the paste.

ix. *Magnitude of residue trials were conducted on bananas using aerial application equipment that would result in the highest possible residues.* Residues in whole fruit, edible pulp and peel fractions from bagged banana samples were all below the method LOQ. In one unbagged sample, a residue of 0.09 ppm was reported. The proposed tolerance of 0.10 ppm will adequately cover any potential residues in/on banana.

B. Toxicological Profile

1. *Acute toxicity.* Pyrimethanil is of low acute toxicity placing the active

ingredient in Toxicity Category II, III and IV. Pyrimethanil is non-irritating to the eyes and skin and is not a skin sensitizer.

2. *Genotoxicity*. Pyrimethanil is not mutagenic or genotoxic in any assay in either the presence or absence of metabolic activation.

3. *Reproductive and developmental toxicity*. Pyrimethanil is not a developmental or reproductive toxicant.

i. *Teratology—Rat*. Thirty Sprague Dawley rats/group received doses of 0, 7, 85, 1,000 milligrams/kilogram (mg/kg) of pyrimethanil by gavage from gestation days 6–15. At the highest dose tested (HDT), reduced maternal body weight gain was observed during gestation days 6–15, along with a slight but statistically significant decrease in food consumption, hair loss, hunched posture, slight emaciation, and slightly reduced mean fetal body weight. The maternal and developmental no observed adverse effect level (NOAEL) was 85 mg/kg.

ii. *Teratology—Rabbit*. Groups of at least 18 time-mated New Zealand white rabbits received oral gavage doses of 0, 7, 45 or 300 mg/kg/day pyrimethanil over gestation days 7–19. At the HDT, there was a decrease in body weight gain, production of feces and food consumption. Three females were euthanized due to severe emaciation. The HDT, 300 mg/kg/day exceeded the maternal maximum tolerated dose (MTD). The maternal NOAEL was 45 mg/kg/day due to reduced fecal production in 1/3 of the animals. The HDT resulted in reduced mean fetal body weight, increased incidence of runts, delayed skeletal ossification and incidence of fetuses with 13 thoracic vertebrae and ribs. The maternal NOAEL was 7 mg/kg/day. The developmental NOAEL was 45 mg/kg/day.

iii. *Two-generation reproduction—Rat*. Three groups of 30 Sprague-Dawley rats per sex received dietary exposure to pyrimethanil at levels of 0, 1.7, 20.9 or 266.7 mg/kg/day. In the parental generation at the highest dose tested there was a statistically significant decrease in mean body weight gain in both sexes. Mean pup weights, observed on postnatal day (PND1) through weaning, were reduced, though were within the range of historical controls. In the F1 generation at the HDT, mean body weights and mean food consumption were reduced. Though the mean score for the combined sexes was the same as the controls, a marginally different air-righting reflex at PND11 associated with reduced body weight was seen in high dose male pups. The NOAEL for maternal and developmental toxicity was 20.9 mg/kg/day. The reproductive NOAEL was 266.7 mg/kg/day.

4. *Subchronic toxicity—28–day dietary*—i. *Rat*. Five Sprague-Dawley rats/sex/group received dietary exposure to pyrimethanil for 28 days at 0, 844, 1,161, 1,500, and 2,710 mg/kg/day. All doses exceeded the maximum tolerated dose. Severe emaciation was observed at all dose levels. Body weight gains and food consumption were reduced. Liver and thyroid histopathology were observed, along with reduced hemoglobin, Maxium Concentration Volume (MCV), and Mean Corpuscular Hematocrit (MCH). Kidney, adrenal and liver weights were altered. No NOEL or NOAEL was achieved.

ii. *90–Day dietary—Rat*. Ten Sprague-Dawley rats/sex/group received pyrimethanil in the diet at dose levels of 0, 5.4–6.8, 54.5–66.7, 545–667 mg/kg/day (males and females, respectively). High dose animals had reduced body weight gain and food consumption, increased urinary protein in males, colored urine (not blood or bilirubin) and minimal hepatocellular hypertrophy. The NOAEL in males was 54.5–66.7 (males and females, respectively) due to colored urine and a low incidence of minimal centrilobular hepatocellular hypertrophy. The NOAEL was 5.4 mg/kg/day (males) – 6.8 mg/kg/day (females).

iii. *28–Day dietary—Mouse*. Five CD-1 mice/sex/group received dietary doses of 0, 167–236, 567–667, 1,960–2,357 mg/kg/day males and females respectively, for 28 days (all the mice in one additional high dose group, 30,000 ppm, died within the first week of the study). At 1,960–2,357 mg/kg/day, animals experienced body weight loss (females), decreased body weight gain during the first 2 weeks (males), a statistically significant decrease in cholesterol, statistically significant decreases in relative liver weights (females), pigmentation of thyroid follicles, urolithiasis, moderate urothelial hyperplasia in urinary bladder, and slight kidney tubular degeneration (females). The NOAEL was 167–236 mg/kg/day.

iv. *90–Day dietary—Mouse*. Twenty CD-1 mice/sex/group received pyrimethanil diet exposure at dose levels of 0, 12–18, 139–203, 1,864–2,545 mg/kg/day males-females for 90 days. At the high dose, animals had decreased body weight and increased food consumption, cholesterol and total bilirubin. High dose females had increased relative liver weights. Histopathology in the high dose animals was found in the kidneys, liver, thyroid, and urinary bladder. High dose males had slight urinary tract tubular dilation and slight to moderate hyperplasia of bladder epithelium. The NOAEL was determined to be 12 mg/kg/day (males) 18 mg/kg/day (females). Based on mild hepatic glycogen depletion, the NOAEL was 139–203 mg/kg/day (males and females, respectively).

v. *90–Day dietary—Dog*. Four beagle dogs/sex/group received pyrimethanil by gavage for 90 days at doses of 0, 6, 80, 1,000 mg/kg/day. The high dose was lowered to 800 mg/kg/day on day 7 due to frequent and consistent vomiting. Decreased body weight, food and water consumption were observed. Males had a significant reduction in phosphate, while females experienced a slight reduction in sodium, anion gap and total protein. At 80 mg/kg/day, infrequent vomiting after dosing and decreased water consumption were observed. After 4 weeks of dosing at 80 mg/kg/day, males had significantly reduced phosphate. The NOEL was 80 mg/kg/day. The NOAEL was 6 mg/kg/day.

vi. *Dermal toxicity evaluation*. No dermal studies have been conducted for pyrimethanil.

5. *Chronic toxicity—i. Chronic toxicity—Dog*. Four beagle dogs/sex/group received pyrimethanil by gavage at levels of 0, 2, 30, or 250 mg/kg/day for 12 months. The high dose was reduced from 400 to 250 mg/kg/day on day 8 of treatment due to excessive vomiting during the first week of treatment. At the high dose, there was a decrease in mean body weight gain and mean consumption of food and water. The NOAEL for the study was 30 mg/kg/day, with the high dose of 250 mg/kg/day being the NOAEL.

ii. *Combined chronic toxicity/oncogenicity—Rat*. Seventy Sprague-Dawley rats/sex/group received pyrimethanil by diet at levels of 0, 1.3–1.8, 17–22, 221–291 mg/kg/day (males and females, respectively) for 2 years. At the HDT, body weight gain and food consumption were decreased. Absolute liver weights were increased. Histopathology revealed centrilobular hepatocyte hypertrophy, increased incidence of eosinophilic foci (males), thyroid follicular hyperplasia, hypertrophy and colloid depletion, and the presence of a brown pigment, identified as lipofuscin in thyroid follicular cell epithelium. There was a statistically significant, dose-dependent increase in the incidence of benign thyroid follicular cell adenomas. There was no increased incidence in any malignant tumor or increase in tumor multiplicity as a result of daily dietary ingestion of pyrimethanil at any dose

level. The results of special studies, discussed below, demonstrate that the benign thyroid tumors are likely a secondary result of a disruption of thyroid-pituitary homeostasis, a well-known, threshold-mediated mechanism. The NOAEL was 17 mg/kg/day (males) and 22 mg/kg/day (females).

iii. *Oncogenicity—Mouse*. Fifty–one CD-1 mice/sex/group received pyrimethanil by diet at 0, 16, 160, and 1,600 ppm (corresponding to 0, 2–2.5, 20–24.9, 210.9–253.8 mg/kg/day in males and females, respectively). There was an increase in the number of high dose male deaths caused by urogenital tract lesions. Urinary bladder histopathology on those dying during the course of the study indicates an increase in the incidence of male urinary bladder distension, cystitis, urothelial hyperplasia and inflammation of the penis. These findings are consistent with the findings of both the 28–day and 90–day studies indicating that high dose administration of pyrimethanil resulted in urolith formation leading to irritation, distension and hyperplasia of the urinary bladder and urinary tract. Chronic dietary treatment with pyrimethanil produced no increased incidence of tumor-bearing mice nor of any specific tumor type suggestive of a carcinogenic effect. The NOAEL for both sexes was 20–24.9 mg/kg/day (males and females, respectively).

iv. *Special studies*. Since rodent thyroid tumors are fairly common, and since the EPA has established that five lines of evidence are required to prove the thyroid-pituitary disruption mode of action for rodent thyroid tumors, special studies were undertaken.

Thyroid mechanistic study (14–day). Sprague Dawley rats received 378.5 mg/kg/day of pyrimethanil for 14 days to study the effects of pyrimethanil on the thyroid and liver microsomal enzymes. An increase in the levels of UDPGT and a corresponding statistically significant increase in liver weight were observed. Thyroid hormones T4 and T3 were decreased, while TSH levels were significantly increased. All effects were shown to be reversible.

Dietary thyroid function test using perchlorate discharge (7–day). Sprague Dawley rats received 509 mg/kg/day pyrimethanil or 177 mg/kg/day propylthiouracil, or 109 mg/kg/day phenobarbital in order to study the function of the thyroid gland. The animals fed pyrimethanil had 43% decreased body weight gain, 21% decreased food consumption and a 150% increase in uptake of iodine-125. There was no significant discharge of radioactive iodine from the thyroid after administration of perchlorate.

The required five lines of evidence to support the threshold mode of action for thyroid pituitary disruption and rat thyroid tumors are satisfied in the pyrimethanil studies.

EPA's final rule establishing a tolerance for pyrimethanil in wine stated that ''The Agency's Carcinogenicity Peer Review Committee (CPRC)'' chose a non-linear approach MOE based on a NOAEL of 17 mg/kg/day for increased incidences of thyroid tumors in rats. The MOE methodology was selected because of thyroid tumors associated with administration of pyrimethanil in the rat, which may be due to a disruption in the thyroid-pituitary status. This chemical has been classified as a Group C chemical (possible human carcinogen) and a non-linear methodology MOE was applied for the estimation of human cancer risk. The estimated MOE does not exceed the Agency's level of concern and therefore, EPA has a reasonable certainty that no harm will result from exposures to residues of pyrimethanil.

6. *Animal metabolism*. Pyrimethanil is rapidly metabolized and excreted from lactating dairy cows. The observed total radioactive residues in edible tissues and milk were as follows: Milk maximum residue of 0.069 ppm; liver - 0.363 ppm; kidney 0.249 ppm, and muscle 0.017 ppm. The metabolic pathway is similar to that of plants involving hydroxylation of the phenyl and pyrimidine rings as well as hydroxylation of the methyl substituents. Further metabolic reactions occur including cleavage of the phenyl ring to produce substituted pyrimidines. The major metabolite was AE C614276 (46% of the kidney residues, 63% of the milk residues resulting from hydroxylation of the phenyl ring. Hydroxylation of the pyrimidinyl ring of pyrimethanil resulted in formation of minor amounts of AE C614277. Hydroxylation of the methyl groups of pyrimethanil resulted in formation of minor amounts of AE C614278. Hydroxylation of the methyl groups of AE C614276 resulted in formation of minor amounts of AE C614800.

7. *Metabolite toxicology*. The primary residue of concern in both crop and animal commodities is pyrimethanil. In the animal metabolism, since major metabolites are produced following the oral administration of pyrimethanil, toxicology data for metabolites are completely supported by data obtained for pyrimethanil.

8. *Endocrine disruption*. Chronic, life span, and multi-generational bioassays in mammals and acute and subchronic studies on aquatic organisms and wildlife did not reveal endocrine effects. Any endocrine related effects would have been detected in this definitive array of required tests. The probability of any such effect due to agricultural uses of pyrimethanil is negligible.

C. Aggregate Exposure

1. *Dietary exposure*. Tolerances are proposed under 40 CFR part 180 for pyrimethanil in or on tree nuts, bulb vegetables, grapes, stone fruits (except cherries), pome fruit, tuberous and corm vegetables, strawberries, and tomatoes. An import tolerance for wine grapes has been approved by the EPA. A petition for registration of pyrimethanil on bananas is pending at EPA. There are no residential uses proposed for pyrimethanil. Therefore, potential human risk scenarios cover aggregate exposure from food residues and drinking water.

i. *Food*. Refined estimates of acute dietary exposure from potential pyrimethanil residues on the proposed crops are all well under 100% of the acute reference dose (aRfD) at the 99.^{9th} percentile. The most highly exposed sub population of children (1–6) utilizes 7.9% of the RfD, while the U.S. population utilizes 3.4%. These potential dietary exposures were estimated in a Tier 3 Monte Carlo risk assessment using the DEEM™ software, Version 7.76 (Novigen Sciences, Inc.). The 1994–96, 1998 Continuing Survey of Food Intake by Individuals (CSFII) consumption data from Department of Agriculture (USDA) was used which includes the Supplemental Children's Survey (1998). Residue values included in the assessment were distributions of the field trail values incorporating percent crop treated (PCT) as zeroes for all non-blended and partially blended items. Blended items were included as the average residue and adjusted for PCT. These PCT values are the anticipated market share of pyrimethanil for the crops at market maturity (5 years). Concentration factors derived from processing studies were included where appropriate. Secondary residues for meat and milk were included in the assessment. These were calculated using theoretical dietary burdens from sensible diets for beef and dairy cattle and tissue to feed ratios from the ruminant feeding study.

Refined chronic dietary exposure estimates resulting from the proposed uses of pyrimethanil are well within acceptable limits for all population subgroups examined. The most highly exposed group of children (1–6) utilized 0.3% of the RfD with the .U.S

population utilizing 0.1% of the RfD. A Tier 3 chronic analysis was done using the DEEM™ software, Version 7.76 (Novigen Sciences, Inc.). The 1994–96, 1998 CSFII consumption data from USDA were used. Average anticipated residue values were calculated from the appropriate field trial studies conducted for pyrimethanil. The average residue values were adjusted by the projected PCT at product maturity. Concentration factors derived from processing studies were included where appropriate. Secondary residues were calculated using theoretical dietary burdens derived from sensible diets for beef and dairy cattle and tissue to feed ratios from the ruminant feeding study.

ii. *Drinking water*. U.S. EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was followed to perform the Tier 1 drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessments, including water models such as Screening Concentration in Ground Water (SCI-GROW), FIRST, Pesticide Root Zone Model (PRZMS)/EXAMS, and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface and ground water and the highest levels (whether ground or surface) are assumed to be the drinking water residue. In the case of pyrimethanil, monitoring data are not available. SCI-GROW and FIRST were used to estimate a drinking water residue. Calculation of the Drinking Water Estimate Concentration (DWEC) for surface water for the worst case pyrimethanil use scenario results in an acute DWEC of 122 parts per billion (ppb) and a chronic DWEC of 37 ppb. DWLOCs calculated based on the acute and chronic risk assessments described above are many fold higher than these conservative DWECs. The adult acute and chronic DWLOCs are 10,146 ppb and 5,944 ppb respectively. Children's acute and chronic DWLOCs are 2,762 ppb and 1,695 ppb respectively.

2. *Non-dietary exposure*. Pyrimethanil products are not labeled for residential uses (food or non-food), thereby eliminating the potential for residential exposure or non-occupational exposure.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' There are no available data to determine whether pyrimethanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyrimethanil does not appear to form a toxic metabolite produced by other substances. For the purposes of the tolerance petition and this reduced risk rationale, therefore, it has been assumed that pyrimethanil does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. Using the assumptions and data described above, based on the completeness and reliability of the toxicity data, it is concluded that dietary risk from the proposed uses of pyrimethanil are acceptable for all populations examined. Chronic exposure for the U.S. population utilizes 0.1% (0.00015 mg/kg bwt/day) of the cRfD. Acute exposure for the U.S. population utilizes 3.4% (0.01012 mg/kg bwt/day) of the aRfD. The most highly exposed population of children 1–6 utilizes only 0.3% of the cRfD and 7.9% of the aRfD. The actual exposures are likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD (acute or chronic), because the RfD represents the level at or below which exposure will not pose appreciable risk to human health. DWLOC for adults both acute (10,146 ppb) and chronic (5,944 ppb) are several orders of magnitude above the conservative DWEC for acute (122 ppb) and chronic (37 ppb) worst case scenarios. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) to residues of pyrimethanil.

2. *Infants and children*. The relevant toxicity studies as discussed in the toxicology section above show no extra sensitivity of infants and children to pyrimethanil, therefore, the FQPA safety factor can be removed. Using the assumptions and data described in the exposure section above, it is concluded that dietary risk from the proposed uses of pyrimethanil are acceptable for all infant and children sub-populations examined. The most highly exposed sub-population was children 1–6 for both the chronic and acute analyses. The sub-population children 1–6 utilizes 0.3% (0.00047 mg/kg bwt/day) of the cRfD and 7.9% (0.02377 mg/kg bwt/day) of the aRfD. All other infant and children populations have less exposure. The chronic and acute drinking water levels of concern for children (1,695 ppb and 2,762 ppb respectively) are well above the conservative DWEC for chronic and acute scenarios. The chronic DWEC is 37 ppb and the acute DWEC is 122 ppb. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of pyrimethanil.

F. International Tolerances

Maximum residue limits for pyrimethanil have not been established by the Codex Alimentarius Commission.

[FR Doc. 03–5032 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0027; FRL–7291–1]

Imidacloprid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0027, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5409; e-mail address: *daniel.dani@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0027 The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is

placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0027.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0027. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 0E6074

EPA has received a pesticide petition (0E6074) from Bayer CropScience, 2 T.W. Alexander Drive, PO Box 12014, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.472, by establishing an import tolerance for residues of imidacloprid, [(1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine] in or on the raw agricultural commodity (RAC): Banana at 0.01 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method.* The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary gas chromatography mass spectrometry (GC-MS) selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and high performance liquid chromatography ultraviolet (HPLC-UV) which has been validated by EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues.* For bananas, Bayer conducted 12 residue crop field trials to evaluate the quantity of imidacloprid expected in bananas from applications of Confidor 70 WG and Confidor 350 SC. Trials were conducted at eight sites in the Caribbean coastal area of Central America and 4 sites in

the Pacific coastal area of Ecuador. Imidacloprid residues in banana whole fruit were quantitated by GC using a mass selective detector. The limit of quantitation (LOQ) was 0.01 ppm. The highest average field trial (HAFT) was 0.01 ppm in bananas.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} values for imidacloprid technical ranged from 424 milligrams/kilograms (mg/kg) in the male rat and <450 mg/kg in the female rat. The acute dermal LD_{50} was <5,000 mg/kg in the rat. The 4–hour rat inhalation LC_{50} was <5.33 mg/L. Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs. In an acute neurotoxicity study the lowest observed adverse effect level (LOAEL) = 42 mg/kg body weight day (bwt/day).

2. *Genotoxicty*. Mutagenicity studies have demonstrated that imidacloprid is non-mutagenic both *in vivo* and *in vitro*.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study with Sprague-Dawley rats, groups of pregnant animals (25/group) received oral administration of imidacloprid (94.2%) at 0, 10, 30, or 100 mg/kg bwt/day during gestation days 6 through 16. Maternal toxicity was manifested as decreased body weight gain at all dose levels and reduced food consumption at 100 milligrams/kilograms of body weight/day (mg/kg bwt/day. No treatment-related effects were seen in any of the reproductive parameters (i.e., Cesarean section evaluation). At 100 mg/kg bwt/day, developmental toxicity manifested as wavy ribs (fetus = 7/149 in treated vs. 2/158 in controls and litters, 4/25 vs. 1/25). For maternal toxicity, the LOAEL was 10 mg/kg bwt/day lowest dose tested (LDT) based on decreased body weight gain; a NOAEL was not established. For developmental toxicity, the NOAEL was 30 mg/kg bwt/day and the LOAEL was 100 mg/kg bwt/day based on increased wavy ribs master record identification (MRID No. 42256338). In a developmental toxicity study with Chinchilla rabbits, groups of 16 pregnant does were given oral doses of imidacloprid (94.2%) at 0, 8, 24, or 72 mg/kg bwt/day during gestation days 6 through 18. For maternal toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on mortality, decreased body weight gain, increased resorptions, and increased abortions. For developmental toxicity, the NOAEL was 24 mg/kg bwt/day and the LOAEL was 72 mg/kg bwt/day based on decreased fetal body weight, increased resorptions, and increased skeletal abnormalities (MRID No. 42256339). In a 2-generation reproductive toxicity study, imidacloprid (95.3%) was administered to Wistar/Han rats at dietary levels of 0, 100, 250, or 700 ppm (0, 7.3, 18.3, or 52.0 mg/kg bwt/day for males and 0, 8.0, 20.5, or 57.4 mg/kg bwt/day for females) (MRID No. 42256340, Doc. No. 010537). For parental/systemic/reproductive toxicity, the NOAEL was 250 ppm (18.3 mg/kg bwt/day) and the LOAEL was 750 ppm (52 mg/kg bwt/day), based on decreases in body weight in both sexes in both generations. Based on these factors, EPA recommended that the Data Evaluation Record should be revised to indicate the parental/systemic/reproductive NOAEL and LOAEL to be 250 and 700 ppm, respectively, based upon the body weight decrements observed in both sexes in both generations.

4. *Subchronic toxicity*. In a dermal toxicity study, groups of five male and five female New Zealand white rabbits received repeated dermal applications of imidacloprid (95%) at 1,000 mg/kg bwt/day (LD), 6 hours/day, 5 days/week for 3 weeks. No dermal or systemic toxicity was seen. For systemic and dermal toxicity, the NOAEL was <1,000 mg/kg bwt/day, a LOAEL was not established (MRID No. 42256329). In an oral toxicity study, groups of Fischer 344 rats (12/sex/dose) were fed diets containing imidacloprid (98.8%) at 0, 150, 1,000, or 3,000 ppm (0, 9.3, 63.3, or 196 mg/kg bwt/day in males and 0, 10.5, 69.3 or 213 mg/kg bwt/day in females, respectively) for 90 days. No treatment-related effects were seen at 150 ppm. Treatment-related effects included decreases in body weight gain during the first 4 weeks of the study at 1,000 ppm (22% in males and 18% in females) and 3,000 ppm (50% in males and 25% in females) with an associated decrease in forelimb grip strength especially in males. The NOAEL was 150 ppm (9.3 and 10.5 mg/kg bwt/day in males and females, respectively) and the LOAEL was 1,000 ppm (63.3 and 69.3 mg/kg bwt/day in males and females, respectively) (MRID No. 43286401). In a rat inhalation study (28–day study in which rats were exposed 6 hours/day, 5 days/week for 4 weeks), the NOAEL for imidacloprid was 5.5 mg/m^3 (MRID No. 422730–01).

5. *Chronic toxicity*. In a chronic toxicity study, groups of beagle dogs (4/sex/dose) were fed diets containing imidacloprid (94.9%) at 0, 200 or 1,250/2,500 ppm (0, 6.1, 15 or 41/72 mg/kg bwt/day, respectively) for 52 weeks. The 1,250 ppm dose was increased to 2,500 ppm from week 17 onwards. The threshold NOAEL was 1,250 ppm (41 mg/kg bwt/day). The LOAEL was 2,500 ppm (72 mg/kg bwt/day) based on increased cytochrome-P-450 levels in both sexes and was considered to be a threshold dose. Due to the lack of toxicity at 1,250 ppm, a LOAEL was not established in this study following the dose increase to the 2,500 ppm level, toxicity was observed, thus making 1,250 ppm the threshold NOAEL and 2,500 ppm the threshold LOAEL (MRID No. 42273002).

6. *Animal metabolism*. The metabolism imidacloprid in rats was reported in seven studies. These data show that imidacloprid was rapidly absorbed and eliminated in the excreta (90% of the dose within 24 hours), demonstrating no biologically significant differences between sexes, dose levels, or route of administration. Elimination was mainly renal (70–80% of the dose) and fecal (17–25%). The major part of the fecal activity originated in the bile. Total body accumulation after 48 hours consisted of 0.5% of the radioactivity with the liver, kidney, lung, skin and plasma being the major sites of accumulation. Therefore, bioaccumulation of imidacloprid is low in rats. Maximum plasma concentration was reached between 1.1 and 2.5 hours. Two major routes of biotransformation were proposed for imidacloprid. The first route included an oxidative cleavage of the parent compound rendering 6-chloronicotinic acid and its glycine conjugate. Dechlorination of this metabolite formed the 6-hydroxynicotinic acid and its mercapturic acid derivative. The second route included the hydroxylation followed by elimination of water of the parent compound rendering imidacloprid. A comparison between [methylene-^{14}C]-imidacloprid and [imidazolidine-4,5-^{14}C]-imidacloprid showed that while the rate of excretion was similar, the renal portion was higher with the imidazolidine-labeled compound. In addition, accumulation in tissues was generally higher with the imidazolidine-labeled compound. A comparison between imidacloprid and one of its metabolites, WAK 3839, showed that the total elimination was the same for both compounds. The proposed metabolic pathways for these two compounds were different. WAK 3839 was formed following pretreatment (repeated dosing) of imidacloprid.

7. *Endocrine disruption*. The toxicology data base for imidacloprid is current and complete. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short-term or long-term exposure. These studies revealed no

primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

1. *Dietary exposure.* Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population and selected population subgroups to residues of imidacloprid. These analyses cover all registered crops including rotational crops; uses pending with EPA in the 2003 work plan including dry beans, peas, bushberries, lingonberry, juneberries, salal, carrots, turnips, okra, cranberries, artichoke (globe), watercress, beet roots, leaves of root and tuber vegetables, stone fruit, mamey sapote, guava, feijoa, jaboticaba, wax jambu, starfruit, passion fruit, acerola, strawberry, cucumber (greenhouse), and tomato (greenhouse), this import tolerance petition on bananas; and active and proposed section 18 uses on blueberries, cranberries, table beets, strawberries, turnips.

Novigen Sciences, Inc.'s Dietary Exposure Evaluation Model (DEEM™), which is licensed to Bayer, was used to estimate the chronic and acute dietary exposure. This software uses the food consumption data from the 1994–1998 Department of Agriculture (USDA) continuing surveys of food intake by individuals (CSFII) 1994–1998.

The endpoint for acute dietary risk assessments is based on neurotoxicity characterized by decreases in motor or locomotor activity in female rats at 42 mg/kg bwt/day, the LOAEL from an acute neurotoxicity study. Based on an uncertainty factor (UF) of 10x for inter-species and 10x for intra-species the acute reference dose (aRfD) = 0.42 mg/kg bwt/day. EPA has determined that an additional UF for FQPA (reduced to 3x) applies to all population subgroups for acute risk. Application of the additional 3x safety factor results in an acute population adjusted dose (aPAD) 0.14 mg/kg bwt/day or a margin of exposure (MOE) of 300. For chronic dietary analyses, EPA has established the reference dose (RfD) for imidacloprid at 0.057 mg/kg/day based on a NOAEL of 5.7 mg/kg bwt/day from a rat chronic toxicity carcinogenicity study and uncertainty factors of 10x for inter-species and 10x for intra-species. EPA has determined that an additional UF for FQPA (reduced to 3x) applies to all population subgroups for chronic risk. Application of the additional 3x safety factor results in a chronic population adjusted dose (cPAD) of 0.019 mg/kg bwt/day. Results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of imidacloprid on currently registered and pending uses.

i. *Food.* Acute and chronic (tier 3) risk assessments were made using the results of field trials conducted at maximum label application rates and the shortest pre-harvest intervals. For some of the vegetable crops, these residue data were collected at 1.5x or greater than the maximum label rate of 0.5 lb active ingredient/acre per season. In addition, no adjustments were made to account for dissipation of residues during storage, transportation from the field to the consumer, washing or peeling. Therefore, the actual dietary exposure will be less than that presented here. For the chronic analysis, mean field trial residues were calculated. For the acute Monte Carlo analysis, the entire distribution of residue field trial data was used for the ''non-blended'' and ''partially blended'' foods as determined by EPA's HED SOP 99.6. For the foods considered as ''blended'' by EPA'S HED SOP 99.6, mean field trial residue data were used. As allowed in EPA's draft guidance for submission of probabilistic human health exposure assessments one half limit of detection (LOD)/LOQ values were used for all non-detected values (values below the sensitivity of the method). Bayer's acute Monte Carlo dietary exposure assessment estimated percent of the aPAD and corresponding MOE for the overall U.S. population, (all seasons), and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 7.73% of the aPAD at the 99.9th percentile. The most highly exposed population subgroup, children (1–6 years), had an exposure equal to 16.42% of the aPAD at the 99.9th percentile. Therefore, the acute dietary exposure estimates are below EPA's level of concern for the overall U.S. population as well as the various subpopulations. Bayer's chronic dietary exposure estimated the percent of the cPAD for the overall U.S. population (all seasons) and various subpopulations. In this analysis, the exposure for the total U.S. population was equal to 1.4% of the cPAD. The most highly exposed population subgroup, children (1-6 years), had an exposure equal to 3.0% of the cPAD. Therefore, the chronic exposure estimates are below EPA's level of concern for the overall U.S. population as well as the various subpopulations.

ii. *Drinking water.* EPA, as published in the **Federal Register** of April 10, 2001 (66 FR 18554) (FRL–6777–6), calculated acute and chronic DWLOCs and compared them with the EECs for surface and ground water. Based on this comparison, they determined that acute exposure and chronic exposure would not be expected to exceed the aPAD and cPAD, respectively. It is not expected that the additional exposure from the minor crops pending in EPA's 2003 work plan would significantly change EPA's water assessment.

2. *Non-dietary exposure*—i. *Residential turf.* Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 - 41,546 for 10–year old children and 6,859 - 45,249 for 5–year old children were estimated by comparing dermal exposure doses to the imidacloprid NOAEL of 1,000 mg/kg/day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year old children ranged from 5.6 - 38.2 μg/cm^2 and for 5–year old children from 5.1 - 33.5 μg/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 μg/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide.* Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA and Bayer. Data indicate that the MOS for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0 x 10^{-7} and 2.4 x 10^{-8}, respectively - and exposure can thus be considered negligible.

iii. *Tobacco.* Smoke Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOAEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment.* Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA with the conclusion that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

Imidacloprid is a chloronicotinyl insecticide. At this time, EPA has not made a determination that imidacloprid and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for these tolerance petitions, it is assumed that imidacloprid does not have a common mechanism of toxicity with other substances and only the potential risks of imidacloprid in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population.* EPA has considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. These studies are discussed under section A (Toxicology Profile) above. The developmental toxicity data demonstrated no increased sensitivity of rats or rabbits to *in utero* exposure to imidacloprid. In addition, the multi-generation reproductive toxicity study did not identify any increased sensitivity of rats to *in utero* or post-natal exposure. Parental NOAELs were lower or equivalent to developmental or offspring NOAELs. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different MOS will be safe for infants and children. MOS are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors (UF) in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard UF (usually 100 for combined inter-species and intra-species variability) and not the additional tenfold MOE/UF when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/UF.

Although developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits, no increased sensitivity in pups as compared to adults was seen in the 2-generation reproduction toxicity study in rats, and the toxicology data base is complete as to core requirements, EPA has determined that the additional safety factor for the protection of infants and children will be retained but reduced to 3x based on the following weight-of-the-evidence considerations relating to potential sensitivity and completeness of the data:

i. There is concern for structure activity relationship. Imidacloprid, a chloronicotinyl compound, is an analog to nicotine and studies in the published literature suggests that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*.

ii. There is evidence that imidacloprid administration causes neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study.

iii. The concern for structure activity relationship along with the evidence of neurotoxicity dictates the need of a developmental neurotoxicity study for assessment of potential alterations on functional development. Because a developmental neurotoxicity study potentially relates to both acute and chronic effects in both the mother and the fetus, EPA has applied the additional UF for FQPA for all population subgroups, and in both acute and chronic risk assessments.

Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that the dietary exposure estimates from all label and pending uses of imidacloprid are 7.73% of the aPAD at the 99.9th percentile and 1.4% of the cPAD for the U.S. population. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children.* Based on the exposure assessments described above for the safety determination of the U.S. population and on the completeness and reliability of the toxicity data, it can be concluded that the dietary exposure estimates from all label and pending uses of imidacloprid are 16.42% of the aPAD at the 99.9th percentile and 3.0% of the cPAD for the most sensitive population subgroup, children 1–6 years. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

F. International Tolerances

No CODEX Maximum Residue Levels have been established for residues of imidacloprid on any crops pending in EPA's 2003 work plan.

[FR Doc. 03–5034 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0047; FRL–7294–5]

Trifloxystrobin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0047, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in OPP–2003–0047. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0047. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0047. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0047. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access''

system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0047.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0047. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. The Interregional Research Project No. 4 (IR–4) assembled and submitted the petition to EPA in behalf of Bayer CropScience, the registrant.

Interregional Research Project Number 4 and Bayer CropScience

PP 3E6522

EPA has received a pesticide petition (3E6522) from Interregional Research Project Number 4 (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.555 by establishing a tolerance for residues of trifloxystrobin in or on the raw agricultural commodities (RACs) vegetable, root, except sugar beet, subgroup 1B, except radish at 0.1 part per million (ppm) and leafy petiole subgroup 4B at 2.0 ppm. EPA has determined that the petition contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of trifloxystrobin in plants (cucumbers, apples, wheat, sugar beets, and peanuts), is well understood. Identified metabolic pathways are substantially similar in plants and animals (goat, rat, and hen). EPA has determined that trifloxystrobin parent and its metabolite CGA–321113 are the residues of concern for tolerance setting purposes.

2. *Analytical method.* A practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on RACs has been submitted. The limit of detection (LOD) for each analyte of this method is 0.08 nanogram (ng) injected, and the limit of quantitation (LOQ) is 0.02 ppm. The method is based on crop specific cleanup procedures and determination by gas chromatography (GC) with nitrogen-phosphorus detection.

3. *Magnitude of residues*—i. *Vegetable root, except sugar beet, subgroup 1B, except radish.* Interregional Research Project Number 4 received a request from Michigan for the use of trifloxystrobin on carrots. Interregional Research Project Number 4 performed

10 field trials to support the requested tolerance of 0.1 ppm.

ii. *Leaf petiole subgroup 4B*. Interregional Research Project Number 4 received a request from Florida, Michigan, Oregon, California, and Ohio, for the use of trifloxystrobin on celery. Interregional Research Project Number 4 performed nine field trials to support the requested tolerance of 2.0 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Studies conducted with the technical material of trifloxystrobin:

- *Rat*. Acute oral toxicity study with a lethal dose $(LD)_{50}$ >5,000 milligrams/kilogram (mg/kg).
- *Mouse*. Acute oral toxicity study with a LD_{50} >5,000 mg/kg.
- *Rabbit*. Acute dermal toxicity study with a LD_{50} >2,000 mg/kg.
- *Rat*. Acute dermal toxicity study with a LD_{50} >2,000 mg/kg.
- *Rat*. Acute inhalation toxicity study with a lethal concentration $(LC)_{50}$ >4.65 milligrams/liter (mg/L).
- *Rabbit*. Eye irritation study showing slight irritation (toxicity category III).
- *Rabbit*. Dermal irritation study showing slight irritation (toxicity category IV).
- *Guinea pig*. Dermal sensitization study with the Buehler's method showing negative findings.
- *Guinea pig*. Dermal sensitization study with the maximization method showing some positive findings.

2. *Genotoxicity*. No genotoxicity activity is expected of trifloxystrobin under *in vivo* or physiological conditions. The compound has been tested for its potential to induce gene mutation and chromosomal changes in five different test systems. The only positive finding was seen in the *in vitro* test system (chinese hamster V79 cells) as a slight increase in mutant frequency at a very narrow range (250 – 278 micrograms/milliliter (µg/ml) of cytologic and precipitating concentrations (compound solubility in water was reported to be 0.61 µg/ml; precipitate was visually noted in culture medium at 150 µg/ml). The chemical was found to be non-mutagenic in the *in vivo* system or all other *in vitro* systems. Consequently, the limited gene mutation activity in the V79 cell line is considered a nonspecific effect under non-physiological *in vitro* conditions and not indicative of a real mutagenic hazard.

3. *Reproductive and developmental toxicity*. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base on trifloxystrobin relative to prenatal and postnatal effects for children is complete.

In assessing the potential for additional sensitivity of infants and children to residues of trifloxystrobin, data were considered from teratogenicity studies in the rat, rabbit, and a 2–generation reproduction studies in the rat. The teratogenicity studies are designed to evaluate adverse effects on the developing embryo as a result of chemical exposure during the period of organogenesis. Reproduction studies provide information on effects from chemical exposure on the reproductive capability of mating animals and systemic and developmental toxicity from *in utero* exposure.

In the rat teratology study, reductions in body weight gain and food consumption were observed in the dam at ≥100 mg/kg. No teratogenic effects or any other effects were seen on pregnancy or fetal parameters except for the increased incidence of enlarged thymus, which is a type of variation, at 1,000 mg/kg. The developmental no observed adverse effect level (NOAEL) was 100 mg/kg.

In the rabbit teratology study, body weight loss and dramatically reduced food consumption were observed in the dam at ≥250 mg/kg. No teratogenic effects or any other effects were seen on pregnancy or fetal parameters except for the increase in skeletal anomaly of fused sternebrae–3 and –4 at the top dose level of 500 mg/kg. This finding is regarded as a marginal effect on skeletal development that could have resulted from the 40–65% lower food intake during treatment at this dose level. The developmental NOAEL was 250 mg/kg.

In the 2–generation rat reproduction study, body weight gain and food consumption were decreased at ≥750 ppm, especially in females during lactation. Consequently, the reduced pup weight gain during lactation (≥750 ppm) and the slight delay in eye opening (1,500 ppm) are judged to be a secondary effect of maternal toxicity. No other fetal effects or any reproductive changes were noted. The low developmental NOAEL, 50 ppm (5 mg/kg), seen in this study was probably due to the lack of intermediate dose levels between 50 and 750 ppm. Based on an evaluation of the dose-response relationship for pup weight at 750 ppm and 1,500 ppm, the NOAEL should have been nearly ten-fold higher if such a dose was available.

Based on all these teratology and reproduction studies, the lowest NOAEL for developmental toxicity is 5 mg/kg while the lowest NOAEL in the subchronic and chronic studies is 2.5 mg/kg/day (from the rat chronic study). Therefore, no additional sensitivity for infants and children to trifloxystrobin is suggested by the data base.

4. *Subchronic toxicity*. In subchronic studies, several mortality related changes were reported for the top dose in dogs (500 mg/kg) and rats (800 mg/kg). At these dose levels, excessive toxicity has resulted in body weight loss and mortality with the associated and nonspecific changes in several organs (such as atrophy in the thymus, pancreas, bone marrow, lymph node, and spleen) which are not considered specific target organs for the test compound.

In the dog, specific effects were limited to hepatocellular hypertrophy at ≥150 mg/kg and hyperplasia of the epithelium of the gall bladder at 500 mg/kg. Target organ effects in the rat were noted as hepatocellular hypertrophy (≥200 mg/kg) and the related liver weight increase (≥50 mg/kg). In the mouse, target organ effects included single cell necrosis (≥300 mg/kg) and hypertrophy (1,050 mg/kg) in the liver and extramedullary hematopoiesis (≥300 mg/kg) and hemosiderosis in the spleen (1,050 mg/kg).

In general, definitive target organ toxicity, mostly in the liver, was seen at high feeding levels of over 100 mg/kg for an extended treatment period. At the lowest observed adverse effect level (LOAEL), no serious toxicity was observed other than mostly non-specific effects including a reduction in body weight and food consumption or liver hypertrophy.

5. *Chronic toxicity*. The liver appears to be the major primary target organ based on the chronic studies conducted in mice, rats, and dogs. It was identified as a target organ in both the mouse and the dog studies with trifloxystrobin. However, no liver effect was seen in the chronic rat study which produced the lowest NOAEL of 2.5 mg/kg based on reduced body weight gain and food consumption seen at higher dose levels.

The compound did not cause any treatment-related increase in general tumor incidence, any elevated incidence of rare tumors, or shortened time to the development of palpable or rapidly lethal tumors in the 18–month mouse and the 24–month rat studies. Dosages in both studies were sufficient for identifying a cancer risk. In the absence of carcinogenicity, a reference dose

(RfD) approach is appropriate for quantitation of human risks.

6. *Animal metabolism*. Trifloxystrobin is moderately absorbed from the gastrointestinal tract of rats and is rapidly distributed. Subsequent to a single oral dose, the half life of elimination is about 2 days and excretion is primarily via bile. Trifloxystrobin is extensively metabolized by the rat into about 35 metabolites, but the primary actions are on the methyl ester (hydrolysis into an acid), the methoxyimino group (O-demethylation), and the methyl side chain (oxidation to a primary alcohol). Metabolism is dose dependent as it was almost complete at low doses but only about 60% complete at high doses.

In the goat, elimination of orally administered trifloxystrobin is primarily via the feces. The major residues were the parent compound and the acid metabolite (CGA–321113) plus its conjugates. In the hen, trifloxystrobin is found as the major compound in tissues and in the excreta, but hydroxylation of the trifluormethyl-phenyl moiety and other transformations, including methyl ester hydrolysis and demethylation of the methoxyimino group, are also seen. In conclusion, the major pathways of metabolism in the rat, goat, and hen are the same.

7. *Metabolite toxicology*. Metabolism of trifloxystrobin has been well characterized in plants, soil, and animals. In plants and soil, photolytically induced isomerization results in a few minor metabolites not seen in the rat; however, most of the applied materials remained as parent compound as shown in the apple and cucumber studies. All quantitatively major plant and/or soil metabolites were also seen in the rat. The toxicity of the major acid metabolite, CGA–321113 (formed by hydrolysis of the methyl ester), has been evaluated in cultured rat hepatocytes and found to be 20 times less cytologic than the parent compound. Additional toxicity studies were conducted for several minor metabolites seen uniquely in plants and/or soil. The studies indicate that these metabolites, including CGA–357261, CGA–373466, and NOA–414412, are not mutagenic to bacteria and are of low acute toxicity (LD_{50} >2,000 mg/kg).

In conclusion, the metabolism and toxicity profiles support the use of an analytical enforcement method that accounts for parent trifloxystrobin.

8. *Endocrine disruption*. CGA–279202 does not belong to a class of chemicals known for having adverse effects on the endocrine system. Developmental toxicity studies in rats, rabbits, and reproduction study in rats, gave no indication that CGA–279202 might have any effects on endocrine function related to development and reproduction. The subchronic and chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. Assessments were conducted to evaluate potential risks due to chronic and acute dietary exposure of the U.S. population and selected population subgroups to residues of trifloxystrobin. These analyses cover all registered crops plus the crops of vegetable, root, except sugar beet, subgoup1B, except radish; and the leafy petiole subgroup 4B.

The dietary exposure evaluation model ((DEEM™) v.7.76 software) was used to estimate the chronic and acute dietary exposure. This software uses the food consumption data from the United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals CSFII 1994–1998.

EPA established an acute population adjusted dose (aPAD) of 2.5 milligrams/kilogram/day (mg/kg/day) for acute dietary risk assessments based on a NOAEL of 250 milligrams/kilogram of body weight/day from a rabbit developmental toxicity study and an uncertainty factor (UF) of 100. For chronic dietary analyses, EPA established a chronic population adjusted dose (cPAD) of 0.038 based on a NOAEL of 3.8 from a rat reproductive toxicity study and UF of 100.

Bayer CropScience believes that results from the acute and chronic dietary exposure analyses described below demonstrate a reasonable certainty that no harm to the overall U.S. population or any population subgroup will result from the use of trifloxystrobin on currently registered uses plus the pending uses on vegetable root crops, except sugar beets, subgoup1B, except radish; and the leafy petiole subgroup 4B.

i. *Food*. Acute and chronic dietary exposure assessments were performed using tolerance values for all crops and assuming 100% crop treated. Acute exposure, expressed at the 95th percentile of exposure, was 0.59% of the aPAD for females 13 to 50 years old (only population subgroup of concern). The chronic exposure was 17.3% cPAD for the total U.S. population and 51.5% cPAD for the most sensitive population, children 1 to 6 years old.

ii. *Drinking water*. Using DEEM software, acute and chronic drinking water levels of concern (DWLOC) were calculated. The acute DWLOC was 74,560 and the chronic DWLOC was 1,100 for the total U.S. population and 184 for the most sensitive population subgroup, children 1 to 6 years old. These values are above the estimated concentrations of trifloxystrobin and its metabolites in drinking water as published in the **Federal Register** of May 22, 2002, (67 FR 35915–35924) (FRL–7178–6). Therefore, Bayer CropScience believe that there is reasonable certainty that exposure from trifloxystrobin will not result in harm to the adult U.S. population or infants and children.

2. *Non-dietary exposure*. As published in the **Federal Register** of May 22, 2002, (67 FR 35915–35924) (FRL–7178–6), EPA calculated post application exposure estimates and risk estimates for adults and children resulting from the use of trifloxystrobin on turf and recreational use sites.

The margin of exposure (MOE) that resulted were above 100 and all risks were considered below EPA's level of concern (LOC).

D. Cumulative Effects

EPA has determined that unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, trifloxystrobin does not appear to produce a toxic metabolite produced by other substances. Therefore, EPA has not assumed, as published in the **Federal Register** of May 22, 2002, (67 FR 35915–35924) (FRL–7178–6), that trifloxystrobin has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. Based on the information supplied under aggregate exposure described above, Bayer CropScience believe that there is reasonable certainty that exposure from trifloxystrobin will not result in harm to the adult U.S. population.

2. *Infants and children*. Based on the information supplied under aggregate exposure described above, Bayer CropScience believes that there is reasonable certainty that exposure from trifloxystrobin will not result in harm to infants and children.

F. International Tolerances

There are no codex, Canadian, or Mexican maximum residue limits (MRLs) established for trifloxystrobin.

[FR Doc. 03–5193 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0051; FRL–7294–3]

Ammonium Thiosulfate; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0051, must be received on or before April 4, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: tompkins.jim]@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111)
- Crop production (NAICS 112)
- Animal production (NAICS 311)
- Food manufacturing, and

Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket (ID) number OPP–2003–0051. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in docket ID number OPP–2003–0051. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0051. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0051.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0051. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 20, 2003.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Siemer and Associates Inc., and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Siemer and Associates, Inc.

PP 6F4789

EPA has received a pesticide petition (PP 6F4789) from Siemer and Associates, Inc. on behalf of National Chelating, 4672 West Jennifer, Suite 103, Fresno, CA 93722, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirements for a tolerance for ammonium thiosulfate when used for blossom thinning on apples.

Pursuant to the section 408(d)(2)(A)(i) of the FFDCA, as amended, Siemer and Associates, Inc., on behalf of National Chelating has submitted the following

summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Siemer and Associates, Inc., and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

On August 30, 1996 Siemer and Associates on behalf of National Chelating petitioned EPA, under pesticide petition 6F4789, for a permanent exemption from the requirements of a tolerance for ammonium thiosulfate on apples.

Section 408(b)(2)(A) of the amended Federal Food, Drug, and Cosmetic Act allows the EPA to establish an exemption from the requirements for a tolerance only if the Administrator determines that there is a ''reasonable certainty that no harm will result from the aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.''

The available information indicates that there is a reasonable certainty that no harm will result from various types of exposure. Requests for waivers from the requirements of performing studies for known chemistry are presented and substantiated. The following is a summary of the information submitted to EPA, to support the establishment, under Section 408(b)(2)(D) of the amended FFDCA, of a tolerance for ammonium thiosulfate on apples.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of ammonium thiosulfate in apple is adequately understood. The requirement for residue studies was waived by EPA based on the knowledge that ammonium thiosulfate has been used as a soil applied and foliar applied fertilizer for many years. Prior experience and numerous publications teach that ammonium thiosulfate ionizes when placed into water, forming an ammonium ion and a thiosulfate ion which further degrades to form elemental sulfur and a sulfate ion. The sulfur is further oxidized to form a sulfate ion. The ammonium and sulfate ions thus formed are absorbed into the growing plant and moved into the naturally occurring nitrogen and sulfate pools that occur naturally in growing plants. Once applied to the plant, without isotope identification, it is not possible to separate the ammonium and sulfate ions that will occur from those that already occur naturally in the plant. On this basis, an exemption from the requirements of a tolerance is justified. There is no analytical method needed since there is no practical way to separate the ammonium and sulfate ions from those that naturally occur.

2. *Analytical method.* The need for an analytical method is waived on the basis that there is no need for analyzing for the component of ammonium and sulfate ion applied for blossom thinning purposes.

3. *Magnitude of residues.* No residues of ammonium thiosulfate will be identified separately from those ammonium and sulfate ions naturally occurring. This result supports the proposed exemption from the requirements for a tolerance.

B. Toxicological Profile

A request to waive the battery of mammalian toxicity studies for ammonium thiosulfate is based on and justified by the following:

1. *Acute toxicity.* Based on EPA criteria, ammonium thiosulfate previously registered for a non-food use as an ornamental herbicide has been shown to be relatively non-toxic and has been registered for non-food use purposes as a Category III herbicide. These data have previously been supplied to the agency.

2. *Genotoxicity.* A request for a waiver from the following requirements is made on the basis that sodium thiosulfate is on the Food and Drug Administration's Generally Recognized as Safe (GRAS) list at 21 CFR 184.1807, and ammonium thiosulfate is already exempted from the requirements of a tolerance when used in accordance with good agricultural practices as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest (at 40 CFR 180.1001(c)). Ammonium thiosulfate ionizes to form ammonium ion and thiosulfate ion in water with neither of these ions being mutagenic or genotoxic. On that basis the following tests are requested to be waived.

i. Gene Mutation - Ames.

ii. *In vitro* Structural chromosomal aberration assay.

iii. *In vitro* CHO/HGPRT assay.

iv. *In vivo* micronucleus aberration assay.

3. *Reproductive and developmental toxicity.* A request for waiving the data requirements for the following is made on the basis of the discussion in paragraph B. above. In addition, all of the tests listed below rely on feeding the test substance, to animals that have acidic stomachs. Placing ammonium thiosulfate into an acidic environment will cause near instantaneous ion formation giving rise to ammonium and thiosulfate ions, which ultimately breaks down to elemental sulfur and sulfite. These sulfur forms will be quickly oxidized under acidic conditions to sulfate, which will be incorporated into the normal sulfate pool that exists within the metabolic system of the various animal test systems. The ammonium ion will react with the acidic component, most likely forming ammonium chloride which will be metabolized in a well understood pathway in the systems of the various animal test systems. The new moiety formed in this acidic medium is the sulfite ion which also is well understood and is quickly oxidized to sulfate. The FDA instituted studies in 1975 and 1985 on the GRAS status of sulfite and, as a result of these studies, has substantiated the GRAS status except for a few individuals that might be allergic to sulfite. In this proposed usage, however, the sulfite will not reach the possibly allergic people, since the sulfite will be metabolized to sulfate in the plant system before reaching any sensitive people who may consume the treated tissue. The data waivers requested are as follows:

i. Teratology in rats.

ii. Teratology in rabbits.

iii. 2-Generation reproduction in rats.

4. *Subchronic toxicity.* The data requirements listed below are requested to be waived on the basis illustrated above at paragraph B. 3.

i. 28–Day dermal in rats.

ii. 13–Week oral feeding in rats.

iii. 90–Day oral feeding in dogs.

5. *Chronic toxicity.* The data requirements listed below are requested to be waived for reasons listed above at paragraph B. 3.

i. 1–Year chronic toxicity in dogs.

ii. 18–month chronic toxicity and carcinogenicity in mice.

iii. 24–month chronic toxicity and carcinogenicity in rats.

6. *Animal metabolism.* The metabolism of ammonium thiosulfate is well understood in animals. As listed above, this substance rapidly ionizes in the acidic portion of the animal gut, giving rise to ammonium ion and sulfate ion. Both of these substances are required and occur in the metabolism of animals.

7. *Metabolite toxicology.* No toxicologically significant metabolites will be detected in plant or animal metabolism studies using ammonium thiosulfate. Therefore, no metabolites are required to be regulated.

8. *Endocrine effects.* There is no information available that suggest that

ammonium thiosulfate would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*—i *Food*. There will be no residues of ammonium thiosulfate that will reach any portion of the U.S. population as a result of using ammonium thiosulfate as a blossom thinner on apples. The ammonium and sulfate ions that will arise will not be different from the naturally occurring forms of the ions, which exceed by far the amount that will be applied as a result of the use of the ammonium thiosulfate.

ii. *Drinking water.* Ammonium and sulfate ions that arise from ammonium thiosulfate use will add no additional burden to the drinking water. The end points of the two ions formed as a result of ammonium thiosulfate use will both be used in plant nutrition. The ammonium form of nitrogen resists leaching by binding to the colloid fraction in the soil to resist ground water contamination. The amount of sulfate added as a result of the described use will add an imperceptible amount to the sulfate level already in existence in the soil.

There is a reasonable certainty that no harm will result from dietary exposure to ammonium thiosulfate, because dietary exposures to residues on food cannot be differentiated from those that will occur naturally in food, and exposure through drinking water is expected to be insignificant.

2. *Non-dietary exposure.* There is no non-dietary exposure expected, since any ammonium thiosulfate finding its way onto the plants or around any plants will be absorbed and metabolized into naturally occurring plant constituents.

D. Cumulative Effects

There are no cumulative effects expected since the ammonium thiosulfate metabolites are all incorporated into naturally occurring constituents found in all plant systems.

E. Safety Determination

1. *U.S. population.* The natural occurrence of the metabolites of the ammonium and sulfate ions in all plants and in humans is the basis for the Generally Recognized As Safe characterization of the thiosulfate ion and the use of the ammonium ion as a component in nearly all fertilizers, supports the conclusion that there is a ''reasonable certainty of no harm'' from aggregate exposure to ammonium thiosulfate.

2. *Infants and children.* No developmental, reproductive or fetotoxic effects have been associated with ammonium thiosulfate and its use as a fertilizer. The calculation of safety margins with respect to ammonium thiosulfate is unnecessary since the ammonium and sulfate ions that will arise from the use of ammonium thiosulfate will add only slightly to the already naturally occurring nitrogen and sulfur pools in existence in various plants. Since there will be no residues of toxicological significance resulting from ammonium thiosulfate, calculations of safety margins are not necessary based on the lack of any unnatural residues.

F. International Tolerances

There is no codex maximum residue level established for ammonium thiosulfate on apple. However, ammonium thiosulfate is widely used as a nutrient in many parts of the world.

[FR Doc. 03–5036 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0305; FRL–7281–6]

Pesticides; Final Guidance for Pesticide Registrants on Labeling of Pesticide Products Under the National Organic Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of a pesticide registration notice (PR Notice) titled ''Labeling of Pesticide Products Under the National Organic Program.'' This PR Notice was issued by the Agency on January 31, 2003 and is identified as PR Notice 2003–1. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular final PR Notice provides guidance to the registrant concerning obtaining EPA approval of pesticide product label language indicating that all ingredients (active and inert) in a pesticide product and all uses of that pesticide product meet the criteria defined in the National Organic Program Rule. This notice is being issued because of registrant requests to be able to identify, on pesticide product labels, pesticide products that are allowable under the National Organic Program.

FOR FURTHER INFORMATION CONTACT: Robert Torla, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8098; fax number: (703) 308–7026; e-mail address: *torla.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who wish to consider including language on their pesticide labeling identifying their pesticide product as allowable under the National Organic Program. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Guidance Does this PR Notice Provide?

This PR Notice provides guidance to the registrant concerning how registrants may obtain EPA approval of label language indicating that all ingredients (active and inert) in a pesticide product and all uses of that product meet the criteria defined in the National Organic Program Rule (7 CFR part 205). This notice provides information on:

1. The conditions which must be met for approval of the label language.
2. An example of acceptable label language.
3. Guidance on materials to be submitted for Agency review.
4. Guidance for inserting label language on pesticide products exempted from FIFRA regulation under 40 CFR 152.25.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

IV. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0305. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. You may obtain an electronic copy of other PR Notices, both final and draft, at http://www.epa.gov/opppmsd1/PR_Notices.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit IV.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 31, 2003.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 03–4775 Filed 3–4–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–510]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 28, 2003, the Commission released a public notice announcing the March 19, 2003 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATE: Wednesday, March 19, 2003 9 am.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov.* The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: *Released:* February 28, 2003.

The North American Numbering Council (NANC) has scheduled a meeting to be held Wednesday, March 19, 2003, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Wednesday, March 19, 2003, 9 am

1. Announcements and Recent News
2. Approval of Minutes
   —Meeting of January 22, 2003
3. Report of the North American Numbering Plan Administrator (NANPA)
   —CO Code activity
   —NRUF Update
   —Publishing NPA and NANP exhaust projections
   —Other NANPA activity
4. Report of National Thousands Block Pooling Administrator
   —Activity report
   —Trend of problems caused by intra-Service Provider porting on

contaminated number blocks.
5. Report of Oversight Working Group
—NANPA Performance Review
—Review of Change Orders
—Review of PA semi-annual forecasting issue
—Performance Improvement Plan
6. Report of 3-Digit DIG IMG
7. Status of Industry Numbering Committee activities
8. Report of the Local Number Portability Administration (LNPA) Working Group
—Standard for service providers requiring multiple LRNs
—Wireless Number Portability Operations (WNPO) Subcommittee
9. Report from NBANC
10. Report of Cost Recovery Working Group
11. Briefing on ENUM Developments
12. Conclude discussion of VoIP use of numbers (continued from January meeting)
13. Summary of Action Items
14. Steering Committee
—Table of NANC Projects
15. Public Comments and Participation (5 minutes per speaker)
16. Other Business
Adjourn no later than 5 p.m.
Next Meeting: Tuesday, May 13, 2003.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–5151 Filed 3–4–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011539–009.
Title: Libra/Lykes/ML Space Charter and Sailing Agreement.
Parties:
Companhia Libra de Navegacao
Lykes Lines Limited, LLC
TMM Lines Limited, LLC

Synopsis: The proposed agreement amendment expands the geographic scope to include the Atlantic Coast of Florida and Trinidad and Tobago.

Agreement No.: 011591–002.
Title: EUKOR/WWL Space Charter Agreement.
Parties:
EUKOR Car Carriers. Inc.
Wallenius Wilhelmsen Lines AS

Synopsis: The amendment substitutes EUKOR Car Carriers for Hyundai Merchant Marine Co., Ltd. as a party to the agreement.

Agreement No.: 011841.
Title: Lykes/Libra Slot Charter Agreement.
Parties:
Companhia Libra de Navegacao
Lykes Lines Limited, LLC.

Synopsis: The proposed agreement would authorize Libra to take space on Lykes' vessels operating between the U.S. and Mexican Gulf Coasts and the Atlantic Coast of Colombia.

Agreement No.: 011842.
Title: Crowley/Dole Space Charter and Sailing Agreement.
Parties:
Crowley Liner Services
Dole Ocean Cargo Express, Inc.

Synopsis: The agreement authorizes the parties to engage in reciprocal vessel slot chartering in the trade between Port Everglades, Florida, and Puerto Limon, Costa Rica. The parties request expedited review.

Agreement No.: 011843.
Title: LT/ZIM Cross Space Charter and Cooperative Working Agreement.
Parties:
Lloyd Triestino de Navigazione S.p.A.
Zim Israel Navigation Company Ltd.

Synopsis: The agreement authorizes the parties to exchange space on their respective services in the trades between the U.S. East Coast and the Caribbean, Central America and the Far East.

By Order of the Federal Maritime Commission.

Dated: February 28, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–5152 Filed 3–4–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) on behalf of the agencies a request for review of the information collection described below. The agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

On December 9, 2002, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the revision, without extension, of the currently approved information collection: the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). The comment period expired February 7, 2003.

DATES: Comments must be submitted on or before April 4, 2003.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies. Written comments, which should refer to the ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, 7100–0032,'' should be addressed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov,* or fax them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside those hours. Both the mailroom and the security control room are accessible from the Eccles building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room M–P–500 between 9

a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: A draft copy of the proposed FFIEC 002 reporting form may be obtained at the FFIEC's Web site (*http://www.ffiec.gov*). A copy of the proposed revisions to the collection of information may also be requested from Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collection of information:

Report Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 295.

Estimated Total Annual Responses: 1,180.

Estimated Time per Response: 22.50 burden hours.

Estimated Total Annual Burden: 26,550 burden hours.

General Description of Report

This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions

The agencies did not receive any comments in response to the notice published in the **Federal Register** on December 9, 2002 (67 FR 72951) requesting public comment to revise this currently approved information collection.

The revisions to the FFIEC 002 summarized below have been approved by the FFIEC. The agencies will implement these changes as of the March 31, 2003, reporting date. The revisions will improve the agencies' ability to analyze the risks and activities of branches and agencies and achieve consistency with the Reports of Condition and Income (Call Report) (forms FFIEC 031 and 041) filed by insured commercial banks and FDIC-supervised savings banks.

Schedule RAL—Assets and Liabilities

1. Splitting item 1.c(2), ''Mortgage-backed securities,'' into separate items 1.c(2)a ''Issued or guaranteed by U.S. Government agencies'' and 1.(c).2b ''Other.'' The breakdown will provide information on the composition of mortgage-backed securities held by branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes.

2. Splitting item 1.d., ''Federal funds sold and securities purchased under agreements to resell'' into separate items 1.d.(1), ''Federal funds sold,'' 1.d.(1)a, ''With depository institutions in the U.S.,'' 1.d.(1)b, ''With others,'' and 1.d.(2), ''Securities purchased under agreements to resell,'' 1.d.(2)a, ''With depository institutions in the U.S.,'' 1.d.(2)b, ''With others.'' The breakdown will provide greater insight into the liquidity of branches and agencies. These institutions actively participate and often hold large positions in the federal funds and repurchase agreement market. The separation will also achieve consistency with the existing Reports of Condition and Income (Call Report) because insured commercial banks and FDIC-supervised savings banks currently report federal funds sold separately from securities purchased under agreements to resell.

3. Splitting item 4.b., ''Federal funds purchased and securities sold under agreements to repurchase'' into separate items 4.b.(1), ''Federal funds purchased,'' 4.b.(1)a, ''With depository institutions in the U.S.,'' 4.b.(1)b, ''With others'' and 4.b.(2), ''Securities sold under agreements to repurchase,'' 4.b.(2)a, ''With depository institutions in the U.S.,'' 4.b.(2)b, ''With others.'' The rationale for this change, which deals with a funding source for branches and agencies, is essentially the same as the justification above for splitting ''Federal funds sold and securities purchased under agreements to resell''.

4. Splitting item 1.f, ''Trading Assets,'' into separate items 1.f(1), ''U.S. Treasury and Agency Securities'' and 1.f(2), ''Other trading assets.'' The breakdown will provide information on the composition of the trading assets of branches and agencies, which will enter into the derivation of weekly bank credit data used by the Board for monetary policy purposes. On November 8, 2002, the agencies published a notice soliciting comments for 60 days on proposed revisions to the Reports of Condition and Income (Call Report) (67 FR 68234). The notice includes a proposed clarification to the ''Trading Account'' Glossary entry on when loans can be designated as trading assets. Accordingly, the agencies are proposing the same clarification for the FFIEC 002 ''Trading Account'' Glossary entry to achieve consistency with the changes to the Call Report.

Schedule L—Derivatives and Off-Balance-Sheet Items

1. Adding Memoranda items 1.a., ''Gross positive fair value,'' and 1.b., ''Gross negative fair value'' to Memoranda item 1., ''Notional amount of all credit derivatives on which the reporting branch or agency is the guarantor.'' The new items will provide a better measure of credit and market risk, particularly for branches and agencies with large positions in credit derivatives. These new items will also achieve consistency with the existing Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC-supervised savings banks.

2. Adding Memoranda items 2.a., ''Gross positive fair value,'' and 2.b., ''Gross negative fair value'' to Memoranda item 2., ''Notional amount of all credit derivatives on which the reporting branch or agency is the beneficiary.'' The rationale for the change is the same as the justification above for adding items to Memoranda item 1.

Schedule O—Other Data for Deposit Insurance Assessments

Modifying the captions for Memorandum items 1.a., ''Deposit accounts of $100,000 or less,'' and 1.b., ''Deposit accounts of more than $100,000,'' to reflect the deposit insurance limits in effect on the report date that are to be used as the basis for reporting the number and amount of deposit accounts in Memorandum item

1. Memorandum item 1, collects information on the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000. This information provides the basis for calculating ''simple estimates'' of the amount of insured and uninsured deposits. The captions for these memorandum items explicitly refer to $100,000, which is the current deposit insurance limit. Given the purpose of these memorandum items, the dollar amount cited in the caption will be changed if the deposit insurance limit were to change. The revision will ensure that such a change occurs automatically as a function of the deposit insurance limit in effect on the report date.

Schedule S—Securitization and Asset Sale Activities

Splitting item 2.b., ''Standby letters of credit, subordinated securities, and other enhancements,'' into two items, one for securitization credit enhancements that are on-balance sheet assets and another for other credit enhancements. This will be accomplished by adding a new item 2.c., ''Standby letters of credit and other enhancements,'' where branches and agencies will disclose the unused portion of standby letters of credit and the maximum contractual amount of recourse or other credit exposure not in the form of an on-balance sheet asset that has been provided or retained in connection with the securitization structures reported in item 1 of Schedule S. This revision will enable the agencies to better understand the types of credit support that branches and agencies are providing to their securitizations, including which types are typically used for different types of securitized loans. The revisions will also achieve consistency with the changes to the Reports of Condition and Income (Call Report) filed by insured commercial banks and FDIC-supervised savings banks.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(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; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, February 27, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–5070 Filed 3–4–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Harrodsburg First Financial Bancorp, Inc., Harrodsburg, Kentucky; to engage *de novo* through its subsidiary, First South Credit of Versailles, Inc., Versailles, Kentucky, in consumer finance activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–5071 Filed 3–4–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–48]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Performance Evaluation Program for Rapid HIV Testing—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

To support our mission of improving public health and preventing disease through continuously improving laboratory practices, the Model Performance Evaluation Program (MPEP), Division of Laboratory Systems, Public Health Practice Program Office, Centers for Disease Control and Prevention intends to provide a new HIV rapid testing performance evaluation program (HIV Rapid Testing MPEP). This program will offer external performance evaluation (PE) for rapid tests such as the OraQuick® Rapid HIV–1 Antibody Test, recently approved as a waived test by the U.S. Food and Drug Administration, and for other licensed tests such as the Abbott-Murex SUDS® HIV–1 Test. Participation in PE programs is expected to lead to improved HIV testing performance because participants have the opportunity to identify areas for improvement in testing practices. This program will help to ensure accurate testing as a basis for development of HIV prevention and intervention strategies.

This external quality assessment program will be made available at *no cost* (for receipt of sample panels) to sites performing rapid testing for HIV antibodies. This program will offer laboratories/testing sites an opportunity for:

(1) Assuring that the laboratories/testing sites are providing accurate tests through external quality assessment.

(2) Improving testing quality through self-evaluation in a non-regulatory environment.

(3) Testing well characterized samples from a source outside the test kit manufacturer.

(4) Discovering potential testing problems so that laboratories/testing sites can adjust procedures to eliminate them.

(5) Comparing individual laboratory/testing site results to others at a national and international level, and consulting with CDC staff to discuss testing issues.

Participants in the MPEP HIV Rapid Testing program will be required to complete a laboratory practices questionnaire survey annually. In addition, participants will be required to submit results twice/year after testing mailed performance evaluation samples. The estimated annualized cost to respondents is $2,625.00.

Forms	Number of respondents	Frequency of responses	Average burden/response (in hours)	Total burden (in hours)
HIV Rapid Testing Questionnaire	300	1	15/60	75
HIV Rapid Testing Results Booklet	300	2	10/60	100
Total				175

Dated: February 27, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–5120 Filed 3–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2003, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: topperk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12534. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–414, VITRASE (hyaluronidase for intravitreal injection), ISTA Pharmaceuticals, for the treatment of vitreous hemorrhage. The background material for this meeting will be posted on the Internet when available or 1 working day before the meeting at http://www.fda.ohrms/dockets/ac/menu.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 10, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Littleton Topper at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the March 17, 2003, Dermatologic and Ophthalmic Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Dermatologic and Ophthalmic Drugs Advisory Committee

were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–5074 Filed 3–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dietary Supplement Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dietary Supplement Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 25, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn (Ballrooms A and B), 10000 Baltimore Ave., College Park, MD, 301–345–6700.

Contact Person: Constance J. Hardy, Center for Food Safety and Applied Nutrition (HFS–811), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1433, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: To be a dietary supplement as defined in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(ff)), a product must contain at least one ''dietary ingredient.'' Section 201(ff)(1) of the act lists those substances that are considered ''dietary ingredients.'' Among other things, the term ''dietary ingredient'' includes a metabolite of any other dietary ingredient defined in section 201(ff)(1) of the act. The statute is ambiguous, however, as to what substances are, or are not, metabolites of other substances. The practical result of this ambiguity is that it is often difficult to determine whether a particular substance meets the dietary ingredient definition and, therefore, whether products containing the substance can be marketed as dietary supplements. The purpose of this meeting is to explore whether there are recognized scientific principles that would facilitate reaching a conclusion as to whether a particular substance is a ''metabolite'' of another substance that is a ''dietary ingredient'' defined in the act and, therefore, is itself a dietary ingredient within the scope of section 201(ff)(1) of the act. The background material for this meeting will be posted on the Internet when available or 1-working day before the meeting at http://www.cfsan.fda.gov/~lrd/vidtel.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 17, 2003. Oral presentations from the public will be scheduled on March 25, 2003, between approximately 11 a.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 20, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Constance J. Hardy at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 27, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–5073 Filed 3–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 18, 2003, from 10:30 a.m. to 12:45 p.m.

Location: Food and Drug Administration, 5515 Security Lane, conference room A on the 11th floor, suite 1113, Rockville, MD. This meeting will be held by a telephone conference call. The public is welcome to attend the open portion of the meeting at the location in the first sentence of this paragraph. A speaker phone will be provided at the specified location.

Contact Person: Jody G. Sachs or Denise H. Royster, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–71), 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the selection of strains to be included in the influenza virus vaccine for the 2003–2004 season.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 12, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 12, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and

an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the March 18, 2003, Vaccines and Related Biological Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Vaccines and Related Biological Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 26, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–5075 Filed 3–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–10]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Salishan Revitalization Project, City of Tacoma, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of intent.

SUMMARY: HUD gives notice to the public, agencies, and Indian tribes that the City of Tacoma, WA acting under its authority as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4, and jointly the City of Tacoma and Tacoma Housing Authority (THA) acting under their authority as lead agencies in accordance with the State Environmental Policy Act (SEPA) (Revised Code of Washington (RCW) 43.21) intends to prepare an Environmental Impact Statement (EIS) for the redevelopment of the Salishan housing project. This notice is given in accordance with the Council on Environmental Quality regulations [40 CFR parts 1500–1508].

Lead Agencies: The EIS will be prepared as a joint NEPA and Washington State SEPA document intended to satisfy the requirements of both federal and state environmental statutes. In accordance with specific statutory authority and HUD's regulations under 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has authorized the City of Tacoma to assume authority as the NEPA Responsible Entity. The City of Tacoma is also the SEPA lead agency and has agreed to share lead agency status with THA with the City as nominal lead as allowed under Washington Administrative Code 197–11–944. Federal agencies with jurisdiction by law, special expertise, or other special interest should report their interests and indicate their willingness to participate in the EIS process as a ''Cooperating Agency.''

ADDRESSES: Notice of intent to prepare an EIS is hereby given and all interested federal, state, and local agencies, Indian tribes, groups, and the public are invited to comment on the scope of the EIS. Comments relating to the scope of the EIS are requested and will be accepted by the contact person listed below for a period of 30 days following issuance of this notice. Parties interested in receiving future notices to comment on the published Draft EIS should also notify the contact person within the 30-day time period.

FOR FURTHER INFORMATION CONTACT: Karie Hayashi, Land Use Administration Planner, City of Tacoma, 747 Market Street, Tacoma, Washington, 98404; Phone (253) 591–5387, Fax: (253) 591–5433; e-mail: *khayashi@cityoftacoma.org.*

SUPPLEMENTARY INFORMATION:

A. Background

The Salishan Public Housing Development (Salishan) was originally constructed in 1942 as war time temporary housing on 147.7 acres on the east side of Tacoma. Located in what is known as the East Side neighborhood, Salishan is bordered on the west by Portland Avenue and on the east by Swan Creek. In 2000, THA submitted a successful HOPE VI grant application for the redevelopment of Salishan. The amount of the HOPE VI grant awarded in connection with the Salishan revitalization project was $35 million. Under the proposed Revitalization Plan, all of the units will be demolished and Salishan will be redeveloped into a community of approximately 1,200 units. The project will require temporary and permanent relocation of all existing residents. The new unit mix will incorporate low-income, affordable, and market rate housing with single- and multi-family dwellings, and senior and special needs housing. The redevelopment project will also include a mixture of commercial uses and improvements to community facilities such as expanding the existing health clinic, day care, family investment center, and gymnasium. There are currently 837 housing units, in which approximately 810 families reside.

Alternatives to be considered in the EIS include a no action alternative and a range of development alternatives from 1,100 units to 1,400 units. An additional option that will be considered as part of the two development alternatives will be a potential land swap with Metro Parks. Metro Parks is proposing to develop a portion of their property and the land they get from THA for active and passive recreation uses. THA will develop the land from Metro Parks for housing or other community facilities.

B. Need for the EIS

This proposal may constitute an action with potentially significant impact on the human environment and significant adverse impacts on the environment. Therefore the lead agencies have elected to prepare an EIS pursuant to 24 CFR 58.37 and RCW 43.21.030(2)(c). Respondents may comment on EIS alternatives, probable significant adverse impacts, mitigation measures, and licenses or other approvals that may be required. Responses to this notice will be used to: (1) Determine significant environmental issues, (2) assist in developing the range of alternatives to be considered, and (3) identify interested parties who would like to participate in the EIS process.

C. Scoping

A public scoping meeting is scheduled to occur on March 19, 2003 from 4 p.m. to 8 p.m. (childcare and language translation services will be available at the meeting). The EIS scoping meeting will provide an opportunity for the public to learn more about the project and provide input on the scope of the EIS. The public scoping meeting will be held at the following location: Tacoma Housing Authority, Salishan Meeting Rooms, 1724 E. 44th Street, Tacoma, Washington 98404.

D. EIS Issues

The lead agencies have identified the following areas for potential discussion in the EIS: geology and soils, air quality, water resources, vegetation and wetlands, fish and wildlife, threatened and endangered species, hazardous materials, noise, land use, housing, displacement, and relocation, social and economic (including environmental justice), historic resources, cultural and archaeological resources, recreation, visual resources and aesthetics, transportation, public services, and utilities.

Questions may be directed to the individual named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: February 28, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–5254 Filed 3–4–03; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Southwestern Willow Flycatcher Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability of the Final Recovery Plan for the southwestern willow flycatcher (*Empidonax traillii extimus*). The breeding range of this bird includes southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and possibly extreme northern portions of the Mexican states of Baja, California del Norte, Sonora, and Chihuahua. Within this region, the species breeds in dense riparian tree and shrub communities associated with rivers, swamps, and other wetlands including lakes (*e.g.*, reservoirs). Most of these habitats are classified as forested wetlands or scrub-shrub wetlands.

ADDRESSES: Persons wishing to obtain a copy of the Recovery Plan may contact Greg Beatty, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951 (602/242–0210 x247, *Greg__Beatty@fws.gov*). The Plan is also available at *http://arizonaes.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Beatty (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. On June 6, 2001, the Service published in the **Federal Register** an announcement of the availability for public review of the draft Recovery Plan for the southwestern willow flycatcher. Public comments were accepted through October 4, 2001. The comment period was subsequently reopened on October 10, 2001, for a period of 60 days extending through December 10, 2001. Seventy-eight letters of comment were received during the two comment periods. The draft Recovery Plan was revised and finalized based on this input.

The Southwestern Willow Flycatcher Recovery Plan describes the status, current management, recovery objectives and criteria, and specific actions needed to reclassify the southwestern willow flycatcher from endangered to threatened, and to ultimately delist it. The Recovery Plan was developed by a Technical Subgroup comprised of 14 technical specialists, and geographically-based teams of stakeholders (Implementation Subgroups), which include representatives of Native American Tribes, State and local governments, ranchers, private land owners and managers, agency representatives, and others.

The southwestern willow flycatcher is known to currently breed in dense riparian vegetation in southern California, southern Nevada, southern Utah, Arizona, New Mexico, and southwestern Colorado. Although extreme northwestern Mexico and western Texas are considered part of its breeding range, no nesting birds are presently known to occur in these areas. The dense riparian vegetation that is needed for breeding was historically rare and sparsely distributed, and is now more rare. Destruction and modification of riparian habitats have been caused mainly by: Reduction or elimination of surface and subsurface water due to diversion and groundwater pumping; changes in flood and fire regimes due to dams and stream channelization; clearing and controlling vegetation; livestock overgrazing; changes in water and soil chemistry due to disruption of natural hydrologic cycles; and establishment of non-native plants. Concurrent with habitat loss have been increases in brood parasitism by the brown-headed cowbird (*Molothrus ater*) and the presence of nest predation which inhibits reproductive success and further reduces population levels. Actions needed to recover the southwestern willow flycatcher are those that would increase and improve breeding habitat by restoring and/or re-creating natural physical and biotic processes that influence riparian ecosystems, and reducing other stresses on the flycatcher. Specific actions include: Changing management of surface and groundwater where feasible; restoring flood cycles; reducing impacts of domestic livestock, wild burros, and native ungulates; improving metapopulation stability; securing long-term protection of breeding habitat; managing exotic plant species; reducing brood parasitism by brown-headed cowbirds; and conducting research to refine management practices and knowledge of ecology. The Recovery Plan was finalized based on comments received during meetings with the Implementation Subgroups, as well as comments received from the public.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 19, 2002.

David A. Yazzie,

Acting Regional Director.

[FR Doc. 03–5124 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to Office of Management and Budget.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs is seeking to extend clearance for an information collection request. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112. Interested parties are invited to comment on this collection.

DATES: Submit comments on or before April 4, 2003.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street NW., Washington, DC 20503. Send a copy of your comments to Larry Blair, Bureau of Indian Affairs, Office of Tribal Services, Division of Social Services, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 513–7621, Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1918, and is incorporated in 25 CFR 13.11. A 60-day notice for public comments was published on December 12, 2002 (67 FR 76413). There were no comments received.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

Please note, any comments, names and addresses concerning this submission are available for public review during regular business hours (8 a.m. to 4:30 p.m). If you wish your name and address withheld from public review, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB is required to make a decision concerning this information collection request between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment will receive the best consideration by OMB if it is submitted early during this comment period.

III. Data

Type of action: Renewal.

Title of the Information Collection: Tribal Reassumption of Jurisdiction Over Child Custody Proceedings.

Summary of Collection of Information: The collection of information will ensure that the provisions of Pub. L. 95–608 are met.

Affected Entities: Federally recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

Frequency of Response: Annually.

Estimated Number of Annual Responses: 2.

Estimated Time Per Application: 8 hours.

Estimated Total Annual Burden Hours: 16 hours.

Dated: February 26, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–5079 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Ponca Tribe of Nebraska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 3 acres, more or less, of land into trust for the Ponca Tribe of Nebraska on December 20, 2002. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–4543 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR part 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR part 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On December 20, 2002, the Assistant Secretary—Indian Affairs decided to accept approximately 3 acres, more or less, of land into trust for the Ponca Tribe of Nebraska under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The Ponca Tribe was legislatively terminated in 1962 pursuant to the Ponca Termination Act, Public Law 87–629, 25 U.S.C. 971–980. Pursuant to Public Law 101–484, 25 U.S.C. 983–983(h), dated October 31, 1990 the Tribe was restored to federal recognition. In a memorandum dated November 22, 2002, the Associate Solicitor, Division of Indian Affairs, concluded that the prohibition on gaming on after-acquired trust lands contained in Section 20 of IGRA, 25 U.S.C. 2719, does not apply in this case because the Ponca Tribe is a restored tribe within the meaning of 25 U.S.C. 2719(b)(1)(B)(iii), and the acquisition of land in Knox County qualifies as ''the restoration of lands'' for an Indian tribe that is restored to Federal recognition

for purposes of 25 U.S.C. 2719(b)(1)(B)(iii) because it is located within Knox County, and the Ponca Tribe Restoration Act mandates that the Secretary acquire land for the Ponca Tribe in Knox County.

The legal description of the property is as follows:

A tract of land lying wholly in Out Lot G, Park Addition to the Village of Crofton, Knox County, Nebraska, more particularly described as follows: Commencing at a point 150.0 feet West of the Northeast corner of said Out Lot G; thence West, along the North line of said Out Log G, 166.0 feet; thence South 132.8 feet; thence East 70.7 feet; thence South 42.2 feet; thence East 95.3 feet; thence North 1750.0 feet to the point of beginning.

The property consists of approximately 3 acres located in Knox County, Nebraska.

Dated: December 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–5062 Filed 3–4–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF JUSTICE

Civil Rights Division

Office of Special Counsel for Immigration Related Unfair Employment Practices; Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration related unfair employment discrimination. Grants will range in size from $40,000 to $100,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualified them to educate workers, employers and the general public about the antidiscrimination provisions of the INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants rights advocacy organizations, labor organizations, trade associations, industry groups, professional organizations, or other nonprofit entities, including state and local government agencies, providing information services to potential victims of discrimination and/or employers.

Application Due Date: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lilia Iraizarry, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Ave., Washington, DC 20530. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). OSC's e-mail address is: *osccrt@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct cost-effective public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers, workers covered by this statute, and/or the general public.

Background: The Immigration and Nationality Act protects worker-authorized individuals from employment discrimination based on their citizenship status and/or national origin. Federal law also makes knowingly hiring unauthorized workers unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

Employers of four or more employees are prohibited from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment and referral for a fee, and engaging in document abuse in the employment eligibility verification process on the basis of national origin or citizenship status.

U.S. citizens and certain classes of work authorized individuals are protected from *citizenship status discrimination.* Protected non-citizens include:

- Temporary Residents;
- Lawful Permanent Residents;
- Refugees; and
- Asylees.

Citizens and *all* work authorized individuals are protected from *discrimination on the basis of national origin.* However, under INA this prohibition applies only to employers with four to fourteen employees. National original discrimination complaints against employers with fifteen or more employees are under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, U.S.C. 2000e, *et seq.*

In addition, under the *comment abuse provision* of the law, employers cannot request more or different documents than are required by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form or prefer or require one form of documentation over another, if made for the purpose or with the intent of discriminating against an individual on the basis of national origin or citizenship status.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with specially designated administrative law judges. OSC also initiates independent investigations of possible immigration related job discrimination.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individual and employers about the antidiscrimination provisions of the INA. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of responsibilities.

Purpose: OSC seeks to educate both workers and employers about their rights and responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (*e.g.,* brochures, posters, booklets, information packets and videos) to educate these groups, OSC has determined that the main focus of the program should be on the *actual delivery* of these materials to educate further both potential victims and employers. OSC seeks proposals that will use *existing materials* effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions. OSC will, of course, consider any proposal that articulates and substantiates other creative means of reaching these populations.

Program Description: The program is designed to develop and implement cost-effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. *Application may propose to educate potential victims only, employers only, or both in a single campaign.* Program budgets include the travel, lodging and other expenses necessary for up to two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Intended Audience(s)

The educational efforts under the grant should be directed to (1) work-authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or (3) employers, especially small businesses. The proposals should define the characteristics of the work authorized population or the employer group(s) intended to be the focus of the educational campaign, and the applicant's qualification to reach credibly and effectively large segments of the intended audience(s).

The proposals should also detail the reasons for focusing on each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign focuses and supporting the reasons for the selection, applicants may use census data, studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible intended audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Grants are an important component of OSC partnerships to better serve the public, employers and potential discrimination victims. Grantees should plan to include OSC attorneys and other professional staff in public outreach programs in order to more successfully reach their audiences and prevent discrimination before it occurs or combat it where it exists.

Some grantees who are conducting citizenship campaigns have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals. Applicants proposing to combine these efforts should discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, applicants should include in their budget proposals the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC prior to production to ensure legal accuracy and proper emphasis. Proposed revisions/translations of OSC-approved materials must also be submitted for clearance. All information distributed should also identify OSC as a source of assistance, information and action, and include the correct address and telephone numbers of OSC, (including the toll-free numbers, TDD numbers) and OSC e-mail and Internet addresses.

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts.

Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign. Interim evaluation/activity reports are due at least quarterly, or more frequently as needed throughout the grant year.

Selection Criteria: The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

A panel made up of OSC staff will review and rate the applications and make recommendations to the Special Counsel regarding funding. The panel's results are advisory in nature and not binding on the Special Counsel. *Letters of support, endorsement, or recommendation are not part of the grant application process and will not be considered.*

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 points)

Sound program design and cost-effective strategies for educating the intended population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (10 points)

b. Selection and definition of the intended audience(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the intended audience(s). (15 points)

c. A cost-effective campaign strategy for educating employers and/or members of the protected class, with a justification for the choice of strategy, including the degree to which the campaign has prevented immigration related unfair employment practices and has reached individuals with such claims. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 points)

Proposals will be rated in terms of the capability of the applicant to define the intended audience, reach it, and implement the public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided. (10 points)

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying

individually, propose the use of subcontractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project.

3. Staff Capability (10 points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants: This grant competition is open to nonprofit organizations, including labor organizations, employer groups and state and local government agencies.

Grant Period and Award Amount: It is anticipated that several grants will be awarded and will range in size from $40,000 to $100,000.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 2003.

Application Deadline: All applications must be received by 6 p.m. EDT, April 21, 2003. If using regular first-class mail, send to: U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue NW., Washington, DC 20530. If using messengers, overnight or priority mail, send to: Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, 1425 New York Ave., NW., Suite 9000, Washington, DC 20005. *Applications may not be submitted via facsimile machine.*

Application Requirements: Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424). Note: The Catalogue of Federal Domestic Assistance number is 16.110 and the title is ''Education & Enforcement of the Antidiscrimination Provisions of the Immigration and Nationality Act'' (box #10 of the SF 424).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. Disclosure Form to Report Lobbying (SF LLL).

4. OJP Form 4000/3 (Assurances).

5. An abstract of the full proposal, not to exceed one page.

6. A program narrative of not more than fifteen (15) double-spaced typed pages that includes the following:

a. A clear statement describing the approach and strategy to be used to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion and the extent of OSC participation in grantee outreach events;

c. The proposed staffing plan. Note: If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff, hiring is subject to review and approval by OSC at that time; and

d. Description of how the project will be evaluated.

7. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget. Note: Program budgets must include the travel, lodging and other expenses necessary for *not more* than two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn).

8. Copies of resumes of the professional staff proposed in the budget.

Application forms may be obtained by writing or telephoning: U.S. Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue NW., Washington, DC 20530. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). This announcement and the required forms will also appear on the World Wide Web at: *http://www.usdoj.gov/crt/osc/.* In order to facilitate handling, please do not use covers, binders or tabs.

Dated: February 27, 2003.

Katherine A. Baldwin,

Deputy Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 03–5090 Filed 3–4–03; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act

Under 28 C.F.R. 50.7, notice is hereby given that on February 14, 2003, a proposed consent decree (''consent decree'') in *United States* v. *Chicago Specialties, L.L.C.,* Civil Action No. 03C 0864, was lodged with the United States District Court for the Northern District of Illinois. This consent decree resolves claims against Chicago Specialties, L.L.C., for violations of the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act.

In this action the United States sought penalties and injunctive relief for violations under the Clean Air Act of the Illinois State Implementation Plan (the ''SIP''), violations of the National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (''HON'' or ''HON regulations''), 40 CFR part 63, subparts F, G and H, violations of the Spill Prevention, Control and Countermeasures (''SPCC'') standards, 40 CFR 112.7, and violations of RCRA waste-handling and record-keeping requirements in Illinois' EPA-authorized program. Under the terms of the consent decrees, Chicago Specialties agrees to shutdown its paracresol process, perform supplemental environmental projects (SEPs) valued at $310,000, pay $100,000 in civil penalties (half to the United States and half to the State of Illinois) and reimburse the State of Illinois for $71,000 in costs incurred in connection with the Facility. The decision to shutdown the paracresol process was a business decision made by Chicago Specialties, as an alternative to installing pollution controls.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Chicago Specialties, L.L.C.,* Civil Action No. 03 C 0864, D.J. Ref. 90–5–2–1–06918.

The consent decrees may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the consent decree may also be examined on the following Department of Justice website, *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdop.gov),* fax no (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree, please enclose a check in the amount of $53.50 (25 cents per page reproduction cost) payable tot he U.S. Treasury for the consent decree with attachments, or $11.00 for the consent decree without attachments.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–5190 Filed 3–4–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Homeless Veterans' Reintegration Program (HVRP) Competitive Grants for PY 2003

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (SGA 03–02).

SUMMARY: *This competition is targeting eligible applicants that have not received HVRP or Veterans' Workforce Investment Program (VWIP) Funds.* All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for Homeless Veterans' Reintegration Programs (HVRP) authorized under the Homeless Veterans Comprehensive Assistance Act of 2001 (HVCAA). This notice contains all of the necessary information and forms needed to apply for grant funding. Applicants should design programs to assist eligible veterans who are homeless by providing employment, training, support services and assistance. Under this solicitation, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $1.0 million of funds available and expects to award up to five (5) grants in PY 2003. The HVRP program is designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. VETS in Program Year (PY) 2003 will continue to seek applicants that provide direct services through a case management approach, link with Federal, State and Local resources for homeless veterans and have clear strategies for employment and retention of the homeless.

DATES: Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., Eastern Standard Time, April 21, 2003.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–02, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FORMS OR AMENDMENTS: If another copy of a Standard form is needed, go online to *http://www.nara.gov.*

To receive amendments to this Solicitation (Please reference SGA 03–02), all applicants must register their name and address with the Grant Officer at the following address:

U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline.

It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) amended the Homeless Veterans' Reintegration Programs at 38 U.S.C. § 2021, and provides ''the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.''

The Homeless Veterans' Reintegration Program (HVRP) was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of programs, urban and non-urban, in the past have provided valuable information on approaches that work in the different environments.

In accordance with the HVCAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $1.0 million of the funds available to award up to 5 grants to eligible applicants that have not previously received HVRP grants.

The Department has published SGAs for urban and non-urban HVRP grants at the same time. Applicants who have not previously received HVRP grants also may apply for those SGAs.

II. Application Process

A. Potential Jurisdictions To Be Served

Both urban and non-urban areas within the United States and its territories are eligible jurisdictions to receive services under this competition. Urban areas are defined as the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. Non-urban areas are defined as the geographic areas outside of the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. Applicants must identify whether they are applying for an urban or non-urban grant award. Please be advised that urban requests exceeding the $300,000 and non-urban requests exceeding $200,000 will be considered non-responsive.

B. Eligible Applicants

Entities that have *not* previously operated a HVRP or VWIP and have a proven capacity to manage grants and have or will provide the necessary linkages with other service providers are encouraged to apply. Applications for funds will be accepted from State and

local workforce investment boards, local public agencies, for-profits/commercial entities, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in Section 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub-awards, experienced public agencies, private nonprofit organizations, and private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are for-profit/commercial entities and private nonprofit organizations, including faith-based community organizations. Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

C. Funding Levels

The total amount of funds available for this solicitation is $1.0 million. It is anticipated that up to 5 awards may be made under this solicitation. Individual grant awards will not exceed $200,000 for non-urban areas and $300,000 for urban areas. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the amounts specified above will be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from the date of award unless modified. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2003. Program funds must be obligated by June 30, 2004, however, funds may be reserved for limited activities of closeout package.

E. Optional Year Funding

Should there be action by Congress to appropriate funds for this purpose, optional year funding may be considered. The Government does *not,* however, guarantee optional year funding for any awardee. Should VETS decide that an optional year for funding be exercised, the grantees' performance during the previous period of operations will be taken into consideration as follows:

1. The grantee must meet 85% of planned goals for Federal expenditures, enrollments, and placements in each quarter; and

2. The Grantee must be in compliance with all terms identified in the solicitation for grant applications, general and special provisions.

3. All program and fiscal reports must have been submitted by the established due date and must be verifiable for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. For these competitive grants, only two optional years of HVRP funding may be available.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (a) The technical proposal and (b) the cost proposal; (1) one completed, blue ink-signed original SF 424 grant application with an original and two (2) copies of the Technical Proposal; and an original and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. ET, April 21, 2003, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before April 21, 2003; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 21, 2003; and

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume

the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

III. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term ''homeless or homeless individual'' includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. [42 U.S.C. 11302 (a)].

B. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [38 U.S.C. 101(2)]

IV. Related HVRP Program Development Activities

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran,* such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups,* and especially veterans' service and community-based (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support:*

A ''Stand Down,'' as it relates to homeless veterans, is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

V. Program Summary

A. Program Concept and Emphasis

The HVRP grants under Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) are intended to address two objectives:

(1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in PY 2003 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

1. Outreach, intake, assessment, counseling to the degree practical and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be a veteran who has experience in dealing with, and an understanding of the needs of the homeless.

2. Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
—Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

3. Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drugs;
—Medical;
—Post Traumatic Stress Disorder;
—Mental Health;
—Coordinating with McKinney Homeless Assistance Act (MHAA) Title VI programs for health care for the homeless [health care programs under the HVCAA];

4. Referral to housing assistance provided by, for example:

—Local shelters;
—Federal Emergency Management Administration (FEMA) food and shelter programs;
—Transitional housing programs and single room occupancy housing

programs funded under MHAA Title IV [and under the HVCAA];
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV [and under the HVCAA];
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and

5. Employment and training services such as:
—Basic skills instruction;
—Remedial education activities;
—Job search activities, including job search workshops;
—Job counseling;
—Job preparatory training, including resume writing and interviewing skills;
—Subsidized trial employment (Work Experience);
—On-the-Job Training;
—Classroom Training;
—Job placement in unsubsidized employment;
—Placement follow up services; and
—Services provided under WIA.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce. Under the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. The outcome measurement established for HVRP grants is for grantees to meet a minimum entered employment rate of 56%, *e.g.,* number of entered employments divided by enrollments (These outcomes will be reported quarterly on Technical Performance Goals Form, Appendix D.). While entering employment is a viable outcome, it will be necessary to measure results over a longer term (retention) to determine the success of programs.

The following program discussion must be considered in a program model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans.

Once the eligible participants have been identified, an assessment must be made of their abilities, interests, needs and barriers to employment. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training.

When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan can be monitored by the staff.

Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process.

Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90 and 180 day follow-up is fundamental to assessing the results of the program success. Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Grantees prior to the end of the grant performance period must obligate funds to ensure that follow-up activities are completed. Such results will be reported in the final technical performance report.

VI. Required Contents

There are seven program activities that all applications must contain to be found technically acceptable under ''this SGA.'' Programs must be ''employment focused'' and must be responsive to the rating criteria in Section IX. These activities are:

1. Outreach
2. Pre-Enrollment Assessments;
3. Employment Development Plans for all clients;
4. Case Management
5. Job Placement and job retention follow-up (at 90 and 180 days) after individual enters employment.
6. Utilization of DVOP and LVER staff in service delivery.
7. Programs must show community linkages with other programs and services which provide support to homeless veterans.

VII. Proposal Content

The proposal consists of two parts, Part 1 being the Technical portion and Part 2 the Cost portion. The information provided in these two parts is essential in gaining a sound understanding of the programmatic and fiscal contents of the grant proposal.

A. *Part 1—The Technical Proposal* will consist of a narrative proposal that demonstrates: the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal narrative must not exceed fifteen (15) pages double-spaced, font size no less than 11pt. and typewritten on one side of the paper only. [The applicant also must complete the forms, *i.e.* Technical Performance Goals chart provided in the SGA, Appendix D.].

The proposal must include an outreach component which uses veterans whenever possible to provide outreach. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

Programs must be ''employment focused''. The services provided will be directed toward: (a) Increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format for the technical proposal is strongly recommended:

1. *Need for the program:* The applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community

infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the program would respond to these needs. Include Labor Market Information (LMI) on the outlook for job opportunities in the service area.

2. *Approach or strategy to increase employment and job retention:* Applicants must be responsive to the Rating Criteria contained in Section IX and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Outline the type(s) of training available—is training for demand occupations, the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow-up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section V.c.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to the homeless veterans:* Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representatives (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system must be delineated. Describe any linkages with any other resources and/or other programs for Homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

4. *Linkages with other federal agencies:* Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and Per Diem programs. Indicate how the applicant will coordinate with any ''continuum of care'' efforts for the homeless among agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

5. *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary, if Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

6. *Organizational capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. A summary narrative of program experience and employment and training performance outcomes is required. The applicant must also provide evidence of key staff capability to support veterans seeking employment and training opportunities.

7. *Proposed housing strategy for homeless veterans:* Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant is not allowed to use HVRP resources to support housing needs.

Note: Resumes, charts, standard forms, transmittal letters, MOUs, agreements, lists of contracts and grants and letters of support are not included in the page count. [If provided include these documents as attachments to the technical proposal.]

B. *Part 2—Cost Proposal* must contain: (1) The Standard Form (SF) 424, ''Application for Federal Assistance'', (original, signed in blue-ink) (2) the Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B, and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA. All applicants must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, Block 10.

All applicants must include, as a separate appendix, a list of all government grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information. Veterans' Employment and Training Service reserves the right to have a representative within each State review and verify this data. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness.

VIII. The Cost Proposal Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-awardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.,* rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-awards/ contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges will not exceed 36 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a longitudinal follow-up survey, six (6) months after the program performance period ends;

E. A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. An identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

IX. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs *e.g.,* cost per enrollment and placement, demonstration models, and geographic service areas. While points will not be awarded for cost issues, cost per entered employment will be given serious consideration in the selection of awardee. The Grant Officer's determination is final agency action for award under SGA 03–02 is the final agency action.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant will document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 40 Points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post-placement follow-up services. Applicants must address how they will target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local resources services and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs including (DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, entered employment/placements and job retention. (See Appendix D) Of the 40 points possible in the strategy to increase employment and retention, 5 points will be awarded to grant proposals that demonstrate the ability to maintain a six-month employment retention rate of 50 percent or greater.

3. Quality and Extent of Linkages With Other Providers of Services to the Homeless and to Veterans: 10 Points

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. [Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.]

4. Demonstrated Capability To Provide Required Program Services: 20 Points

The applicant must describe its capability to provide and operate employment and training programs and providing services to participants similar to those that are proposed under this solicitation. The applicant must address its capability and ability for timely startup of the program. The applicant should delineate its staff capability and ability to manage the financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. Quality of Overall Housing Strategy: 15 Points

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds may not be used to purchase housing or vehicles.

X. Post-Award Conference

A post-award conference will be held for those grantees awarded PY 2003 HVRP funds from the competition. It is expected to be held in May or June 2003. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please plan on five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

XI. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (*i.e.*, October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals

for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

C. 90 Day Follow-Up Report

The grantee must submit no later than 120 days after the grant expiration date a final report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards); and

2. Technical Performance Report—(Program Goals).

D. Six (6) Month Follow-Up/Closeout Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow-up report containing the following:

1. Final Financial Status Report (SF–269A).

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of participants that remained employed 90 and 180 days after entering employment; (c) whether the veterans are still employed at the same or similar job, if not what are the reasons; (d) whether the training received was applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XII. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

2. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

3. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Administrative Standards and Provisions

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition. All grants will be subject to the following administrative standards and provisions:

1. 29 CFR Part 93—Lobbying.

2. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

3. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

4. 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR Part 98—Federal standards for Government-wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).

6. 29 CFR Part 99—Audit Of States, Local Governments, and Non-profit Organization.

7. 29 CFR Parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial Assistance.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC. this 27 day of February, 2003.

Daniel P. Murphy,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424
Appendix B: Budget Information Sheet
Appendix C: Assurances and Certifications Signature Page
Appendix D: Technical Performance Goals Form
Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants
Appendix F: The Glossary of Terms
Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes **If "Yes," attach an explanation.** ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				

Cost Per Placement				
Number Retaining Jobs For 90 Days				
Number Retaining Jobs For 180 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total		
Fringe Benefits For All Positions		
Contractual		
Travel		
Indirect Costs		
Equipment		
Supplies		
Total Costs ----------		

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Rank	Area Name	Census Population	
		April 1, 2000	April 1, 1990
1	New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	21,199,865	19,549,649
2	Los Angeles--Riverside--Orange County, CA CMSA	16,373,645	14,531,529
3	Chicago--Gary--Kenosha, IL--IN--WI CMSA	9,157,540	8,239,820
4	Washington--Baltimore, DC--MD--VA--WV CMSA	7,608,070	6,727,050
5	San Francisco--Oakland--San Jose, CA CMSA	7,039,362	6,253,311
6	Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	6,188,463	5,892,937
7	Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	5,819,100	5,455,403
8	Detroit--Ann Arbor--Flint, MI CMSA	5,456,428	5,187,171
9	Dallas--Fort Worth, TX CMSA	5,221,801	4,037,282
10	Houston--Galveston--Brazoria, TX CMSA	4,669,571	3,731,131
11	Atlanta, GA MSA	4,112,198	2,959,950
12	Miami--Fort Lauderdale, FL CMSA	3,876,380	3,192,582
13	Seattle--Tacoma--Bremerton, WA CMSA	3,554,760	2,970,328
14	Phoenix--Mesa, AZ MSA	3,251,876	2,238,480
15	Minneapolis--St. Paul, MN--WI MSA	2,968,806	2,538,834
16	Cleveland--Akron, OH CMSA	2,945,831	2,859,644
17	San Diego, CA MSA	2,813,833	2,498,016
18	St. Louis, MO--IL MSA	2,603,607	2,492,525
19	Denver--Boulder--Greeley, CO CMSA	2,581,506	1,980,140
20	San Juan--Caguas--Arecibo, PR CMSA	2,450,292	2,270,808
21	Tampa--St. Petersburg--Clearwater, FL MSA	2,395,997	2,067,959
22	Pittsburgh, PA MSA	2,358,695	2,394,811
23	Portland--Salem, OR--WA CMSA	2,265,223	1,793,476
24	Cincinnati--Hamilton, OH--KY--IN CMSA	1,979,202	1,817,571
25	Sacramento--Yolo, CA CMSA	1,796,857	1,481,102
26	Kansas City, MO--KS MSA	1,776,062	1,582,875
27	Milwaukee--Racine, WI CMSA	1,689,572	1,607,183
28	Orlando, FL MSA	1,644,561	1,224,852
29	Indianapolis, IN MSA	1,607,486	1,380,491
30	San Antonio, TX MSA	1,592,383	1,324,749
31	Norfolk--Virginia Beach--Newport News, VA--NC MSA	1,569,541	1,443,244
32	Las Vegas, NV--AZ MSA	1,563,282	852,737
33	Columbus, OH MSA	1,540,157	1,345,450
34	Charlotte--Gastonia--Rock Hill, NC--SC MSA	1,499,293	1,162,093
35	New Orleans, LA MSA	1,337,726	1,285,270
36	Salt Lake City--Ogden, UT MSA	1,333,914	1,072,227
37	Greensboro--Winston-Salem--High Point, NC MSA	1,251,509	1,050,304
38	Austin--San Marcos, TX MSA	1,249,763	846,227
39	Nashville, TN MSA	1,231,311	985,026
40	Providence--Fall River--Warwick, RI--MA MSA	1,188,613	1,134,350
41	Raleigh--Durham--Chapel Hill, NC MSA	1,187,941	855,545
42	Hartford, CT MSA	1,183,110	1,157,585
43	Buffalo--Niagara Falls, NY MSA	1,170,111	1,189,288
44	Memphis, TN--AR--MS MSA	1,135,614	1,007,306

45	West Palm Beach--Boca Raton, FL MSA	1,131,184	863,518
46	Jacksonville, FL MSA	1,100,491	906,727
47	Rochester, NY MSA	1,098,201	1,062,470
48	Grand Rapids--Muskegon--Holland, MI MSA	1,088,514	937,891
49	Oklahoma City, OK MSA	1,083,346	958,839
50	Louisville, KY--IN MSA	1,025,598	948,829
51	Richmond--Petersburg, VA MSA	996,512	865,640
52	Greenville--Spartanburg--Anderson, SC MSA	962,441	830,563
53	Dayton--Springfield, OH MSA	950,558	951,270
54	Fresno, CA MSA	922,516	755,580
55	Birmingham, AL MSA	921,106	840,140
56	Honolulu, HI MSA	876,156	836,231
57	Albany--Schenectady--Troy, NY MSA	875,583	861,424
58	Tucson, AZ MSA	843,746	666,880
59	Tulsa, OK MSA	803,235	708,954
60	Syracuse, NY MSA	732,117	742,177
61	Omaha, NE--IA MSA	716,998	639,580
62	Albuquerque, NM MSA	712,738	589,131
63	Knoxville, TN MSA	687,249	585,960
64	El Paso, TX MSA	679,622	591,610
65	Bakersfield, CA MSA	661,645	543,477
66	Allentown--Bethlehem--Easton, PA MSA	637,958	595,081
67	Harrisburg--Lebanon--Carlisle, PA MSA	629,401	587,986
68	Scranton--Wilkes-Barre--Hazleton, PA MSA	624,776	638,466
69	Toledo, OH MSA	618,203	614,128
70	Baton Rouge, LA MSA	602,894	528,264
71	Youngstown--Warren, OH MSA	594,746	600,895
72	Springfield, MA MSA	591,932	587,884
73	Sarasota--Bradenton, FL MSA	589,959	489,483
74	Little Rock--North Little Rock, AR MSA	583,845	513,117
75	McAllen--Edinburg--Mission, TX MSA	569,463	383,545

[FR Doc. 03–5087 Filed 3–4–03; 8:45 am]
BILLING CODE 4510–79–C

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Non-Urban Homeless Veterans' Reintegration Program Competitive Grants for PY 2003

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (HVRP) (SGA 03–03).

SUMMARY: *All applicants for grant funds should read this notice in its entirety.* The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for non-urban grants for Homeless Veterans' Reintegration Programs (HVRP) authorized under the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) for HVRP grants for non-urban areas. This notice contains all of the necessary information and forms needed to apply for grant funding. Such programs will assist eligible veterans who are homeless by providing employment, training, support services and assistance. Under this solicitation, VETS anticipates that up to $2.0 million will be available for grant awards in Program Year (PY) 2003 and expects to award up to fifteen (15) grants. The HVRP programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. VETS in Program Year (PY) 2003 will continue to seek applicants that provide direct services through a case management approach, link with Federal, State and Local resources for homeless veterans and have clear strategies for employment and retention of the homeless.

DATES: Applications are to be submitted, including those hand delivered, to the address below by no later than 4:45 p.m., eastern standard time, April 21, 2003.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–03, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

Forms or Amendments: If another copy of a standard form is needed, go online to *http://www.nara.gov.*

To receive amendments to this solicitation (please reference SGA 03–

03), all applicants must register their name and address with the Grant Officer at the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) amended the Homeless Veterans Reintegration Programs at 38 U.S.C. 2021, (HVCAA) and provides ''the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.''

The Homeless Veterans' Reintegration Project (HVRP) was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of programs, urban and non-urban, in the past have provided valuable information on approaches that work in the different environments.

II. Application Process

A. Potential Jurisdictions To Be Served

This SGA is for non-urban HVRP grants. Separate SGAs for urban and *new grantees* HVRP grants have been issued at the same time. Due to the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the HVCAA, the only potential jurisdictions which will be served through this non-urban competition for HVRPs in PY 2003 are the areas outside of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. The 75 U.S. cities largest in population are listed in Appendix G.

B. Eligible Applicants

Applications for funds will be accepted from State and local workforce investment boards, local public agencies, for-profit/commercial entities, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in sections 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through sub-awards, experienced public agencies, private nonprofit organizations, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are for-profit/commercial entities and private nonprofit organizations that have operated an HVRP or similar employment and training program for the homeless or veterans and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. Entities described in section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

C. Funding Levels

The total amount of funds available for this solicitation is $2.0 million. It is anticipated that up to 15 awards may be made under this solicitation. Awards are expected to range from $150,000 to $200,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $200,000 will be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from date of award unless modified. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2003. Program funds must be obligated by June 30, 2004, however, funds may be reserved for limited activities of close-out.

E. Optional Year Funding

Should there be action by Congress to appropriate funds for this purpose, optional year funding may be considered. The government does *not,* however, guarantee optional year funding for any awardee. Should VETS decide that an option year for funding be exercised, the grantees' performance during the previous period of operations will be taken into consideration as follows:

1. The grantee must meet at minimum 85% of planned goals for Federal expenditures, enrollments, and placements in each quarter; and

2. The grantee must be in compliance with all terms identified in the solicitation for grant application, general and special provisions.

3. All program and fiscal reports must have been submitted by the established due date and must be verifiable for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. For these competitive grants, only two optional years of HVRP funding may be available.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (a) The technical proposal and (b) the cost proposal; one (1) completed, blue ink-signed original SF 424 grant application with an original and two (2) copies of the Technical Proposal; and an original and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received

at the Office of Procurement Services after 4:45 p.m. e.t., April 21, 2003, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before April 21, 2003; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 21, 2003; and

3. It is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

III. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term ''homeless or homeless individual'' includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (42 U.S.C. 11302 (a)).

B. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. (38 U.S.C. 101(2))

IV. Related HVRP Program Development Activities

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran,* such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups,* and especially veterans' service and community-based (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support.* A ''Stand Down'', as it relates to homeless veterans, is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

V. Program Summary

A. Program Concept and Emphasis

The HVRP grants under section 5 of the Homeless Veterans' Comprehensive Assistance Act (HVCAA) of 2001 are intended to address two objectives: (1) To provide services to assist in reintegrating homeless veterans into meaningful employment within the

labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2003 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

1. Outreach, intake, assessment, counseling to the degree practical and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be veterans who have experience in dealing with, and an understanding of the needs of the homeless.

2. Coordination with veterans' services programs and organizations such as:

- Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
- Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
- Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

3. Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

- Alcohol and drugs;
- Medical;
- Post Traumatic Stress Disorder;
- Mental health;
- Coordinating with McKinney Homeless Assistance Act (MHAA) title VI programs for health care for the homeless (health care programs under the HVCAA);

4. Referral to housing assistance provided by, for example:

- Local shelters;
- Federal Emergency Management Administration (FEMA) food and shelter programs;
- Transitional housing programs and single room occupancy housing programs funded under MHAA title IV (and under the HVCAA);
- Permanent housing programs for the handicapped homeless funded under MHAA title IV (and under the HVCAA);
- Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and

5. Employment and training services such as:

- Basic skills instruction;
- Remedial education activities;
- Job search activities, including job search workshops;
- Job counseling;
- Job preparatory training, including resume writing and interviewing skills;
- Subsidized trial employment (work experience);
- On-the-job training;
- Classroom training;
- Job placement in unsubsidized employment;
- Placement follow up services; and
- Services provided under WIA.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to the local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce.

Under the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. The outcome measurement established for HVRP grants is for grantees to meet a minimum entered employment rate of 56%, *e.g.,* number of entered employments divided by enrollments (these outcomes will be reported quarterly on Technical Performance Goals Form, Appendix D). While entering employment is a viable outcome, it will be necessary to measure results over a longer term (retention) to determine the success of programs.

The following program discussion must be considered in a program model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans.

Once the eligible participants have been identified, an assessment must be made of their abilities, interests, needs and barrier to employment. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training.

When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process.

Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90 and 180 day follow-up is fundamental to assessing the results of the program success. Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Grantees, prior to the end of the grant performance period, must obligate funds to ensure that follow-up activities are completed. Such results will be reported in the final technical performance report.

VI. Required Content

There are seven program activities that all applications must contain to be found technically acceptable under this SGA. Programs must be ''employment focused'' and must be responsive to the rating criteria in section IX. These activities are:

1. Outreach;
2. Pre-enrollment assessments;
3. Employment Development Plans for all clients;
4. Case management;
5. Job placement and job retention follow-up (at 90 and 180 days) after individual enters employment.
6. Utilization of DVOP and LVER staff in service delivery.
7. Programs must show community linkages with other programs and services which provide support to homeless veterans.

VII. Proposal Content

The proposal consists of two separate and distinct parts, part 1 is the technical proposal and part 2 is the cost proposal. The information provided in these two parts is essential in gaining an understanding of the programmatic and fiscal contents of the grant proposal.

A. *Part 1—The Technical Proposal* consists of a narrative proposal that demonstrates: The applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal narrative must not exceed fifteen (15) pages double-spaced, font size no less than 11 pt., and typewritten on one side of the paper only. (The applicant also must complete the forms, *i.e.*, Technical Performance Goals chart provided in the SGA, Appendix D.)

The proposal must include an outreach component which uses veterans whenever possible to provide outreach. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

Programs must be ''employment focused''. The services provided will be directed toward: (a) Increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format for the technical proposal is strongly recommended:

1. *Need for the program:* The applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the project would respond to these needs. Include Labor Market Information (LMI) on the outlook for job opportunities in the service area.

2. *Approach or strategy to increase employment and job retention:* Applicants must be responsive to the Rating Criteria contained in section IX and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Outline the type(s) of training available—is training for demand occupations, the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow up to address retention after 90 and 180 days with participants who entered employment (*see* discussion on results in section VII); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to the homeless veterans:* Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representatives (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system must be delineated. Describe any linkages with any other resources and/or other programs for homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

4. *Linkages with other Federal agencies:* Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and per diem programs. Indicate how the applicant will coordinate with any ''continuum of care'' efforts for the homeless among agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

5. *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary.

6. *Organizational capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a HVRP or other Homeless Employment and Training program, JTPA IV–C program, or VWIP program, must include final or most recent technical performance reports. For those applicants with no prior grant experience, a summary narrative of program experience and employment and training performance outcomes is required. The applicant must also provide evidence of key staff capability.

7. *Proposed housing strategy for homeless veterans:* Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant is not allowed to use HVRP resources to support housing needs.

Note: Resumes, charts, standard forms, transmittal letters, MOUs, agreements, lists of contracts and grants, and letters of support are not included in the page count. (If provided include these documents as attachments to the technical proposal.)

B. *Part 2—Cost Proposal* must contain: (1) the Standard Form (SF) 424, ''Application for Federal Assistance'' (original, signed in blue ink), (2) the Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B, and

(3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA. All applicants must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, block 10.

All applicants must include, as a separate appendix, a list of all government grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information. Veterans' Employment and Training Service reserves the right to have a representative within each State review and verify this data. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of placement and enrollment costs.

VIII. The Cost Proposal Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-awardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-awards/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges may not exceed 36 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a longitudinal follow up survey, six (6) months after the program performance period ends;

E. A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. An identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in section B of the Budget Information Sheet.

IX. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the government reserves the right to award on the basis of the initial proposal submissions, the government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer.

The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs *e.g.*, cost per enrollment and placement, demonstration models, and geographic service areas. While points will not be awarded for cost issues, cost per entered employment will be given serious consideration in the selection of awardee. The Grant Officer's determination for award under SGA 03–03 is the final agency action. The submission of the same proposal from any prior year HVRP or Homeless Veterans' Employment and Training (HVET) competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. *Need for the Project:* 15 points.

The applicant will document the extent of need for this project, as demonstrated by: (a) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (b) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (c) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. *Overall Strategy to Increase Employment and Retention:* 40 points.

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post-placement follow-up services. Applicants must address how they will target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local services and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (including DVOP and LVER Programs), VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, entered employment/placements and job retention. (*See* Appendix D.) Of the 40 points possible in the strategy to increase employment and retention, 5 points will be awarded to grant proposals that demonstrate the ability to maintain a six month employment retention rate of 50 percent or greater.

3. *Quality and Extent of Linkages with Other Providers of Services to the Homeless and to Veterans:* 10 points.

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. (Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.)

4. *Demonstrated Capability in Providing Required Program Services:* 20 points.

The applicant must describe its relevant prior experience in operating employment and training programs and

providing services to participants similar to those which are proposed under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also address its capability and ability for timely startup of the program. The applicant should delineate its staff capability and ability to manage the financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. *Quality of Overall Housing Strategy:* 15 points.

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds may not be used to purchase housing or vehicles.

X. Post-Award Conference

A Post-Award conference will be held for those grantees awarded PY 2003 HVRP funds from the competition. It is expected to be held in May or June, 2003. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please plan on five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

XI. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (*i.e.*, October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, if required; and (ii) a timetable for accomplishment of the corrective action.

C. 90 Day Follow-Up Report

The grantee must submit no later than 120 days after the grant expiration date a final report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards); and

2. Technical Performance Report—(Program Goals).

D. Six (6) Month Follow-Up/Closeout Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow up report containing the following:

1. Final Financial Status Report (SF–269A); and

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) whether the veterans are still employed at the same or similar job, if not what are the reasons; (d) whether the training received was applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XII. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

2. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

3. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Administrative Standards and Provisions

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

All grants will be subject to the following administrative standards and provisions, if applicable:

1. 29 CFR part 93—Lobbying.
2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.
3. 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.
4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
5. 29 CFR part 98—Federal standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
6. 29 CFR part 99—Audit of States, Local Governments, and Non-profit Organization.

7. 29 CFR parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial Assistance.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

Signed in Washington, DC this 27th day of February, 2003.

Daniel P. Murphy,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: The Glossary of Terms

Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 90 Days				
Number Retaining Jobs For 180 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total		
Fringe Benefits For All Positions		
Contractual		
Travel		
Indirect Costs		
Equipment		
Supplies		
Total Costs ----------		

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Rank	Area Name	Census Population	
		April 1, 2000	April 1, 1990
1	New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	21,199,865	19,549,649
2	Los Angeles--Riverside--Orange County, CA CMSA	16,373,645	14,531,529
3	Chicago--Gary--Kenosha, IL--IN--WI CMSA	9,157,540	8,239,820
4	Washington--Baltimore, DC--MD--VA--WV CMSA	7,608,070	6,727,050
5	San Francisco--Oakland--San Jose, CA CMSA	7,039,362	6,253,311
6	Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	6,188,463	5,892,937
7	Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	5,819,100	5,455,403
8	Detroit--Ann Arbor--Flint, MI CMSA	5,456,428	5,187,171
9	Dallas--Fort Worth, TX CMSA	5,221,801	4,037,282
10	Houston--Galveston--Brazoria, TX CMSA	4,669,571	3,731,131
11	Atlanta, GA MSA	4,112,198	2,959,950
12	Miami--Fort Lauderdale, FL CMSA	3,876,380	3,192,582
13	Seattle--Tacoma--Bremerton, WA CMSA	3,554,760	2,970,328
14	Phoenix--Mesa, AZ MSA	3,251,876	2,238,480
15	Minneapolis--St. Paul, MN--WI MSA	2,968,806	2,538,834
16	Cleveland--Akron, OH CMSA	2,945,831	2,859,644
17	San Diego, CA MSA	2,813,833	2,498,016
18	St. Louis, MO--IL MSA	2,603,607	2,492,525
19	Denver--Boulder--Greeley, CO CMSA	2,581,506	1,980,140
20	San Juan--Caguas--Arecibo, PR CMSA	2,450,292	2,270,808
21	Tampa--St. Petersburg--Clearwater, FL MSA	2,395,997	2,067,959
22	Pittsburgh, PA MSA	2,358,695	2,394,811
23	Portland--Salem, OR--WA CMSA	2,265,223	1,793,476
24	Cincinnati--Hamilton, OH--KY--IN CMSA	1,979,202	1,817,571
25	Sacramento--Yolo, CA CMSA	1,796,857	1,481,102
26	Kansas City, MO--KS MSA	1,776,062	1,582,875
27	Milwaukee--Racine, WI CMSA	1,689,572	1,607,183
28	Orlando, FL MSA	1,644,561	1,224,852
29	Indianapolis, IN MSA	1,607,486	1,380,491
30	San Antonio, TX MSA	1,592,383	1,324,749
31	Norfolk--Virginia Beach--Newport News, VA--NC MSA	1,569,541	1,443,244
32	Las Vegas, NV--AZ MSA	1,563,282	852,737
33	Columbus, OH MSA	1,540,157	1,345,450
34	Charlotte--Gastonia--Rock Hill, NC--SC MSA	1,499,293	1,162,093
35	New Orleans, LA MSA	1,337,726	1,285,270
36	Salt Lake City--Ogden, UT MSA	1,333,914	1,072,227
37	Greensboro--Winston-Salem--High Point, NC MSA	1,251,509	1,050,304
38	Austin--San Marcos, TX MSA	1,249,763	846,227
39	Nashville, TN MSA	1,231,311	985,026
40	Providence--Fall River--Warwick, RI--MA MSA	1,188,613	1,134,350
41	Raleigh--Durham--Chapel Hill, NC MSA	1,187,941	855,545
42	Hartford, CT MSA	1,183,110	1,157,585
43	Buffalo--Niagara Falls, NY MSA	1,170,111	1,189,288
44	Memphis, TN--AR--MS MSA	1,135,614	1,007,306

45	West Palm Beach--Boca Raton, FL MSA	1,131,184	863,518
46	Jacksonville, FL MSA	1,100,491	906,727
47	Rochester, NY MSA	1,098,201	1,062,470
48	Grand Rapids--Muskegon--Holland, MI MSA	1,088,514	937,891
49	Oklahoma City, OK MSA	1,083,346	958,839
50	Louisville, KY--IN MSA	1,025,598	948,829
51	Richmond--Petersburg, VA MSA	996,512	865,640
52	Greenville--Spartanburg--Anderson, SC MSA	962,441	830,563
53	Dayton--Springfield, OH MSA	950,558	951,270
54	Fresno, CA MSA	922,516	755,580
55	Birmingham, AL MSA	921,106	840,140
56	Honolulu, HI MSA	876,156	836,231
57	Albany--Schenectady--Troy, NY MSA	875,583	861,424
58	Tucson, AZ MSA	843,746	666,880
59	Tulsa, OK MSA	803,235	708,954
60	Syracuse, NY MSA	732,117	742,177
61	Omaha, NE--IA MSA	716,998	639,580
62	Albuquerque, NM MSA	712,738	589,131
63	Knoxville, TN MSA	687,249	585,960
64	El Paso, TX MSA	679,622	591,610
65	Bakersfield, CA MSA	661,645	543,477
66	Allentown--Bethlehem--Easton, PA MSA	637,958	595,081
67	Harrisburg--Lebanon--Carlisle, PA MSA	629,401	587,986
68	Scranton--Wilkes-Barre--Hazleton, PA MSA	624,776	638,466
69	Toledo, OH MSA	618,203	614,128
70	Baton Rouge, LA MSA	602,894	528,264
71	Youngstown--Warren, OH MSA	594,746	600,895
72	Springfield, MA MSA	591,932	587,884
73	Sarasota--Bradenton, FL MSA	589,959	489,483
74	Little Rock--North Little Rock, AR MSA	583,845	513,117
75	McAllen--Edinburg--Mission, TX MSA	569,463	383,545

[FR Doc. 03–5086 Filed 3–4–03; 8:45 am]
BILLING CODE 4510–79–C

DEPARTMENT OF LABOR

Veterans' Employment and Training Services

Urban Homeless Veterans' Reintegration Program Competitive Grants for PY 2003

AGENCY: Veterans' Employment and Training Services, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for Homeless Veterans' Reintegration Programs (SGA 03–04).

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for urban grants for Homeless Veterans' Reintegration Programs (HVRP) authorized under the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA). This notice contains all of the necessary information and forms needed to apply for grant funding. Applicants should design programs to assist eligible veterans who are homeless by providing employment, training, support services and assistance. Under this solicitation, VETS anticipates that up to $7 Million will be available for grant awards in Program Year (PY) 2003 and expects to award up to twenty-five [25] grants.

The HVRP programs is designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. VETS in Program Year (PY) 2003 will continue to seek applicants that provide direct services through a case management approach, link with Federal, State and Local resources for homeless veterans and have clear strategies for employment and retention of the homeless.

DATES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210 by April 21, 2003.

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–04, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

Forms or Amendments: If another copy of a Standard form is needed, go online to *http://www.nara.gov.*

To receive amendments to this Solicitation (Please reference SGA 03–

04), all applicants must register their name and address with the Grant Officer at the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

I. Background

Section 5 of the Homeless Veterans' Comprehensive Assistance Act of 2001 (HVCAA) amended the Homeless Veterans' Reintegration Programs at 38 U.S.C. 2021, and provides ''the Secretary * * * shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to provide job training, counseling, and placement services (including job readiness and literacy and skills training) to expedite the reintegration of homeless veterans into the labor force.''

The Homeless Veterans' Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. Both types of programs, urban and non-urban, in the past have provided valuable information on approaches that work in the different environments.

II. Application Process

A. Potential Jurisdictions To Be Served

This SGA is for urban HVRP grants. Separate SGAs for non-urban and *new grantees* HVRP grants have been issued at the same time.

Due to the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the HVCAA, the only potential jurisdictions which will be served through this urban competition for HVRPs in PY 2003 are the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. All potential HVRP jurisdictions are listed in Appendix G.

B. Eligible Applicants

Applications for funds will be accepted from State and Local workforce investment boards, local public agencies, for-profit/commercial entities, and nonprofit organizations, including faith-based and community organizations, which have familiarity with the area and population to be served and can administer an effective program. Eligible applicants will fall into one of the following categories:

1. State and Local Workforce Investment Boards (WIBS) as defined in Section 111 and 117 of the Workforce Investment Act, are eligible applicants, as well as State and local public agencies.

2. Local public agencies, meaning any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties.) A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through partnerships or sub-awards, experienced public agencies, private nonprofit organizations, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to homeless veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

3. Also eligible to apply are for-profit/commercial entities and private nonprofit organizations that have operated an HVRP or similar employment and training program for the homeless or veterans and proven a capacity to manage grants and have or will provide the necessary linkages with other service providers. Entities described in Section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as Section 18 of the Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

C. Funding Levels

The total amount of funds available for this solicitation is up to $7.0 million. It is anticipated that up to 25 awards may be made under this solicitation. Awards are expected to range from $250,000 to $300,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $300,000 will be considered non-responsive.

D. Period of Performance

The period of performance will be for twelve (12) months from date of award unless modified. It is expected that successful applicants will commence program operations under this solicitation by July 1, 2003. Program funds must be obligated by June 30, 2004, however, funds may be reserved for limited activities of the close-out.

E. Optional Year Funding

Should there be action by Congress to appropriate funds for this purpose, optional year funding may be considered. The Government does *not,* however, guarantee optional year funding for any awardee. Should VETS decide that an option year for funding be exercised, the grantees' performance during the previous period of operations will be taken into consideration as follows:

1. The grantee must meet at minimum 85% of planned goals for Federal expenditures, enrollments, and placements in each quarter; and

2. The grantee must be in compliance with all terms identified in the solicitation for grant application, general and special provisions.

3. All program and fiscal reports must have been submitted by the established due date and must be verifiable for accuracy.

All instructions for modifications and announcement of fund availability will be issued at a later date. For these competitive grants, only two optional years of HVRP funding may be available.

F. Submission of Proposal

A cover letter, an original and two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Service Office, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210. The proposal must consist of two (2) separate and distinct parts: (a) the technical proposal and (b) the cost proposal; (1) one completed, blue ink-signed original SF 424 grant application with an original and two (2) copies of the Technical Proposal; and an original and two (2) copies of the Cost Proposal.

G. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received

at the Office of Procurement Services after 4:45 p.m. ET, April 21, 2003, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before April 21, 2003; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 21, 2003; and

3. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission; that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

III. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term ''homeless or homeless individual'' includes persons who 1ack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. [42 U.S.C. 11302 (a)].

B. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [38 U.S.C. 101(2)]

IV. Related HVRP Program Development Activities

Community Awareness Activities

In order to promote linkages between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, outstation staff, develop individual service contracts, and involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

A. *Providers of hands-on services to the homeless veteran*, such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

B. *Federal, State and local entitlement services* such as the Social Security Administration (SSA), Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, labor exchange, and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

C. *Civic and private sector groups*, and especially veterans' service and community-based organizations (including faith-based organizations), to describe homeless veterans and their needs.

D. *Stand Down Support*

A ''Stand Down'', as it relates to homeless veterans, is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing, and medical attention. This type of event is mostly volunteer effort, which is organized within a community and brings service providers together such as the DVA, Disabled Veterans' Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on-site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such events have been held throughout the nation.

In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP grant funds may be used to supplement the Stand Down effort where funds are not otherwise available, and should be reflected in the budget and budget narrative.

V. Program Summary

A. Program Concept and Emphasis

The HVRP grants under Section 5 of the Homeless Veterans Comprehensive Assistance Act (HVCAA) of 2001 are intended to address two objectives: (1) to provide services to assist in reintegrating homeless veterans into

meaningful employment within the labor force; and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2003 will continue to strengthen the development of effective service delivery systems, to provide comprehensive services through a case management approach that will address the complex problems facing eligible veterans trying to transition into gainful employment, and improve strategies for employment and retention.

B. Scope of Program Design

The project design must provide for the following services:

1. Outreach, intake, assessment, counseling to the degree practical, and employment services. Outreach must be provided at shelters, day centers, soup kitchens, VA medical centers, and other programs for the homeless. Program staff providing outreach services should be veterans who have experience in dealing with, and an understanding of the needs of the homeless.

2. Coordination with veterans' services programs and organizations such as:

- Disabled Veterans' Outreach Program (DVOP) Specialists, Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the workforce development system's One-Stop Centers, and Veterans' Workforce Investment Programs (VWIPs);
- Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary, and other programs, including those offering transitional housing; and
- Veteran service organizations such as The American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS);

3. Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

- Alcohol and drugs;
- Medical;
- Post Traumatic Stress Disorder;
- Mental Health;
- Coordinating with McKinney Homeless Assistance Act (MHAA) Title VI programs for health care for the homeless or [health care programs under the HVCAA];

4. Referral to housing assistance provided by, for example:

- Local shelters;
- Federal Emergency Management Administration (FEMA) food and shelter programs;
- Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV [and under HVCAA];
- Permanent housing programs for the handicapped homeless funded under MHAA Title IV [and under HVCAA];
- Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers; and

5. Employment and training services such as:

- Basic skills instruction;
- Remedial education activities;
- Job search activities, including job search workshops;
- Job counseling;
- Job preparatory training, including resume writing and interviewing skills;
- Subsidized trial employment (Work Experience);
- On-the-Job Training;
- Classroom Training;
- Job placement in unsubsidized employment;
- Placement follow up services; and
- Services provided under WIA.

C. Results-Oriented Model

No model is mandatory, but the applicant must design a program that is responsive to the local needs, and will carry out the objectives of the program to successfully reintegrate homeless veterans into the workforce.

Under the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes. The outcome measurement established for HVRP grants is for grantees to meet a minimum entered employment rate of 56%, *e.g.*, number of entered employments divided by enrollments (These outcomes will be reported quarterly on Technical Performance Goals Form, Appendix D.). While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs.

The following program discussion must be considered in a results-oriented model. The first phase of activity must consist of the level of outreach that is necessary to reach eligible veterans. Such outreach will also include establishing contact with other agencies that encounter homeless veterans.

Once the eligible participants have been identified, an assessment must be made of their abilities, interests, needs, and barriers to employment. In some cases, these participants may require referrals to services such as social rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training.

When the individual is stabilized, the assessment should focus on the employability of the individual and their enrollment into the program. A determination should be made as to whether they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow, in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Supportive services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process.

Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The following program discussion emphasizes that follow-up is an integral program component. Follow-up to determine whether the veteran is in the same or similar job at the 90 and 180 day period after entering employment is required. It is important that the grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 90 and 180 day follow-up is fundamental to assessing the results of the program success. Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Grantees, prior to the end of the grant performance period, must obligate funds to ensure that follow-up activities are completed. Such results will be reported in the final technical performance report.

VI. Required Content

There are seven program activities that all applications must contain to be found technically acceptable under this SGA. Programs must be ''employment focused'' and must be responsive to the rating criteria in Section IX. These activities are:

1. Outreach
2. Pre-Enrollment Assessments;
3. Employment Development Plans for all clients;
4. Case Management
5. Job Placement and job retention follow-up (at 90 and 180 days) after individual enters employment.
6. Utilization of DVOP and LVER staff in service delivery.
7. Programs must show community linkages with other programs and services which provide support to homeless veterans.

VII. Proposal Content

The proposal consists of two separate and distinct parts, Part 1 is the technical proposal and Part 2 is the cost proposal. The information provided in these two parts is essential in gaining an understanding of the programmatic and fiscal contents of the grant proposal.

A. Part 1—The Technical Proposal consists of a narrative proposal that demonstrates: the applicant's knowledge of the need for this particular grant program; an understanding of the services and activities proposed to obtain successful outcomes for the homeless veterans served; and the capability to accomplish the expected outcomes of the proposed project design. The technical proposal narrative must not exceed fifteen (15) pages double-spaced, font size no less than 11 pt., and typewritten on one side of the paper only. [The applicant also must complete the forms, i.e., Technical Performance Goals chart provided in the SGA, Appendix D.].

The proposal must include an outreach component which uses veterans whenever possible to provide outreach. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVER) in the jurisdiction is required.

Programs must be ''employment focused''. The services provided will be directed toward: (a) increasing the employability of homeless veterans through training or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

The following format for the technical proposal is strongly recommended:

1. *Need for the program:* The applicant must identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans, and how the project would respond to these needs. Include Labor Market Information (LMI) on the outlook for job opportunities in the service area.

2. *Approach or strategy to increase employment and job retention:* Applicants must be responsive to the Rating Criteria contained in Section IX and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Outline the type(s) of training available '' is training for demand occupations, the length of training, the training curriculum and how the training will enhance the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a plan for follow-up to address retention after 90 and 180 days with participants who entered employment. (See discussion on results in Section V.c.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

3. *Linkages with other providers of employment and training services to the homeless veterans:* Describe the linkages this program will have with other providers of services to homeless veterans outside of the HVRP grant; include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP), the Local Veterans' Employment Representative (LVER) program, and programs under the Workforce Investment Act; and list the type of services provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system must be delineated. Describe any linkages with any other resources and/or other programs for Homeless veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

4. *Linkages with other federal agencies:* Describe any program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (DVA) for the homeless, to include the Compensated Work Therapy (CWT) and Per Diem programs. Indicate how the applicant will coordinate with any ''continuum of care'' efforts for the homeless among agencies in the community. If Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

5. *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and why they are necessary, if Memoranda of Understanding (MOU) or other service agreements exist with other service providers, copies should be provided.

6. *Organizational capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. A summary narrative of program experience and employment and training performance outcomes is required. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant which has operated a HVRP or other Homeless Employment and Training program, or VWIP program, must include final or most recent technical performance reports. The applicant must also provide evidence of key staff capability.

7. *Proposed housing strategy for homeless veterans:* Describe how housing resources for homeless veterans will be obtained or accessed. These resources should be from linkages or sources other than the HVRP grant such as HUD, HHS, community housing resources, DVA leasing, or other programs. The applicant is not allowed to use HVRP resources to support housing needs.

Note: Resumes, charts, standard forms, transmittal letters, MOUs, agreements, lists of contracts and grants and letters of support are not included in the page count. [If provided, include these documents as attachments to the technical proposal.]

B. Part 2—Cost Proposal must contain: (1) The Standard Form (SF) 424, ''Application for Federal Assistance'', (original, signed in blue-ink) (2) the Standard Form (SF) 424A

''Budget Information Sheet'' in Appendix B, and (3) a detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative'' and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. In addition to the cost proposal the applicants must include the Assurance and Certification signature page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this SGA. All applicants must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements.

The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, Block 10.

All applicants must include, as a separate appendix, a list of all government grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information. Veterans' Employment and Training Service reserves the right to have a representative within each State review and verify this data. Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness.

VIII. The Cost Proposal Narrative Information

As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

A. A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including subawardees);

B. An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.,* rates exceeding 35% of salaries and wages);

C. An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subawards/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges may not exceed 36 cents per mile;

D. A plan, which includes all associated costs, for retaining participant information pertinent to a follow-up survey, six (6) months after the program performance period ends;

E. A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

F. An identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in Section B of the Budget Information Sheet.

IX. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs *e.g.*, cost per enrollment and placement, demonstration models, and geographic service areas. While points will not be awarded for cost issues, cost per entered employment will be given serious consideration in the selection of awardee. The Grant Officer's determination for award under SGA 03–04 is the final agency action. The submission of the same proposal from any prior year HVRP or Homeless Veterans Employment and Training (HVET) competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. *Need for the Project:* 15 points.

The applicant will document the extent of need for this project, as demonstrated by: (a) The potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (b) the rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (c) the extent of gaps in the local infrastructure to effectively address the employment barriers that characterize the target population.

2. *Overall Strategy To Increase Employment and Retention:* 40 points.

The application must include a description of the approach to providing comprehensive employment and training services, including job training, job development, any employer commitments to hire, placement, and post-placement follow up services. Applicants must address how they will target occupations in expanding industries, rather than declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local services and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (including DVOP and LVER Programs), One-stops, VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be presented. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, placement/entered employments and job retention. (See Appendix D). Of the 40 points possible in the strategy to increase employment and retention, 5 points will be awarded to grant proposals that demonstrate the ability to maintain a six-month employment retention rate of 50 percent or greater.

3. *Quality and Extent of Linkages with Other Providers of Services to the Homeless and to Veterans:* 10 points.

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless veterans in the local community outside of the HVRP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe, to the extent possible, how the project would fit into the community's continuum of care approach to respond to homelessness and any linkages to HUD, HHS or DVA programs or resources to benefit the proposed program.

4. *Demonstrated Capability in Providing Required Program Services:* 20 points.

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to those which are proposed

under this solicitation. Specific outcomes achieved by the applicant must be described in terms of clients placed in jobs, etc. The applicant must also address its capacity for timely startup of the program. The applicant should delineate its staff capability and ability to manage the administrative, programmatic and financial aspects of a grant program, including a recent (within the last 12 months), financial statement or audit if available. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants may not have any technical reports to submit.

5. *Quality of Overall Housing Strategy:* 15 points.

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, DVA lease, or other means. HVRP funds may not be used to purchase housing or vehicles.

X. Post-Award Conference

A Post-Award conference will be held for those grantees awarded PY 2003 HVRP funds from the competition. It is expected to be held in May or June, 2003. Up to two grantee representatives must be present; a fiscal and a program representative is recommended. The site of the Post-Award conference has not yet been determined, for planning and budgeting purposes, please use five days and use Washington, DC as the conference location. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

XI. Reporting Requirements

The grantee will submit the reports and documents listed below:

A. Financial Reports

The grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (*i.e.*, October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of corrective action which will be taken to meet the planned goals, if required; and (ii) a timetable for accomplishment of the corrective action.

C. 90 Day Follow-Up Report

The grantee must submit no later than 120 days after the grant performance expiration date a report containing the following:

1. Financial Status Report (SF–269A) (copy to be provided following grant awards); and

2. Technical Performance Report—(Program Goals).

D. Six (6) Month Follow-Up/Closeout Report

No later than 210 days after the grant performance period ends, the grantee must submit a follow-up report containing the following:

1. Final Financial Status Report (SF–269A); and

2. Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed after the 6 month follow-up period; (c) whether the veterans are still employed at the same or similar job, if not what are the reasons; (d) whether the training received was applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

XII. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

2. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

3. Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Administrative Standards and Provisions

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition. All grants will be subject to the following administrative standards and provisions, if applicable:

1. 29 CFR part 93—Lobbying.

2. 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

3. 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

4. 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

5. 29 CFR part 98—Federal standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

6. 29 CFR part 99—Audit Of States, Local Governments, and Non-profit Organization.

7. 29 CFR parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the

Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; and Nondiscrimination on the basis of sex in Education programs receiving or benefiting from Federal Financial Assistance.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 27th day of February, 2003.

Daniel P. Murphy,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: The Glossary of Terms

Appendix G: List of 75 largest U.S. Cities

BILLING CODE 4510–79–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				

Cost Per Placement				
Number Retaining Jobs For 90 Days				
Number Retaining Jobs For 180 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total		
Fringe Benefits For All Positions		
Contractual		
Travel		
Indirect Costs		
Equipment		
Supplies		
Total Costs ----------		

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Rank	Area Name	Census Population	
		April 1, 2000	April 1, 1990
1	New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA	21,199,865	19,549,649
2	Los Angeles--Riverside--Orange County, CA CMSA	16,373,645	14,531,529
3	Chicago--Gary--Kenosha, IL--IN--WI CMSA	9,157,540	8,239,820
4	Washington--Baltimore, DC--MD--VA--WV CMSA	7,608,070	6,727,050
5	San Francisco--Oakland--San Jose, CA CMSA	7,039,362	6,253,311
6	Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA	6,188,463	5,892,937
7	Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA	5,819,100	5,455,403
8	Detroit--Ann Arbor--Flint, MI CMSA	5,456,428	5,187,171
9	Dallas--Fort Worth, TX CMSA	5,221,801	4,037,282
10	Houston--Galveston--Brazoria, TX CMSA	4,669,571	3,731,131
11	Atlanta, GA MSA	4,112,198	2,959,950
12	Miami--Fort Lauderdale, FL CMSA	3,876,380	3,192,582
13	Seattle--Tacoma--Bremerton, WA CMSA	3,554,760	2,970,328
14	Phoenix--Mesa, AZ MSA	3,251,876	2,238,480
15	Minneapolis--St. Paul, MN--WI MSA	2,968,806	2,538,834
16	Cleveland--Akron, OH CMSA	2,945,831	2,859,644
17	San Diego, CA MSA	2,813,833	2,498,016
18	St. Louis, MO--IL MSA	2,603,607	2,492,525
19	Denver--Boulder--Greeley, CO CMSA	2,581,506	1,980,140
20	San Juan--Caguas--Arecibo, PR CMSA	2,450,292	2,270,808
21	Tampa--St. Petersburg--Clearwater, FL MSA	2,395,997	2,067,959
22	Pittsburgh, PA MSA	2,358,695	2,394,811
23	Portland--Salem, OR--WA CMSA	2,265,223	1,793,476
24	Cincinnati--Hamilton, OH--KY--IN CMSA	1,979,202	1,817,571
25	Sacramento--Yolo, CA CMSA	1,796,857	1,481,102
26	Kansas City, MO--KS MSA	1,776,062	1,582,875
27	Milwaukee--Racine, WI CMSA	1,689,572	1,607,183
28	Orlando, FL MSA	1,644,561	1,224,852
29	Indianapolis, IN MSA	1,607,486	1,380,491
30	San Antonio, TX MSA	1,592,383	1,324,749
31	Norfolk--Virginia Beach--Newport News, VA--NC MSA	1,569,541	1,443,244
32	Las Vegas, NV--AZ MSA	1,563,282	852,737
33	Columbus, OH MSA	1,540,157	1,345,450
34	Charlotte--Gastonia--Rock Hill, NC--SC MSA	1,499,293	1,162,093
35	New Orleans, LA MSA	1,337,726	1,285,270
36	Salt Lake City--Ogden, UT MSA	1,333,914	1,072,227
37	Greensboro--Winston-Salem--High Point, NC MSA	1,251,509	1,050,304
38	Austin--San Marcos, TX MSA	1,249,763	846,227
39	Nashville, TN MSA	1,231,311	985,026
40	Providence--Fall River--Warwick, RI--MA MSA	1,188,613	1,134,350
41	Raleigh--Durham--Chapel Hill, NC MSA	1,187,941	855,545
42	Hartford, CT MSA	1,183,110	1,157,585
43	Buffalo--Niagara Falls, NY MSA	1,170,111	1,189,288
44	Memphis, TN--AR--MS MSA	1,135,614	1,007,306

45	West Palm Beach--Boca Raton, FL MSA	1,131,184	863,518
46	Jacksonville, FL MSA	1,100,491	906,727
47	Rochester, NY MSA	1,098,201	1,062,470
48	Grand Rapids--Muskegon--Holland, MI MSA	1,088,514	937,891
49	Oklahoma City, OK MSA	1,083,346	958,839
50	Louisville, KY--IN MSA	1,025,598	948,829
51	Richmond--Petersburg, VA MSA	996,512	865,640
52	Greenville--Spartanburg--Anderson, SC MSA	962,441	830,563
53	Dayton--Springfield, OH MSA	950,558	951,270
54	Fresno, CA MSA	922,516	755,580
55	Birmingham, AL MSA	921,106	840,140
56	Honolulu, HI MSA	876,156	836,231
57	Albany--Schenectady--Troy, NY MSA	875,583	861,424
58	Tucson, AZ MSA	843,746	666,880
59	Tulsa, OK MSA	803,235	708,954
60	Syracuse, NY MSA	732,117	742,177
61	Omaha, NE--IA MSA	716,998	639,580
62	Albuquerque, NM MSA	712,738	589,131
63	Knoxville, TN MSA	687,249	585,960
64	El Paso, TX MSA	679,622	591,610
65	Bakersfield, CA MSA	661,645	543,477
66	Allentown--Bethlehem--Easton, PA MSA	637,958	595,081
67	Harrisburg--Lebanon--Carlisle, PA MSA	629,401	587,986
68	Scranton--Wilkes-Barre--Hazleton, PA MSA	624,776	638,466
69	Toledo, OH MSA	618,203	614,128
70	Baton Rouge, LA MSA	602,894	528,264
71	Youngstown--Warren, OH MSA	594,746	600,895
72	Springfield, MA MSA	591,932	587,884
73	Sarasota--Bradenton, FL MSA	589,959	489,483
74	Little Rock--North Little Rock, AR MSA	583,845	513,117
75	McAllen--Edinburg--Mission, TX MSA	569,463	383,545

[FR Doc. 03–5088 Filed 3–4–03; 8:45 am]

BILLING CODE 4510–79–C

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on March 10, 2003 via conference call. The meeting will begin at 2 p.m. and continue until conclusion of the Board's agenda.

LOCATION: 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on adjustments to LSC's FY'04 budget request.
3. Consider and act on authorizing the LSC President and Chairman to discuss and negotiate with the Office of Management & Budget regarding LSC's FY'04 budget request.
4. Consider and act on other business.
5. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing, at (202) 336–8800.

Dated: March 3, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–5348 Filed 3–3–03; 3:20 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: March 12, 2003: 8 a.m.–5:30 p.m., Open Session. Concurrent Sessions: 10 a.m.–10:30 a.m., Closed Session; 2 p.m.–3 p.m., Closed Session.

March 13, 2003: 8:30 a.m.–3 p.m., Open Session. Concurrent Session: 11:15 a.m.–11:45 a.m., Closed Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard,

Arlington, VA 22230, *http://www.nsf.gov/nsb.*

CONTACT PERSON FOR INFORMATION: NSF Information Center, (703) 292–5111.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED

Wednesday, March 12, 2003

Open

Task Force on National Workforce Policy for S&E (8 a.m.–10 a.m.), Room 1295
- Discussion of the draft NWP report

Task Force on S&E Infrastructure (8:30 a.m.–10 a.m.), Room 1235
- Discussion on the final INF report (NSB–02–190)
- Discussion of Draft Communication/Dissemination Plan

Committee on Strategy & Budget (10:30 a.m.–12 Noon), Room 1235
- Review of draft NSF GPRA Strategic Plan, FY 2003–2008
- Discussion of History and Impacts of Funds for Director's Initiatives
- Planning for Implementation of Section 22, NSF Authorization Act
- Review of Contract Activities Examining NSF Business & Management Practices

Subcommittee on S&E Indicators (10 a.m.–11 a.m.), Room 1295
- S&E Indicators 2004—State S&E Chapter
- Final NSB Reviewer Assignments

Executive Committee (2 p.m.–2:20 p.m.), Room 1295
- Director's Report

Committee on Education & Human Resources (3 p.m.–5:30 p.m.), Room 1235
- Agenda for the ''Broadening Participation'' Workshop
- Reports on NSF K–12, Undergraduate and Graduate Programs
- Report from the Subcommittee on S&E Indicators
- Focus on the Future: Mathematics Education Research
- Update on Meeting of the Mathematics Education Portfolio Review Panel
- Report from the Task Force on NWP
- Information Item: NSF Partnership with DOD for Funding REU Sites

Closed

Committee on Strategy and Budget (10 a.m.–10:30 a.m.), Room 1235
- Discussion of the FY 2005 NSF Budget

Executive Committee (2:20 p.m.–3 p.m.), Room 1295
- Specific Personnel Matters
- Future NSF Budgets

Vannevar Bush Award Committee (2 p.m.–3 p.m.), Room 1240
- Discussion of Candidates

Thursday, March 13, 2003

Closed

Plenary session of the Board (11:15 a.m.–11:45 a.m.), Room 1235
- Honorary Awards Recommendations

Open

Committee on Audit & Oversight (8:30a.m.–11 a.m.), Room 1295
- OIG Updates:
  - —Performance Plan
  - —Results of Audit Peer Review
  - —FY 03 and FY 04 OIG Budgets
- CFO Update:
  - —FY 03 and FY 04 Budgets
  - —Facilities Management
  - —Cost Sharing Implementation Update
- CIO Update: Security
- Contact Activity Examining NSF Business & Management Practices

Committee on Programs & Plans (8:30 a.m.–11 a.m.), Room 1235
- High Performance Computing and Computing Infrastructure
- INF Task Force Report
- Long-Lived Data Collections
- Information Item: Status of Support of U.S. Participation in the Integrated Ocean Drilling Program
- Update on NSB Environment Report
- Facilities Management & Oversight Guide: Status & Public Comment
- CPP Issues:
  - —NSF Authorization Act, Section 14
  - —Proposal for NSB Meetings Outside Washington

Plenary session of the Board (12:30 p.m.–3 p.m.), Room 1235
- Science Presentations
- Minutes
- Closed Session Items for May 2003
- Chairman's Report
- Director's Report
- Report on the Retreat
- Committee Reports

Gerard Glaser,

Executive Officer, NSB.

[FR Doc. 03–5350 Filed 3–3–03; 3:19 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03766]

Environmental Assessment and Finding of No Significant Impact

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact related to license amendment of Byproduct Material License No. 06–00807–01, Schlumberger Technology Corporation, Ridgefield, Connecticut.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Material License No. 06–00807–01 to authorize release a portion of its facility in Ridgefield, Connecticut, for unrestricted use and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate, and, therefore, an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Judy Joustra, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5355 or e-mail *jaj@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Nuclear Regulatory Commission is considering amending Byproduct Materials License No. 06–00807–01 and authorizing the release of a portion of the licensee's facilities in Ridgefield, Connecticut, for unrestricted use and has prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) in support of this action.

Summary

The U. S. Nuclear Regulatory Commission (NRC) reviewed the results of the decommissioning of the Schlumberger Technology Corporation (Schlumberger) facility in Ridgefield, Connecticut. Schlumberger was authorized by NRC from 1956 to 2003 to use radioactive materials for research and development purposes at the site. In 2000, Schlumberger ceased operations with licensed materials in a portion of its facility at the Ridgefield site, and on September 30, 2002 requested that NRC amend its license to release three areas for unrestricted use. Schlumberger contracted with Radiation Safety Associates, Inc. Hebron, Connecticut, who conducted surveys of the areas and determined that these areas meet the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has evaluated Schlumberger's request and results of the surveys, and has developed an Environmental Assessment (EA) in accordance with the requirements of 10 CFR Part 51. Based on the staff evaluation, the conclusion

of the EA is a Finding of No Significant Impact (FONSI) on human health and the environment for the proposed licensing action.

Introduction

Schlumberger requested release for unrestricted use areas of designated as Lab Z, and Lab Z Lower Level including the area identified as the Catacomb, which are attached to the main building on Old Quarry Road, Ridgefield, Connecticut. NRC License No. 06–00807–01, which was issued in 1956 and amended periodically since that time authorized activities at these areas. In Lab Z, Lab Z Lower Level including the Catacomb the licensee conducted research and development, and manufactured neutron generators tubes using curie amounts of tritium.

Licensed activities in Lab Z, and Lab Z Lower Level including the Catacomb ceased completely in November 2000, and the licensee requested an amendment to its license to release Lab Z, and Lab Z Lower Level including the Catacomb for unrestricted use in September 2002. Based on the licensee's historical knowledge of the site and the conditions of the facility, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. A decommissioning plan was not required to be submitted to the NRC. The licensee's contractor surveyed the facilities, decontaminated or remediated areas as needed, and provided documentation that the facilities meet the license termination criteria specified in Subpart E of 10 CFR Part 20, and do not require additional decommissioning activities to be performed. The licensee subsequently requested that the facilities (Lab Z, and Lab Z Lower Level including the Catacomb) be released for unrestricted use.

The Proposed Action

The proposed action is to amend Byproduct Materials License No. 06–00807–01 and release Lab Z, and Lab Z Lower Level including the Catacomb of the facilities at Old Quarry Road, Ridgefield, Connecticut for unrestricted use. By letter dated September 30, 2002, Schlumberger provided survey results which demonstrate that the Ridgefield site is in compliance with the radiological criteria for license termination in Subpart E, 10 CFR Part 20, ''Radiological Criteria for License Termination.''

Purpose and Need for the Proposed Action

The purpose of the proposed action is to amend Byproduct Materials License No. 06–00807–01 and release Lab Z, and Lab Z Lower Level including the Catacomb of the Schlumberger site in Ridgefield, Connecticut, for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment of a license and release of facilities for unrestricted use that ensures protection of public health and safety and the environment.

Alternative to the Proposed Action

Since Lab Z, and Lab Z Lower Level including the Catacomb have already been surveyed and found acceptable for release for unrestricted use, the no-action alternative would be to keep the facilities on the license. This no-action alternative is not acceptable because the licensee does not plan to perform the previously authorized activities with licensed materials at those locations. Maintaining the areas under a license would reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The NRC staff has reviewed the surveys performed by Schlumberger to demonstrate compliance with 10 CFR 20.1402 license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the release for unrestricted use of the Schlumberger facilities are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities' (NUREG–1496).

Lab Z, and Lab Z Lower Level including the Catacomb are attached to the main building on Old Quarry Road, Ridgefield, Connecticut. Since Lab Z, and Lab Z Lower Level including the Catacomb have been surveyed and meet the NRC criteria for unrestricted use in 10 CFR Part 20, the environmental impacts resulting from the release of these areas for unrestricted use are expected to be insignificant. The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Consulted

This Environmental Assessment was prepared entirely by the NRC staff. The State Office of Historical Preservation, the State Fish and Wildlife Service, and the U. S. Fish and Wildlife Service were not contacted because release of Lab Z, and Lab Z Lower Level including the Catacomb at the Schlumberger facilities for unrestricted use does not modify the facilities. No other sources were used beyond those referenced in this EA.

NRC provided a draft of its Environmental Assessment to the State of Connecticut Department of Environmental Protection (CTDEP) for review. On January 31, 2003, CTDEP responded by letter and stated that it concurs with NRC's FONSI on human health and the environment.

Finding of No Significant Impact

The NRC staff concluded that the completed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license amendment to the license and release Lab Z, and Lab Z Lower Level including the Catacomb facilities for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

Judy Joustra, Senior Health Physicist, Division of Nuclear Materials Safety, Region 1.

List of References

1. 10 CFR Part 20, Subpart E.

2. NRC License No. 06–00807–01 inspection and licensing records.

3. Letter dated September 30, 2002, with enclosures, from Schlumberger-Doll Research for Schlumberger Technology Corporation. [ADAMS Accession No. ML022820310].

4. Letter dated December 19, 2002, from Schlumberger-Doll Research for Schlumberger Technology Corporation. [ADAMS Accession No. ML023530607].

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' the application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

Any questions with respect to this action should be referred to Judy Joustra, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5355, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 26th day of February, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–5161 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste, Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on March 25, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, March 25, 2003—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: February 27, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–5163 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on March 19 and 20, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss Westinghouse Electric Company LLC proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, March 19, 2003—8:30 a.m. until the conclusion of business.

Thursday, March 20, 2003—8:30 a.m. until the conclusion of business.

The purpose of this meeting is to review thermal-hydraulic issues concerning the design certification of the AP1000 reactor design. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Company LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat El-Zeftawy (Telephone: 301–415–6889) or the Cognizant Staff Engineer, Mr. Michael R. Snodderly (Telephone: 301–415–6927) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official or Cognizant Staff Engineer between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: February 27, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–5164 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1123, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1123, ''Verification, Validation, Reviews, and Audits for Digital Computer Software Used in Safety Systems of Nuclear Power Plants'' is being developed to describe a process that is acceptable to the NRC staff for the development and assessment of evaluation models that may be used to verify and validate safety system software, subject to the exceptions listed in Regulatory Positions 1 through 8, and for carrying out software reviews, inspections, walkthroughs, and audits, subject to the exceptions listed in Regulatory Position 8.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 30, 2003.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV.* For information about Draft Regulatory

Guide DG–1123, contact Mr. Roman Shaffer at (301) 415–7606, e-mail *RAS3@NRC.GOV.*

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4209; fax (301) 415–3548; e-mail PDR@NRC.GOV. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to (301) 415–2289; e-mail *DISTRIBUTION@NRC.GOV.* Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of February 2003.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 03–5162 Filed 3–4–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employer's Quarterly Report of Contributions Under the RUIA.

(2) *Form(s) submitted:* DC–1.

(3) *OMB Number:* 3220–0012.

(4) *Expiration date of current OMB clearance:* 05/31/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 550.

(8) *Total annual responses:* 2,200.

(9) *Total annual reporting hours:* 917.

(10) *Collection description:* Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–5084 Filed 3–4–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47407; File No. 10–135]

Acknowledgement of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the Island Futures Exchange, LLC

February 26, 2003.

Section 6(g) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] provides that an exchange may register as a national securities exchange solely for the purposes of trading security futures products by filing a written notice with the Securities and Exchange Commission (''Commission'') if such exchange is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under Section 5a of the Commodity Exchange Act.[2] Rule 6a-4 under the Exchange Act[3] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[4] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[5]

On February 19, 2003, the Island Futures Exchange, LLC (''Island'') filed a Form 1–N with the Commission. Pursuant to Section 6(g)(3) of the Exchange Act,[6] the Commission hereby acknowledges receipt of the Form 1–N submitted by Island. Copies of the Form 1–N submitted by Island, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–135.

For questions regarding this Release, contact: Jennifer Colihan, Special Counsel at (202) 942–0735, or Mia Zur, Attorney at (202) 942–7309; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5157 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Number IC–25948; 812–12546]

Rydex ETF Trust, et al.; Notice of Application

February 27, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of an open-end management investment company, whose portfolios will consist of the component securities of certain equity securities indexes, to issue shares of limited redeemability; (b)

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 7a.

[3] 17 CFR 240.6a–4.

[4] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Exchange Act Rule 202.3(b)(3), 17 CFR 202.3(b)(3).

[5] Section 6(g)(2)(B) of the Exchange Act.

[6] 15 U.S.C. 78f(g)(3).

[7] 17 CFR 200.30–3(a)(77).

secondary market transactions in the shares of the series to occur at negotiated prices on The Nasdaq Stock Market (''Nasdaq'') or a national securities exchange (each, a ''Listing Market''); (c) dealers to sell shares of the series to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the ''Securities Act''); and (d) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

APPLICANTS: Rydex ETF Trust (''Trust''), Rydex Distributors, Inc. (''Distributor''), PADCO Advisors II, Inc. (''Adviser'').

FILING DATES: The application was filed on June 8, 2001, and amended on February 24, 2003 and February 27, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 24, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 9601 Blackwell Road, Suite 500, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust is organized as a series investment company with one portfolio (the ''Initial Fund'' and together with the ''Future Funds,'' as defined below, the ''Funds''). The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as the investment adviser to the Funds. The Adviser may, in the future, enter into subadvisory agreements with additional investment advisers to act as subadvisers with respect to particular Funds. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and will be the principal underwriter and distributor of the shares of each Fund (''Shares'').

2. Each Fund will invest in a portfolio of equity securities generally consisting of the component securities of a specified equity securities index (an ''Underlying Index'').[1] The Initial Fund will be based on the Equal Weighted S&P 500 Index. In the future, applicants expect to offer multiple series based on other equity securities indices (each, a ''Future Fund''). Any Future Fund will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of this application. No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, a subadviser or promoter of a Fund, or the Distributor.

3. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout regular trading hours on the Listing Market. A Fund will utilize either a replication strategy or a representative sampling strategy to track its Underlying Index. A Fund using a replication strategy generally will invest in substantially all of the component securities of its Underlying Index in the same approximate proportions as in the Underlying Index. When a component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index, a Fund may use a representative sampling strategy where it holds a representative sample of the component securities of the Underlying Index and will invest in some but not all of the component securities of its Underlying Index.[2] Applicants anticipate that a Fund using the representative sampling technique will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index with the same weighting as the Underlying Index. Applicants anticipate that, over time, the expected tracking error of a Fund using the representative sampling technique will not exceed 5%, net of fees or expenses.

4. Shares will be issued in aggregations of at least 50,000 or more (''Creation Units''). The price of a Creation Unit will range from $3,000,000 to $5,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a Depository Trust Company (''DTC'') participant that has executed a participation agreement with the Distributor. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A Fund also may sell Creation Units on a ''cash only'' basis in limited circumstances. A person purchasing a Creation Unit from a Fund must make a ''Creation Deposit'' consisting of: (a) securities selected by the Adviser to correspond to the price and yield performance of the relevant Underlying Index (''Deposit Securities''), and (b) a cash payment equal to the difference between the market value of the Deposit Securities and the net asset value (''NAV'') of a Creation Unit (''Cash Amount'').[3] An investor purchasing or

[1] At least 90% of each Fund's total assets (exclusive of collateral held from securities lending) will be invested in the component securities of its Underlying Index. Each Fund may also invest up to 10% of its total assets in stocks that are not included in the Underlying Index, futures contracts, options on futures contracts, options and swaps related to its Underlying Index, and cash and cash equivalents.

[2] Securities selected for inclusion in a Fund by the Adviser will have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Underlying Index taken in its entirety.

[3] On each day that the Listing Market is open for business (''Business Day''), the Adviser will make available through the National Securities Clearing Corporation (''NSCC''), prior to the opening of trading on the Listing Market, the list of the names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund as well as information regarding the Cash Amount. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit composition is announced. A purchasing investor may be permitted or required to substitute an amount of cash or a different security for a Deposit Security in certain circumstances. The Listing Market will disseminate every 15 seconds throughout the regular trading hours of the Listing Market, an amount representing on a per Share

redeeming Creation Units from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs incurred by the Fund in connection with the purchase and redemption of the Creation Units.[4] Each Fund will provide complete disclosure about the Transaction Fee in its prospectus, including the maximum amount of the Transaction Fee, and the method of calculating the Transaction Fee will be disclosed in the Trust's statement of additional information (''SAI'').

5. Orders to purchase Creation Units must be placed with the Distributor who will be responsible for transmitting the orders to the relevant Fund. The Distributor will maintain a record of Creation Unit purchases and send out confirmations to purchasers. The Distributor will also furnish a copy of the Fund's prospectus to those placing purchase orders.

6. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on a Listing Market, which will either be Nasdaq or a national securities exchange as defined in section 2(a)(26) of the Act, and traded in the secondary market in the same manner as other equity securities. It is expected that one or more member firms of the Listing Market will act as a market maker or specialist (''Market Maker'') and maintain a market on the Listing Market for the Shares.[5] The price of Shares traded on a Listing Market will be based on a current bid/offer market. Each Share is expected to have a market value of between $60 and $100. Purchases and sales of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. A Market Maker, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units in connection with its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[6] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at NAV, will ensure that the market price of Shares will not vary much from its NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Units from a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit in most cases will receive a portfolio of securities (''Redemption Securities'') plus a balancing cash amount representing the difference between the NAV of a Creation Unit and the market value of the Redemption Securities. As with purchases, a redeeming investor will pay a Transaction Fee. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is unable, by law or policy, to own a particular Redemption Security.

9. Applicants state that neither the Trust nor any Fund will be advertised, marketed, or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Fund and the Trust will be marketed as a ''Nasdaq-traded fund,'' ''exchange-traded fund,'' ''investment company,'' ''fund,'' and ''trust'' without reference to an ''open-end fund'' or ''mutual fund,'' except to compare and contrast the Trust and the Funds with conventional open-end investment companies. All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units or Shares will prominently disclose that Shares are not individually redeemable and that Shares may be acquired or redeemed from the Fund in Creation Units only. The same type of disclosure will be provided in each Fund's prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, the market price of Shares will not vary much from its NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at an offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

basis the sum of the current value of the Deposit Securities and the estimated Cash Amount.

[4] Where a Fund permits a purchaser to deposit cash in lieu of depositing one or more Deposit Securities, the purchaser will be assessed a higher Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

[5] The listing requirements established by Nasdaq require that at least two market makers be registered in Shares in order for the Shares to maintain a listing on Nasdaq. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. DTC or its participants will maintain records reflecting the beneficial owners of Shares.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares will not cause dilution for owners of Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances occur as a result of third-party market forces, such as supply and demand and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[7]

8. Applicants state that Shares will be listed on a Listing Market and will be traded in a manner similar to other equity securities. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

9. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be listed on a Listing Market, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Trust (or the Listing Market) also intends to maintain a website that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the closing NAV and the reported closing price. The website for the Trust will also include, for each Fund, on a per Share basis, (a) a calculation of the premium or discount of the closing price against NAV, and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against NAV, within appropriate ranges, for each of the four previous calendar quarters.

10. Investors also will receive a product description (''Product Description'') describing a Fund and its Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market.

Sections 17(a)(1) and (2) of the Act

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that with respect to one or more Funds and the Trust, a large institutional investor, including a Market Maker, could own 5% or more or in excess of 25% of the outstanding Shares of a Fund or the Trust, making that investor an affiliated person of the Fund or Trust. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit persons that are affiliated persons of a Fund or the Trust solely by virtue of a 5% or more or in excess of a 25% ownership interest (and affiliated persons of such affiliated persons that are not otherwise affiliated with such Fund or Trust) to purchase and redeem Creation Units through in-kind transactions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund or the Trust described above from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the securities in the Fund's portfolio. Therefore, applicants state that in-kind

[7] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of shares from the Fund or an underwriter. Applicants state that a Fund's prospectus will caution persons purchasing Creation Units that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Fund's prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. Each Fund's prospectus also will caution dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

purchases and redemptions will afford no opportunity for an affiliated person described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds or Trust.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Fund, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on a Listing Market without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Listing Market.

4. Neither the Trust nor any of the Funds will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Trust has information about the premiums and discounts at which the Fund's Shares have traded.

6. The prospectus and annual report for each Fund will also include: (a) The information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, a Listing Market rule requiring Listing Market members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5156 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 47406; File No. SR–CBOE–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, To Add Two Previously Deleted Interpretations to Rule 5.4

February 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. CBOE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange, to add two previously deleted Interpretations. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.4 to add two interpretations that were inadvertently and unintentionally deleted from Rule 5.4 in a prior rule change, SR–CBOE–1997–23.[5] In 1997, CBOE filed SR–CBOE–97–23, which proposed to make changes to CBOE Rules 5.4, 5.5, 5.6, and 5.7. As noted in that filing, the purpose of that rule change was: (1) To amend the procedures for opening trading in series of equity options under Rules 5.5 and 5.6 in order to allow the Exchange the same flexibility in adding series as permitted under other exchanges' rules; (2) to amend Rules 5.5 and 5.6 to provide specifically in the Rules for near-term options expiration and relieve the Product Development Committee of its responsibility with respect to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* SEC Rel. No. 34–38743 (June 17, 1997), 62 FR 34332 (June 25, 1997).

opening series of options; and (3) to clarify and reorganize Rules 5.4, 5.5, 5.6, and 5.7.

In addition, in SR–CBOE–97–23 CBOE also inadvertently and unintentionally deleted from Rule 5.4 two Interpretations that were then numbered .07 and .08. The deletion of these two Interpretations was neither discussed in the proposed rule change CBOE submitted, nor in the SEC order granting accelerated approval of the proposed rule change. Interpretations .07 and .08 read:

.07 When there is no open interest in a series the Exchange may delist such series. Delisting shall be preceded by a notice to member organizations concerning the delisting.

.08 Where a class of options contracts is open for trading on another national securities exchange, the Exchange may delist such class of options contracts. Delisting shall be preceded by a notice to member organizations concerning the delisting.

CBOE now proposes to add former Interpretation .07 to the current version of Rule 5.4 as Interpretation and Policy 12, and to add a new Interpretation and Policy .13 which is nearly identical to former Interpretation .08. In the proposed new Interpretation .13, CBOE describes the process for delisting option classes that are traded on more than one exchange, and also adds language describing the process for delisting option classes that are traded solely on CBOE.

The Exchange notes that proposed new Interpretation .12 is identical to American Stock Exchange Rule 903, Commentary .02 and Pacific Exchange Rule 6.4(a), Commentary .02.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and in demand without sacrificing any investor protection. Accordingly, the proposed rule change is consistent with section 6(b)[6] of the Act, in general, and furthers the objectives of section 6(b)(5)[7] in particular, in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[10] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the CBOE must file notice of its intent to file the proposed rule change at least five business days beforehand. The CBOE has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The proposal merely replaces rule text that was inadvertently deleted. Also, the proposed rule change is consistent with the rules of other option exchanges that the Commission previously approved. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file No. SR–CBOE–2003–04 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5082 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CRF 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47410; File No. SR–DTC–2002–13]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change To Establish the Prospectus Repository System

February 26, 2003.

I. Introduction

On September 11, 2002, The Depository Trust Company filed with the Securities and Exchange Commission (''Commission'') a proposed rule change File No. SR–DTC–2002–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1).

December 4, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

In response to industry demand, DTC has recently developed a new service for participants that would make prospectuses and official statements relating to new issues of corporate and municipal securities (''Offering Documents'') available in electronic format. The new service, the Prospectus Repository System (''PRS'') will enable participants and DTC-authorized third parties (collectively referred to as ''users'') to view Offering Documents from a DTC-maintained Web site.[3]

As a new service related to DTC's underwriting services, PRS will function as a multipurpose library where users can view, download, and print preliminary and final Offering Documents for DTC-eligible securities for which the underwriters have provided DTC with Offering Documents. PRS will include Offering Documents for both corporate and municipal securities. Access to the Offering Documents posted on the website will be controlled by password protection. By posting Offering Documents in PRS, DTC intends to make access to Offering Documents easier and more efficient. PRS features will include on-line search capabilities; retrieval by ticker symbol CUSIP, or issuer; and downloadable or printable files.

All users accessing Offering Documents in PRS will be required to affirm that they have read DTC's disclaimer prior to retrieving any Offering Documents.[4] The disclaimer states that Offering Documents posted on the PRS website are for informational purposes only and do not constitute bids, offers, or solicitations for securities. The disclaimer also states that by virtue of offering the PRS service, DTC is not participating in any offering as an underwriter, dealer, investment advisor, or otherwise and is not providing any form of investment advice or recommendation as to any security, issuer, or offering. In addition, the disclaimer also states that DTC disclaims responsibility for the following:

- Satisfying Offering Document delivery requirements under federal securities laws or under Municipal Securities Rulemaking Board rules;
- Informing users of PRS of restrictions or limitations on securities or participation in an offering;
- The form or content of any Offering Document posted on the PRS website;
- The accuracy or DTC's verification of information submitted to DTC;
- The responsibility to update any Offering Document posted on the website,
- Posting a final Offering Document if it posts a preliminary Offering Document;
- Posting any supplements to a final Offering Document;
- Keeping an Offering Document posted for any amount of time.

III. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[5] The rule change permits DTC to offer PRS which should enable users to more efficiently obtain and use information about new offerings of securities which are eligible for deposit at DTC. In so doing, PRS should assist participants, as well other PRS users involved in the processing of securities transactions, to process new offerings of securities with more efficiency, less cost, and less errors. Accordingly, the Commission finds that the rule change is consistent with DTC's obligations under Section 17A of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2002–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5160 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[2] Securities Exchange Act Release No. 46915, (November 26, 2002), 67 FR 72253 (December 4, 2002).

[3] PRS authorized third-party users will include syndicate members, correspondent banks, paying agents, transfer agents, and certain legal counsel and financial advisors associated with the underwriting. Individual investors will not have access to Offering Documents through the website.

[4] A copy of DTC's PPS disclaimer is attached to DTC's filing and is available at the Commission's Public Reference office or through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47395; File No. SR–MSRB–2002–15]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G–28, on Transactions with Employees and Partners of Other Municipal Securities Professionals

February 24, 2003.

On December 20, 2002, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities & Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–MSRB–2002–15). The proposed rule change was published for notice and comment in the **Federal Register** on January 22, 2003.[3] The Commission did not receive comment letters on the proposed rule change.

I. Description of the Proposed Rule Change

The MSRB's rule change creates an exemption from Rule G–28 for transactions and accounts involving municipal fund securities. Rule G–28, on transactions with employees and partners of other municipal securities professionals, requires a broker, dealer or municipal securities dealer (''dealer'') that opens a municipal securities account for an employee of another dealer (or a spouse or child of such employee) to first provide written notice to such other dealer and to subsequently follow any instructions provided by the other dealer with respect to transactions for the employee. The transacting dealer is also required to provide copies of all confirmations to the other dealer. The rule was adopted to prevent an employee of a dealer from effecting transactions that are contrary to the interests of the dealer or from otherwise acting illegally or improperly with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47189 (Jan. 15, 2003), 68 FR 03073.

respect to transactions in municipal securities.

The MSRB proposed the exemption because it believes that transactions in municipal fund securities appear not to present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities. Furthermore, fulfilling Rule G–28 requirements may impose an unnecessary burden in the context of municipal fund securities, particularly 529 college savings plans, without any countervailing benefit. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. Since there is no trading market in municipal fund securities, the MSRB believes the safeguards provided by Rule G–28 are not needed in the context of this market.

II. Summary of Comments

The Commission did not receive any comment letters relating to the MSRB's proposed rule change.

III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB.[4] The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[5] The rule change is consistent with the Act in that it amends an existing MSRB rule to accommodate the unique characteristics of municipal fund securities. Furthermore, the rule change removes impediments to a free and open market in such securities and promoting the protection of investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[6] that the proposed rule change (File No. SR–MSRB–2002–15) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5083 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o(b)(2)(C).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47409; File No. SR–NYSE–2003–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through June 30, 2003, or Such Earlier Date as the NYSE's Pending Rule Proposal Requiring Shareholder Approval of Equity-Compensation Plans Is Approved by the Commission

February 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans[3] is approved by the Commission, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan, which were approved by the Commission on a pilot basis (the ''Pilot'') on June 4, 1999.[4] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[5] The Pilot has since been extended until January 11, 2002,[6] March 11, 2002,[7] May 13, 2002,[8] June 30, 2002,[9] August 31, 2002,[10] October 30, 2002,[11] December 30, 2002,[12] and February 28, 2003.[13]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had the Pilot with respect to the definition of a ''broadly-based'' stock option plan since June 4, 1999.[14] On July 13, 2000, the Exchange filed a proposed rule change seeking to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (File No. SR–NYSE–2002–46).

[4] *See* Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) (''Original Pilot Approval Order'').

[5] *See* Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[6] *See* Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) (''2001 Extension Request'').

[7] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[8] *See* Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR–NYSE–2002–14).

[9] *See* Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR–NYSE–2002–18).

[10] *See* Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR–NYSE–2002–22).

[11] *See* Securities Exchange Act Release No. 46437 (August 29, 2002), 67 FR 57262 (September 9, 2002) (File No. SR–NYSE–2002–42).

[12] *See* Securities Exchange Act Release No. 46747 (October 30, 2002), 67 FR 67680 (November 6, 2002) (File No. SR–NYSE–2002–57).

[13] *See* Securities Exchange Act Release No. 47084 (December 23, 2002), 67 FR 79681 (December 30, 2002) (File No. SR–NYSE–2002–67).

[14] *See* Original Pilot Approval Order note 4 *supra*.

extend the effectiveness of the Pilot until September 30, 2003.[15] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of ''broadly based'' under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[16] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[17] The Exchange's 2001 Extension Request extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[18] The Pilot was again extended several times, most recently until February 28, 2003.[19]

On October 7, 2002, in connection with the Exchange's corporate governance proposals, the Exchange filed a proposal with the Commission that would require shareholder approval for equity-compensation plans, making it unnecessary to continue the Pilot. That proposal was published in the **Federal Register** on October 11, 2002.[20] As directed by the Commission staff, the Exchange is requesting an extension of the effectiveness of the Pilot until June 30, 2003, or until such earlier date as the Exchange's proposal relating to shareholder approval of equity-compensation plans is approved by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b-4(f)(6)[23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before February 28, 2003, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, which will extend the Pilot through June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans[26] is approved by the Commission, become operative on February 28, 2003. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of ''broadly-based'' stock option plans under the Pilot.[27] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

The Commission notes that once the Exchange's proposed rule change relating to shareholder approval of equity compensation plans has been approved by the Commission, those approved rules will supercede this Pilot because the concept of ''broadly-based'' stock option plans will no longer be retained in the Exchange's shareholder approval rules.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change, which will extend the Pilot through June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans is approved by the Commission, become operative on

[15] *See* Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) (''2000 Extension Request'').

[16] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[17] *See* note 5 *supra.*

[18] *See* note 6 *supra.*

[19] *See* notes 7 through 13 *supra.*

[20] *See* note 3 *supra.*

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] *Id.*

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See* note 3 *supra.*

[27] *See* Original Pilot Approval Order, note 4 *supra.*

February 28, 2003.[28] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2003–04 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5158 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[28] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47408; File No. SR–Phlx–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

February 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b-4 thereunder,[2] notice is hereby given that on February 19, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges by terminating the Index Option Book Charge of $1000 per month on Phlx specialists in the Exchange's Sector Index Options (''Index Options''), and the $2000 per month charge on Phlx specialists in the KBW Bank Sector℠ (''BKX℠''), the Oil Service Sector℠ (''OSX℠''), the Semiconductor Sector℠ (''SOX℠'') and the Gold and Silver Sector℠ (''XAU℠''). The Index Option Book Charge became effective on January 2, 2003.[3] The text of the proposed rule change is set forth below. Deleted text is in brackets.

Summary of Index Option Charges

Option Comparison Charge I (applicable to all trades—except specialist trades)

Registered Option Trader—$.03 per contract
Firm (Proprietary and Customer Executions)—$.04 per contract

Option Transaction Charge I

Customer Executions
Market value less than $1.00*—$.20 per contract
Market value $1.00 or over*—$.40 per contract
Firm **—$.10 per contract
Registered Option Trade—$.19 per contract
Specialist—$.14 per contract

[Option Book Charge I

KBW Bank Sector℠—$2,000 per month
Oil Service Sector℠
Semiconductor Sector℠
Gold and Silver Sector℠
All other Index Options—$1,000 per month]

Option Floor Brokerage Assessment I

5% of net floor brokerage income.

Floor Brokerage Transaction Fee I

$.05 per contract, for floor brokers executing transactions for their own member firms.

Real-Time Risk Management Fee I

$.0025 per contract for firms/members receiving information on a real-time basis *See* Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* Block transaction for customer executions of 500 to 999 contracts and 1000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the PHLX of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

** Non-clearing firm members' proprietary transactions are eligible for the ''firm'' rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to terminate the Index Option Book Charge of $1000 per month on Phlx specialists in the Exchange's Index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47087 (December 23, 2002), 68 FR 146 (January 2, 2003).

Options, and the $2000 per month charge on Phlx specialists in the KBW Bank Sector℠ (''BKX℠''), the Oil Service Sector℠ (''OSX℠''), the Semiconductor Sector℠ (''SOX℠'') and the Gold and Silver Sector℠ (''XAU℠'') Index Options. The Index Option Book Charge became effective on January 2, 2003.

2. Statutory Basis

The Exchange believes that its proposal to terminate the Index Option Book Charge consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.[6]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[7] and rule 19b–4(f)(2) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–09 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5159 Filed 3–4–03; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] One comment letter regarding SR–Phlx–2002–80 was received after the proposed rule change was effective. No comments were solicited or received regarding the present proposed rule change.

[7] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4291]

Culturally Significant Objects Imported for Exhibition Determinations: ''Renoir, Pierre-Auguste 1841–1919''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''Renoir, Pierre-Auguste 1841–1919,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Trust, Los Angeles,CA from on or about April 28, 2003 to on or about August 29, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of theseDeterminations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (*telephone:* (202) 619–6981). The address isU.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: February 27, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–5113 Filed 3–4–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Equity Act Model (TEAM) Announcement of Request for Proposals

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice of request for proposals.

SUMMARY: The Department of Transportation established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. This office is responsible for implementing and monitoring DOT's goals for small, women-owned and disadvantaged businesses. DOT's Small and Disadvantaged Business Program is designed to ensure that small businesses have an equitable opportunity to participate in the DOT's procurement programs, and that they receive a fair and equitable share of the resulting contract awards.

OSDBU establishes a local presence by entering into Cooperative Agreements with Chambers of Commerce, Trade Associations, Business Organizations and For-Profit Entities to increase awareness of DOT's procurement opportunities and financial assistance programs for small, minority, women-owned and disadvantaged business enterprises (DBEs). This request solicits competitive proposals from organizations and entities classified above for participation under OSDBU's Transportation Equity Act Model (TEAM) program. OSDBU will enter into Cooperative Agreements with these organizations and entities to provide liaison services between the DOT, its grantees, recipients, contractors, subcontractors, and minority, women-

owned, small and disadvantaged business enterprises. This Request for Proposal contains information concerning: (1) The principal objectives of the competition, eligible applicants, activities and factors for an award; (2) the application process, including how to apply and the criteria used for selection; and (3) a checklist of application submission requirements.

DATES: Proposals must be received at U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Room 9414, Washington, DC 20590, by March 24, 2003, 4 p.m., eastern standard time. Proposals received after the deadline will be considered non-responsive and will not be reviewed. Due to security concerns, proposals should be submitted via overnight courier.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., Room 9414, Washington, DC 20590, Tel. 202–366–2852 or 800–532–1169, ext 6–2852.

SUPPLEMENTARY INFORMATION: Send proposals to Arthur Jackson, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW., Room 9414, Washington, DC 20590.

Dated: February 26, 2003.

Sean M. Moss,

Director, Office of Small and Disadvantaged Business Utilization.

Table of Contents

1. Introduction
   1.1 Background
   1.2 Program Description and Goals
   1.3 Description of Competition
   1.4 Duration of Agreements
   1.5 Authority
   1.6 Eligibility Requirements
2. Program Requirements
   2.1 Recipient Responsibilities
   2.2 Work Requirements
   2.3 Office of Small and Disadvantaged Business Utilization Responsibilities
3. Submission of Proposals
   3.1 Content and Format for Proposals
   3.2 Address, Number of Copies, Deadline for Submission
4. Selection Criteria
   Application Form for Proposals—Appendix A
   Attachments

1. Introduction

1.1 Background

The United States Department of Transportation (DOT) established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958. The OSDBU administers the Department's Small and Disadvantaged Business Enterprise (DBE) Program which is designed to ensure that small, women-owned and disadvantaged businesses have an equitable opportunity to participate in DOT's procurement and Federal financial assistance programs and that they receive a fair share of the resulting contract awards. Because DOT's policy is to encourage and increase the participation of small, women-owned and disadvantaged businesses in the contracts and programs that it funds during FY 2002, awards to small businesses totaled $2.5 billion in DOT's direct procurement.

The mission of OSDBU is to promote customer satisfaction through successful partnerships that result in an inclusive and effective small business procurement process. To accomplish this mission, OSDBU has organized its responsibilities, programs and activities under four lines of business: Advocacy, Outreach, Financial Services, and Organizational Management. DOT/OSDBU has a strong commitment to the small business community and offers advocacy, outreach and financial programs to small businesses.

The OSDBU develops Department-wide policy and administers a number of programs and activities to implement the OSDBU's Congressional mandate expanding the level of participation of small, disadvantaged businesses in the Federal financial assistance and direct contracting programs of all modal administrations of DOT and DOT-assisted state and local transportation agencies. The OSDBU is responsible for the development and implementation of an effective program of activities directed at ensuring small business participation in the Department's direct procurement and Federal financial assistance activities. The OSDBU monitors all DOT procurement activities that involve the participation of small, minority, women-owned and disadvantaged businesses, including the goal settings and procurement practices of DOT financial assistance recipients, namely, state and local transportation agencies. The OSDBU also serves an important role in assisting firms in their marketing of the Department and all of its operating administrations. The OSDBU is responsible for developing and administering programs to encourage, stimulate, promote and assist small businesses to obtain and manage transportation-related contracts, subcontracts and projects. The OSDBU administers the Short Term Lending Program (STLP) and the Bonding Assistance Program, two financial assistance efforts that provide assistance in obtaining short-term working capital and surety bonding on transportation-related projects. Under the STLP, guarantees of lines of credit up to $500,000 are available at prime plus 1% to finance accounts receivable for transportation-related contracts. The Bonding Assistance Program enables DBEs to apply for bid, performance and payment bonds on contracts up to $1,000,000. The fee for performance and payment bonds is 2.5%.

1.2 Program Description and Goals

An area where the OSDBU has focused considerable efforts has been that of increasing small, minority, women-owned and disadvantaged businesses access to DOT financial assistance programs and contracting opportunities through the Transportation Equity Act Model (TEAM) program. This initiative utilizes Cooperative Agreements to provide liaison services between DOT, its grantees, recipients, contractors, subcontractors and small businesses. The TEAM includes activities such as information dissemination, outreach services, conference and seminar participation and referrals to technical assistance agencies (*i.e.*, Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), Procurement Technical Assistance Contractors (PTACs) and State DOT highway supportive services contractors) which offer management and technical assistance in financial assistance, marketing and other business areas. In addition, the TEAM provides one-on-one business counseling to small firms to increase their participation in mega projects emanating from the DOT, its grantees/recipients and to assist small businesses to participate in other agency initiatives such as Aviation, Security, and Surface Transportation Safety. Information dissemination and outreach include the distribution of the following DOT marketing materials: DOT Bonding Assistance Program information; DOT Short-Term Lending Program information; Procurement Forecasts; DOT Small Business Subcontracting Opportunities Directory; and Contracting with the United States Department of Transportation Booklets. A compilation of these materials is available in the DOT's Marketing Information Package, a comprehensive document which serves as a resource and reference tool.

The TEAM concept was established by the OSDBU in May 2000 in response to the continuing need to outreach to the small and disadvantaged business communities and increases their participation in DOT contracting and financial assistance programs. To address this need, the TEAM seeks (1) to increase the number of small and disadvantaged businesses that enter into transportation-related contracts; (2) to increase the participation of small, women-owned and disadvantaged businesses in mega projects funded largely from DOT Federal assistance; and (3) to increase the number of small, women-owned and disadvantaged businesses that receive DOT STLP lines of credit and bonding assistance.

The TEAM will:

(1) Work with prime contractors, Federal, State and local agencies, and DOT grantees and recipients to create opportunities for small, women-owned and disadvantaged businesses.

(2) Establish a communications link between DOT, its grantees, recipients, contractors, subcontractors and the small, disadvantaged business community. Increase awareness of contracting opportunities with mega projects by developing an aggressive outreach initiative to identify and refer qualified candidates to service providers and contracting agencies.

(3) Develop structured, consultative relationships with the private sector financial

community and governmental agencies that can create a public/private partnership to provide specialized assistance to small, women-owned and disadvantaged businesses.

(4) Disseminate DOT marketing materials and relevant information at design/build meetings, selected conferences/seminars, and other transportation-related events through the use of quarterly newsletter and mailings from the TEAM's office.

(5) Develop and/or strengthen linkages with State DOTs, local Transit Agencies, Historically Black Colleges and Universities, Hispanic Serving Institutions, Associations of Minority and Women Contractors and Prime Contractors, to encourage small business participation in mega projects and other transportation-related opportunities.

(6) Stimulate referrals of firms to obtain technical assistance from Federal, state and local agencies such as MBDCs, SBDCs and State DOT highway supportive services contractors for management and other business-related assistance, including approvals of surety bonds and working capital.

(7) Establish business operations and procedures that are ''results oriented'', and implement the principles set forth in the Government Performance and Results Act (GPRA) of 1993. This Act ensures that programs and budget decisions are linked with program performance. GPRA establishes a framework for results-oriented management and promotes a new way of doing business, a common sense approach that focuses on getting results through performance-based goals and accountability. Each applicant will put forth every effort in complying with the GPRA and report on achievements of performance.

(8) Establish outreach and information dissemination activities to encourage partnerships with Federal, State and local governments, private sector organizations and businesses, including small and disadvantaged businesses, concerning the availability of contracts and other procurement opportunities.

(9) Focus efforts on existing transportation programs, such as Educational Institutions that use innovative strategies to assist individuals and companies to make the transition from entry-level businesses to successful entrepreneurs in the field of transportation.

(10) Focus on matching businesses with transportation-related procurement opportunities in mega projects where small, disadvantaged businesses can participate in DOT-assisted contracts. Techniques such as disseminating current information on procurement and contract opportunities; transmitting synopses of contract information by e-mail and/or electronic data transfers; and setting up one-to-one contacts between prime contractors and small businesses that will create a ''match'' between the two parties.

(11) Employ a multidimensional approach to business. The applicants must have the capacity and organizational structure to effectively access and provide supportive services to the broad range of small business and disadvantaged clients within their geographical areas. The applicants must have the background to provide management and technical help to small and disadvantaged firms. Applicants must have demonstrated knowledge of the contracting process in their geographical area to ably assist small businesses in contract acquisition.

1.3 Description of Competition

The purpose of this RFP is to solicit proposals from applicants, such as Chambers of Commerce, Trade Associations, Business Organizations and For-Profit Entities, to participate in the Transportation Equity Act Model (TEAM) program. The TEAM will enable the OSDBU to establish a local presence by assisting small businesses and DBEs in securing information on DOT procurement opportunities and DOT's Short-Term Lending and Bonding Assistance Programs in order to increase the number of small businesses that enter into transportation-related contracts. As the program requirements and selection criteria indicate, the OSDBU also intends that the TEAM is multidimensional; that is, the selected organizations and entities must have the capacity to effectively access contracts and other procurements for small businesses within their target areas. In addition, the TEAM must be able to coordinate and establish effective networks with DOT grant recipients and technical assistance agencies to maximize resources and avoid duplication of effort.

It is OSDBU's intent to fund one agreement in each of the selected locations. However, OSDBU reserves the option to make multiple awards, if warranted.

The geographical locations and Target Projects for each TEAM are as follows:

Eastern TEAM: New York, New York
Western TEAM: Oakland/San Francisco, California
Northern TEAM: Chicago, Illinois
Southern TEAM: Orlando, Florida
Midwest TEAM: Milwaukee, Wisconsin
Southeast TEAM: Atlanta, Georgia
Southwest TEAM: Alburquerque, New Mexico
Northwest TEAM: Seattle, Washington
Mid-Atlantic TEAM: DC/MD/VA

1.4 Duration of Agreements

Cooperative agreements will be awarded for a period of 12 months.

1.5 Authority

DOT is authorized under 49 U.S.C. 322 (Pub. L. 97–449), to develop by Cooperative Agreements, support mechanisms including liaison and assistance programs, that will increase the opportunities of small, women-owned and disadvantaged businesses to access transportation-related contracts.

1.6 Eligibility Requirements

- An established Chamber of Commerce, Trade Association, Business Organization or For-Profit Entity which has the documented experience and capacity necessary to successfully operate and administer a coordinated TEAM effort within a specific location.
- Documented and continuous experience prior to the date of application in areas such as advocacy for small businesses, management and marketing expertise, outreach referrals to technical assistance agencies, and government contracting within the jurisdiction of the TEAM service area in which proposed services will be provided; and
- Physically headquartered within the TEAM service area.

2. Program Requirements

In conducting the activities to achieve the goals of the TEAM, the recipient will be responsible for implementing the activities under 2.1 and 2.2 below. The OSDBU will be responsible for conducting activities under 2.3.

2.1 Recipient Responsibilities

(1) Develop structured, consultative relationships with key constituent groups within the TEAM area to help build and reinforce coordination and credibility. Such relationships will ensure that DOT non-minority and minority prime contractors, as well as organizations and associations, facilitate awareness and utilization of the TEAM program's services.

(2) Conduct *outreach* to identify and refer qualified candidates to service providers and contracting entities to ensure that small, minority, women-owned and disadvantaged businesses are well prepared for access to contracting opportunities.

(3) *Disseminate information* as a component of outreach by distributing DOT documents and materials, such as, DOT Bonding Assistance Program Fact Sheets and applications from bond agents; DOT Short-Term Lending Program Fact Sheets and applications; Procurement Forecasts; and Contracting with the United States Department of Transportation Booklets. A compilation of these materials is available in the DOT's Marketing Information Package, a comprehensive guide that serves as a resource and reference tool.

(4) Provide *referrals* to technical assistance agencies and educational institutions to receive assistance in areas such as, the completion of bonding and lending applications, bid and cost estimating, and management assistance. Technical assistance agencies include Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs) and State DOT highway supportive services contractors, Minority Educational Institutions, and Procurement Technical Assistance Centers.

(5) Complete a *follow-up* form for each referral made to the technical assistance agencies, educational institutions and financial institutions that documents the referrals, lists other services provided subsequent to the referral, identifies the *outcome measurements* that were achieved based upon the action taken. This information shall be reported in writing to OSDBU on a monthly basis and will identify the technical assistance agency and contact person.

(6) Develop and maintain a database of transportation-related firms that have the capability to bid on mega projects and other transportation-related opportunities and have

the capacity to secure bonds and loans in support of contracts and subcontracts. The targeted database should consist of firms that will receive a *comprehensive array of services,* including counseling, technical assistance, bonding and lending approvals and regular follow-up services under the TEAM. Referrals of DBEs will be made to prime contractors and mega projects subsequent to matching companies by categories such as NAICS Codes, HUB Zone participants, location of firms, type of certifications held, and bonding and lending capacity.

(7) Provide access to bonding and lending for certified firms to obtain bid, performance and payment bonds on transportation-related contracts up to $1,000,000 and guaranteed lines of credit up to $500,000 for accounts receivable financing. Also, firms certified by the Small Business Administration as 8(a), Hubzone, Small Disadvantaged Businesses (SDBs) and Service Disabled Veterans will qualify for the DOT Bonding and Lending Programs. DOT's bond agents and bankers shall work with the Project Director and OSDBU to present ''how-to-workshops'' on preparation and completion of bond and loan packages. The DOT partners will deliver the workshop presentations *only* when it is feasible for them to participate, or when a training session is scheduled in their locations. The OSDBU will participate in selective workshops at times when it is not feasible for the DOT bond agents or the DOT banks to be in attendance.

(8) Develop procedures for submitting bond and loan applications to DOT's bond agents and banks, and develop procedures for securing necessary training from sources such as, educational institutions, technical assistance agencies, private entities available to work with the TEAM.

(9) Provide access to contracts for businesses seeking to participate on mega or special projects by establishing a working knowledge of the projects and become familiar with the needs of prime contractors and other obligees. Electronic Commerce, Intelligent Transportation System (ITS), and Special Research & Demonstration Projects are additional areas where contract opportunities are available to small businesses.

(10) Participate in conferences/seminars on behalf of OSDBU by attending specific sessions that are transportation-related.

(11) Establish a toll free telephone line that is available to small businesses interested in securing information regarding the DOT in general and OSDBU's TEAM in particular. Callers should receive directions on how they can participate in DOT programs that will enhance their efforts in securing DOT contracts, especially mega projects.

(12) Provide special assistance to small firms by utilizing the services of technical experts in various disciplines to increase the knowledge base of DBE firms.

(13) Furnish all labor, facilities and equipment to perform the services described in this announcement.

2.2 Work Requirements

Each TEAM must perform work in the following functional areas:

- Advocacy
- Outreach
- Financial Services
- Referral to Technical Assistance Providers
- Follow Up
- Success Stories
- Teleconferencing

(A) Advocacy

The applicant shall serve in an advocacy role to small, women-owned and disadvantaged businesses to encourage their participation in DOT financial programs and DOT assisted contracts and procurement opportunities. The TEAM shall coordinate its efforts with Federal, State and local agencies and the private sector, to promote the development and implementation of effective programs that assist small, women-owned and disadvantaged businesses.

The TEAM shall counsel small, women-owned and disadvantaged businesses on the use of the Internet, with priority given to maximizing use of the DOT website at *http://www.dot.gov* and the OSDBU website at *http://osdbuweb.dot.gov* and encourage them to use this medium for marketing the U.S. DOT, the mega project(s) and other Federal, State and local agencies for procurement opportunities.

The TEAM shall establish and implement business operations and procedures that are results oriented, and implement the principles set forth in the Government Performance and Results Act (GPRA) of 1993. The TEAM will keep documentation as to achievements attained for reporting under the GPRA within its geographical area.

(B) Outreach

The TEAM shall provide assistance to small, women-owned and DBE firms for registering their businesses with Federal, State and local databases to market their goods and services to governmental agencies.

(1) *Conferences.* The TEAM shall participate in conferences/seminars as a representative of the DOT OSDBU. The meetings must be transportation related in scope and designed to assist small, disadvantaged businesses to obtain contract opportunities and access to bonding and lending. A written request must be received by OSDBU *at least five days in advance* of the conference and written approval shall be received from OSDBU prior to attendance. Written reports will be transmitted to OSDBU within five workdays after the conference. An outline of the report format will be provided by OSDBU.

The TEAM will work in conjunction with OSDBU's conference coordinator and serve as the local contact for logistical arrangements with hotel and/or other facilities where Transportation Marketplace Conferences are to be held. The TEAM will perform under the leadership of OSDBU's conference coordinator to ensure that local grantees/recipients and other Federal, State and local agencies are included in the planning and coordination of Transportation Marketplace Conferences.

(2) *Database Development.* The TEAM must assist firms to register with primary databases which are accessible from the OSDBU website, namely;

- Pro-Net—is an electronic gateway of procurement information, for and about small businesses, provided by the U.S. Small Business Administration (SBA). It is a search engine for contracting officers, a marketing tool for small firms and a link to procurement opportunities and important information. It is designed to be a virtual one-stop procurement shop.
- Fed Biz Ops—is a web-based system for posting solicitations and other procurement-related documents on the Internet. All DOT procurement organizations currently posting requirements to the Internet are required to use EPS. Contract specialists post synopses and other procurement documents, such as solicitations, amendments, and award notifications to a common index, which allows firms to search databases concerning information from many of the Federal agencies.
- News by E-Mail—is an automatic service afforded firms for registering on the OSDBU Web Site in order to subscribe and receive DBE Announcements, The Transportation Link Newsletter, OSDBU News and Outreach/Conference Announcements.

The agency shall conduct an aggressive outreach effort that will provide a significant increase in the number of small and disadvantaged businesses registered in the TEAM's database in order to participate more effectively in other DOT procurement in general and their special projects (identified under ''Target Projects'') particular. Outreach to DBEs, HUBZone businesses, Service-Disabled Veterans, 8(a) firms, and Women-Owned businesses shall be conducted and representatives from these groups should be a significant part of the database. The TEAM shall conduct outreach and information dissemination regarding the OSDBU bonding and lending programs, and procurement opportunities, at specific events being held in the community, such as conferences, seminars, events that are transportation-related. Materials and documents such as, DOT Bonding Assistance Program Fact Sheets and Application; DOT Short Term Lending Program Fact Sheets and Applications; Procurement Forecasts; and Contracting with DOT Booklets are some of the literature that should be disseminated to DBEs.

(3) *Toll Free Line.* The TEAM shall maintain a Toll Free telephone line to be made available to small, women-owned and disadvantaged businesses interested in securing information regarding the DOT. Reference should be made to the U.S. DOT TEAM when answering the line. Callers should receive directions on how they can participate in DOT programs, especially those related to mega projects, procurement and information on the application process for the Bonding and Short Term Lending Programs. In addition, information should be elicited from callers regarding their e-mail addresses. Inquiries should be made of callers as to their use, or lack of use of the DOT, OSDBU and TEAM web sites. TEAM staff must have sufficient knowledge of how to access and navigate through the web sites in order to provide guidance and assistance to the small businesses as good customer relations.

(C) *Financial Services*

The TEAM will provide assistance to small and disadvantaged businesses, including women-owned in order to participate in OSDBU's financial assistance programs. Also, firms certified by the U.S. Small Business Administration's 8(a) program, Small Disadvantaged Businesses (SDBs), HubZone Empowerment Contracting Program and Service-Disabled Veterans are eligible to participate in the following financial assistance services.

(1) *Bonding Assistance.* The TEAM will provide firms access to bonding information on the program to obtain bid, performance and payment bonds for transportation-related contracts up to $1,000,000.

(a) Deliver at least five bonding workshops on package preparation and completion of applications. The DOT bond agents will participate in the workshop presentations *only* when it is feasible for them to attend, or when a training session is scheduled in their locations.

(b) Provide a checklist of items and documents that each participant must bring to the work sessions and which must be approved by the TEAM prior to attendance.

(c) Produce at least 10 complete bond packages from 10 separate firms for approval by the DOT bond agent.

(d) Secure training and/or other assistance from technical assistance providers, educational institutions, and/or the private sector to ensure that firms will submit quality applications to the bond agents for approval.

The proposed plan of action of how the above will be accomplished must receive approval from OSDBU's COTR prior to implementation.

(2) *Short-Term Lending.* The TEAM will provide firms access to lending information on the program to obtain guaranteed lines of credit up to $500,000 for accounts receivable financing.

(a) Deliver at least five workshops on package preparation and completion of applications. The DOT banks will participate in the workshop presentations only when it is feasible for them to attend, or when a training session is scheduled in their locations.

(b) Provide a checklist of loan documentation required by the participants that should accompany firms to each work session. The TEAM will coordinate the checklist with the Lead Participating Bank and receive their input before proceeding with the work sessions.

(c) Produce at least 10 complete loan packages from 10 separate firms in the for approval by the DOT banks.

(d) Secure training and/or other assistance from technical assistance providers, educational institutions, and/or the private sector, to ensure that firms submit quality applications to the banks for approval.

The proposed plan of action of how the above will be accomplished must receive approval from OSDBU's COTR prior to implementation.

(D) Referral to Technical Assistance Agencies

The TEAM shall refer small and disadvantaged firms seeking contracts with mega projects to technical assistance providers from Federal, State and local agencies such as Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), and State DOT highway supportive services contractors, Minority Education Institutions, Procurement Technical Assistance Centers (PTACs), and private sources. Assistance shall include management and other business related information, including completion and submission of DOT Bonding Assistance and Short Term Lending Applications in order to qualify for financial help. Documentation of each referral must be reported on a referral form indicating to whom the referral was made, the organization and name of the contact person, and the reason(s) for the referral. The technical assistance agency must verify (counter sign the form) to document receipt of the referral, and return it to the TEAM.

(E) Follow Up

The TEAM will track each firm's progress and report on any assistance provided by the TEAM, such as technical assistance referrals to service providers, referrals to financial institutions, counseling, and referrals to OSDBU's website. Also, report the number and type of contract awards received by clients as a result of TEAM's involvement, including the kind of assistance provided to the small business. Reports must be submitted to OSDBU using the monthly Reporting Form (to be provided). The numerical data on the form must be accompanied by narrative information regarding each activity and should highlight the problems, concerns and successes encountered by the small business person. Follow-up must be conducted on all referrals made by the TEAM.

(F) Success Stories

The TEAM must develop a minimum of three success stories each quarter that highlights the accomplishments of DBEs who participate in the assigned mega project(s). The stories shall be submitted to OSDBU for review and approval by the Director, prior to publication in the TEAM's newsletter and/or on OSDBU's Website and the Transportation Link Newsletter.

(G) Teleconferencing

Each TEAM will be responsible for teleconferencing calls with other team members and will document best practices that are derived from the interaction with peers. Each TEAM will be responsible for one teleconferencing call per month on a rotating basis during the course of this agreement. The purpose of the teleconference calls is to assist the TEAMS in working together as a cohesive unit, in exchanging ideas, in discussing on-going activities in respective regions and in sharing actions that are successful in one area, which may be replicated in another location. The TEAMS responsible for hosting the teleconferences are as follows:

1st month—Eastern TEAM
2nd month—Western TEAM
3rd month—Northern TEAM
4th month—Southern TEAM
5th month—Midwest TEAM
6th month—Southeast TEAM
7th month—Southwest TEAM
8th month—Northwest TEAM
9th—month Mid-Atlantic TEAM

At the completion of the 9th month the schedule will rotate back to the first TEAM and the process will continue throughout the period of the Cooperative Agreements. The TEAM that is responsible for placing the call will develop an agenda and transmit it by e-mail to each Project Director prior to teleconference. A written summary of the discussion will be submitted to OSDBU by the host TEAM and the report must include areas such as, discussion highlights, project accomplishments, problems or concerns, and recommendations for improvement.

2.3 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

The OSDBU will perform the following roles as its contribution to the attainment of the TEAM objectives:

1. Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.
2. Provide orientation and training, as appropriate, to applicants awarded funding for participation as TEAMs.
3. Systematically monitor the performance of successful applicants' activities and program compliance.
4. Assist successful applicants in collaborating and developing or strengthening linkages with State DOTs, technical assistance agencies and DOT grantees and recipients within geographical areas served.
5. Facilitate the exchange and transfer of successful TEAM activities and program information among other TEAMs.

3. Submission of Proposals

3.1 Content and Format for Proposals

Each proposal submitted to DOT must be in the format and must contain the information set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any applicant (as defined in section 1.6 of this announcement) will submit only one proposal, not to exceed 35 single-sided pages, for consideration by DOT. Applications should be double spaced, and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, and four bound copies, should be submitted. All pages should be numbered. All documentation, attachments, or other information pertinent to the application must be included in a single submission. Proposals should be submitted to: Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization (S–40) Department of Transportation, 400 7th Street, SW., (Rm. 9414), Washington, DC 20590.

Proposals must be received by DOT/OSDBU no later than March 24, 2003, 4 p.m., e.s.t. Due to security concerns, proposals should be submitted via overnight courier.

4. Selection Criteria

DOT will use the following criteria to rate proposals received in response to this announcement for the specific location of the applicant. The following categories will constitute DOT's selection criteria:

- Approach
- Linkages
- Organizational Capability
- Staff Capabilities and Experience
- Cost

A. Approach

The applicant must describe the activities proposed to be implemented under the cooperative agreement and how the work will be accomplished. DOT will consider the extent to which the proposed objectives are specific, measurable, time-phased, consistent with TEAM goals and the proposed activities are consistent with the applicant's overall mission. DOT will give priority consideration to applicants that demonstrate innovation and creativity of approach in increasing the ability of small, minority, women-owned, and disadvantaged businesses (DBEs) to access information on DOT contracting opportunities and financial assistance programs. DOT will also consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives.

B. Linkages

DOT will consider innovative aspects of the applicant's approach which build upon the applicant's strength(s) and facilitate and encourage linkages to existing resources available within the area. The applicant should describe support and intended collaboration on TEAM activities from DOT grantees, prime contractors, subcontractors, State DOTs, State highway supportive services contractors, SBDCs, MBDCs and colleges and universities, including Minority Educational Institutions (Historically Black Colleges and Universities (HBCUs), Hispanic Serving Institutions (HSIs) and Tribal-Affiliated Colleges and Universities (TACUs)). DOT will also rate the effectiveness of the applicant's strategy to provide outreach, networking and liaison activities to the service area. In rating this factor, DOT will consider the extent to which the applicant demonstrates ability to effectively access and network supportive services to the broad and diverse range of small businesses within the applicant's service area. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to identified needs that can be successfully carried out within the period of this agreement and a plan for forming and involving an internal transportation advisory committee in the execution of that strategy.

C. Organizational Capability

The applicant must have outreach resources and relevant experience in carrying out the purposes of the TEAM program. In rating this factor, DOT will consider the extent to which the applicant has recent, relevant and successful experience in advocating for and addressing the needs of small businesses in general. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives (*i.e.*, computer facilities, voluntary staff time, space and financial resources).

D. Staff Capability and Experience

The applicant should provide a list of proposed personnel for the project with salaries, educational levels and previous experience delineated. The applicant's project team must be well-qualified and knowledgeable and demonstrate the ability to deal effectively with the broad range of small, disadvantaged businesses to be served. Resumes must be submitted for all proposed key personnel, outside consultants and subcontractors. Experience of key personnel in providing services similar in scope and nature to the proposed effort must be presented in detail. The Project Director will serve as the responsible individual for the project a minimum of 100 percent of his/her time. The resume of the proposed Project Director must be included in the applications submitted and his/her resume must reflect appropriate knowledge of the area and customer-service related experience.

DOT will consider the extent to which the applicant's proposed management plan (a) clearly delineates staff responsibilities and accountability for all work required and (b) presents a work plan with a clear and feasible schedule for conducting all project tasks.

E. Cost

The budget is the applicant's estimate of the total cost of establishing and administering its participation in the TEAM program for a 12 month period. The applicant's budget must be adequate to support the project and costs must be reasonable in relation to project objectives. Cost-sharing approaches, in-kind contributions (monetary and staff) are encouraged.

Appendix A—Application Form for Proposals for the Department of Transportation Transportation Equity Act Model (TEAM)

Proposals for the DOT Transportation Equity Act Model (TEAM) should contain all of the following information and should be submitted in the following format.

Applications should be double spaced and printed in a font size not smaller than 12 points. One unbound copy of the proposal with original signatures suitable for reproduction, and four bound copies, should be submitted. Applications will not exceed 35 single-sided pages. All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application should be included in a single submission, forwarded directly to the address listed below. Proposals should be submitted to: Arthur D. Jackson, Office of Small and Disadvantaged Business Utilization (S–40), Department of Transportation, 400 7th Street, SW., Room 9414, Washington, DC 20590.

Proposals must be received by DOT/OSDBU no later than March 24, 2003, 4 p.m. e.s.t.

Applications submitted must contain the following 12 sections and be organized in the following order and cannot exceed 35 single-sided pages.

1. Table of Contents

- Identify all parts, sections and attachments of the application.

2. Application Summary

- Provide a summary overview of the following:

—The applicant's proposed TEAM, its related activities including key elements of the plan of action/methodology to achieve project objectives.
—The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

- Provide a narrative that contains specific project information as follows:

—The applicant will describe its understanding of the TEAM, program goals and the role of the applicant's proposed TEAM in advancing the applicant's goals.
—The applicant will describe specific outreach needs of transportation-related small businesses in the area to be served and how the TEAM will address the identified needs.

4. Approach/Methodology

- Describe the applicant's methodology or plan of action for conducting the project in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and/or creative approaches to be implemented through the TEAM program to increase the ability of small businesses to access information on DOT contracting opportunities and financial assistance programs.

5. Linkages

- Describe outreach activities and linkages to be implemented to ensure that small and disadvantaged businesses participate in TEAM activities.
- Describe or indicate evidence of linkages or collaborations developed or to be developed with State DOTs, DOT grantees, DOT prime contractors, other Chambers of Commerce and trade associations and technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs and SBDCs and educational institutions including HBCUs, HSIs and TACUs.

6. Organizational Capabilities

- Describe recent, relevant and successful experience in advocating and addressing the needs of small and disadvantaged businesses.
- Describe relevant experience in working or collaborating with Chambers of Commerce and trade associations, DOT grantees, State DOTs, technical assistance agencies including DOT/FHWA supportive services contractors, MBDCs, SBDCs and educational institutions including HBCUs, HSIs.
- Describe internal resources available to use in successfully performing/completing the work.

7. Staff Capabilities

• Describe the qualifications and relevant experience, in relation to project requirements, of the key personnel to be used in the project.

8. Management Plan

• Describe how personnel are to be organized in the project and how they will be used to accomplish project objectives. Outline staff responsibilities, accountability and a schedule for conducting project tasks.

9. Budget Narrative

• Outline proposed budget/cost information in detail.

10. Assurances Signature Form

• Complete the attached form identified as Attachment 1.

11. Certification Signature Form

• Complete the attached form identified as Attachment 2.

12. Standard Form 424

• Request for Federal Assistance. Complete the attached Standard Form 424 identified as Attachment 3.

Please be sure that all forms have been signed by an authorized official who can legally represent the applicant.

Thank you for submitting an application to be a participant in the U.S. Department of Transportation's Transportation Equity Act Model (TEAM) Program.

Attachment 1

Assurances

All recipients of Federal funding are required to assure that the recipient:

• Has the legal authority to apply for Federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

• Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

• Will establish safeguards to prohibit employees from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

• Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

• Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for Merit System of Personnel Administration (5 CFR 900; subpart F).

• Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color, or national origin; (b) title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of disability; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

• Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

• Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328), which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

• Will comply, as applicable, with the provisions of the David-Bacon Act (40 U.S.C. 276a and 276a–77), the Copeland Act (40 U.S.C. 276c and 28 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for Federally assisted constructions subagreements.

• Will comply, if applicable, with flood insurance purchase requirements of section 201(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which required the recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

• Will comply with environmental standards which may be prescribed pursuant to the following (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (Pub. L. 93–205).

• Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) Related to protecting components or potential components of the national wild and scenic rivers system.

• Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

• Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

• Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 *et seq.*). Pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

• Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4301 *et seq.*). Which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

• Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular A–133. Audits of Institutions of Higher Learning and other Non-Profit Institutions.

• Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

• In addition, all recipients of Corporation assistance under this application are required to assure that the recipient:

• Will keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation.

• Will not use the assistance to replace state and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

• Will use the assistance only for a program that does not duplicate, and is in

addition to, an activity otherwise available in the locality of the program.

• Will comply with the Notice, Hearing, and Grievance Procedures found in section 176 of the Act.

• Will comply with the nondisplacement rules found in section 177(b) of the Act. Specifically, an employer shall not displace an employee or position, including partial displacement such as reduction hours, wages, or employment benefits, as a result of the employer using an AmeriCorps participant; a service opportunity shall not be created that will infringe on the promotional opportunity of an employed individual; an AmeriCorps participants shall not perform any services or duties or engage in activities that (1) would otherwise be performed by an employee as part of the employee's assigned duties, (2) will supplant the hiring of employed workers, (3) are services or duties with respect to which an individual has recall rights pursuant to a collective bargaining; agreement or applicable personnel procedures; or (4) have been performed by or were assigned to any presently employed worker, an employee who recently resigned or was discharged, an employee who is on leave an employee who is on strike or is being locked out, or an employee who is subject to a reduction in force or has recall rights subject to a collective bargaining agreement or applicable personnel procedure.

Assurances—Signature

By signing this assurances page, the applicant certifies that it will agree to perform all actions and support all intention stated in the attached Assurances.

Note: This form must be signed and included in the application.

Applicant Name

Project Name

Name and Title of Authorized Representative

Signature

Date

Attachment 2

Certifications

Before completing certification, please read Certification Instructions.

Certification—Debarment, Suspension, and Other Responsibility Matters. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR part 85, section 85.510, Participants' responsibilities. The regulations were published as part VII of the May 26, 1988, **Federal Register** (pages 19160–19211).

(1) The applicant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency,

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property,

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification, and

(d) Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause of default;

(2) Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation to this application.

Certification—Drug-Free Workplace. This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR part 85, subpart F. The regulations, published in the January 31, 1989, **Federal Register**, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (*see* 34 CFR part 85, section 85.615 and 85.620). The grantee certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2) Establishing a drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace,

(b) The grantee's policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will

(a) Abide by the terms of the statement, and

(b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(5) Notifying the Corporation within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

(6) Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b) with respect to any employee who is so convicted —

(a) Taking appropriate personnel action against such an employee, up to and including termination; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

Certification Instructions

By signing the Certification Signature Page on the previous page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications.

Signing the Certification Page

1. *Inability to Certify.* The inability of a person to provide the certification required below will not necessarily result in denial of a grant. The applicant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Corporation determination whether to enter into this transaction. However, failure of the applicant to furnish a certification or an explanation shall disqualify such applicant for a grant.

2. *Erroneous Certification.* The certification in this clause is a material representation of fact upon which reliance was placed when the Corporation determined to enter into this transaction. If it is later determined that the applicant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Corporation may terminate this transaction for cause or default.

3. *Notice of Error in Certification.* The applicant shall provide immediate written notice to the Corporation to whom this proposal is submitted if at any time the applicant learns that its certification was erroneous when submitted or has become erroneous by reason of changes circumstances.

4. *Definitions.* The terms ''covered transaction'', ''debarred'', ''suspended'', ''ineligible'', ''lower tier covered transaction,'' ''participant,'' ''person,'' ''primary covered transaction,'' ''principal,'' ''proposal,'' and ''voluntarily excluded,'' as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. An applicant shall be considered a ''prospective primary participant in a covered transaction'' as defined in the rules implementing Executive Order 12549. You

may contact the Corporation for assistance in obtaining a copy of those regulations.

5. *Certification Requirement for Subgrant Agreements.* The applicant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Corporation.

6. *Certification Inclusion in Subgrant Agreement.* The applicant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,'' provided by the Corporation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. *Certification of Subgrant Principals.* A grantee may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A grantee may decide the method and frequency by which it determines the eligibility of its principals. Each grantee may, but is not required to, check the Nonprocurement List.

8. *Prudent Person Standard.* Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a grantee is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. *Non-Certification in Subgrant Agreements.* Except for transactions authorized under paragraph 6 of these instructions, if a grantee knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification—Lobbying Activities

As required by section 1352, title 31 of the U.S. Code, the applicant certifies that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

Certification—Signature

Before You Start. Before completing certification, please read Certification Instructions.

Note: This form must be signed and included in the application.

Signature. By signing this Certification page, the applicant certifies that it will agree to perform all actions and support all intentions stated in the Certifications set forth above. The three Certifications are:

- Certification: Debarment, Suspension, and Other Responsibility Matters
- Certification: Drug-Free Workplace
- Certification: Lobbying Activities

Applicant Name

Project Name

Name and Title of Authorized Representative

Signature

Date

BILLING CODE 4910–62–P

ATTACHMENT 3

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE: _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 03–5138 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–111–12]

ATC Transponder Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on guidance for an acceptable means of showing compliance with the proposed requirements of 14 CFR 121.346, ATC Transponder Operation.

DATES: Send your comments on or before April 4, 2002.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Kenneth Schroer, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1154; fax (425) 227–1320; e-mail: *kenneth.schroer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http:www.faa.gov/certification/aircraft/anminfo/devpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement No. ANM–03–111–12.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The policy memorandum provides a summary of policy that should be applied when certificating the transponder installations pursuant to the proposed rule. Aircraft Certification Offices (ACO) should apply the policy summarized in the memorandum to such new and amended type certificate (TC) and supplemented type certificate (STC) certification programs. The memo ensures a standardized approach in certification independent of ACO or Designated Alteration Station (DAS) geographical location.

Issued in Renton, Washington, on February 25, 2003.

Mike Kaszycki,

Acting Manager, Transport Airplane Director, Aircraft Certification Service.

[FR Doc. 03–5131 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP02–010

AGENCY: National Highway Traffic Safety Administration (NHTSA), Transportation.

ACTION: Denial of petition for a defect recall.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency initiate an investigation of model year (MY) 2000 and 2001 Suzuki GSX–R750 motorcycles to address an alleged safety-related defect. The petition is identified as DP02–010.

FOR FURTHER INFORMATION CONTACT: Mr. Leo Yon, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–7028.

SUPPLEMENTARY INFORMATION: Mr. Scott M. Shannon of Clearwater, Florida, submitted a petition to NHTSA dated October 8, 2002, requesting that NHTSA open a defect investigation on MY 2000 and 2001 Suzuki GSX–R750 motorcycles (the subject R models). The petition alleges that the motorcycles' 6-speed manual transmission contains a safety-related defect, which causes the vehicle to slip or shudder while under load in second gear.

The four cylinder 750cc Suzuki GS series motorcycles, for the years in question, were sold as two designated models: GSX–750 and GSX–R750. Approximately three times as many subject R models were sold in the U.S. as compared to the base model. Prior to MY 2000, the two models shared the same transmission components. For MY 2000, the R model received several design changes to enhance the motorcycle's performance. These changes include, but are not limited to, a revised overall final drive ratio through the use of a new transmission gear set. Other transmission modifications were also introduced in an effort to improve the motorcycle's perceived shift quality and feel.

To evaluate the petition, an information request was sent to the manufacturer, American Suzuki Motor Corporation (Suzuki), in November 2002. In its response, Suzuki submitted data for both models for MYs 1999 through 2001. The total population of the subject R models is 11,551 motorcycles. Following the introduction of the MY 2000 R model, Suzuki received a significant increase in the number of consumer complaints relating to the motorcycle's transmission. Suzuki reported that it received 248 consumer complaints about the subject R models where the key words ''second gear'' or ''shifting'' were found in the description field. This compares to 7 similarly-derived consumer complaints for both MY 1999 models. A corresponding increase occurred in warranty-related claims. Suzuki reported that, according to claims submitted by dealers on transmission parts, there were 439 claims attributed to the subject R models. This compares to 7 for both MY 1999 models. Field reports and calls by dealers to Suzuki's technical hotline for advice on this topic accounted for 492 contacts for the subject R models, compared to 10 for both MY 1999 models.

Suzuki reported only one claim of an injury that may have been caused by this condition in the subject R models. Five Suzuki technical hotline reports allege a crash that may, or may not, relate to the alleged defect. Suzuki stated that there is insufficient information concerning these alleged incidents to allow it to assess these reported incidents. Suzuki has no lawsuits or subrogation claims pertaining to the alleged defect regarding the MY 2000–2001 R model motorcycles.

NHTSA has received 30 ''transmission'' complaints involving

the MY 2000 R models, with one injury allegation and one crash allegation.

To address consumer complaints about this condition, Suzuki redesigned the second driven gear for the R model. In November 2000, a newly-developed second driven gear was introduced as a running change to the MY 2001 R model and released as the recommended service part for all subject motorcycles. A technical training video was released to Suzuki dealers to help their mechanics diagnose the symptoms before disassembling the transmission. A copy of this tape was supplied with Suzuki's reply to ODI's information request.

Suzuki's Quality Assurance group examined several warranty return parts for mechanical integrity, noting that several displayed signs of abuse consistent with ''incomplete or abusive shifting practices.'' Suzuki alleged that these practices will produce high impact shock loads between the gears' engagement surfaces, leading to localized deformation. Eventually, the deformation helps to create a force between the two gears, in this case second and sixth, pushing them apart. If the magnitude of the separating force between the gears exceeds the force generated by the shifting mechanism to hold them together, the two momentarily disconnect, and then are forced back together by the shifting mechanism. This momentary disconnect-reconnect as the motorcycle is accelerated gives the operator a slipping or popping sensation as the transmission delivers torque to the rear wheel. Under rapid acceleration, the operator can experience a quick, hesitation-like feeling when second gear momentarily disengages, accompanied by a change in the pitch of the sound generated by the engine. Left unattended, the slippage can increase in frequency and duration.

To reproduce and demonstrate the failure consequences to ODI, Suzuki prepared one subject motorcycle with parts intended to represent worst-case conditions on the engagement surfaces of the second gear. Additional instrumentation was installed on the shifting mechanism to record the resultant forces and the momentary disconnect of the second gear. Normal operation of the motorcycle, accelerating through a series of turns and straight roadways, was digitally taped (video) to allow analysis of the condition and its consequences, both from an observer's perspective and that of the operator. Review of the video clips did not identify an increased risk to safety or a loss of vehicle control.

Based on this analysis, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, your petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8

Issued on: February 26, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–5137 Filed 3–4–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 400X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Franklin and Webster Counties, NE

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 19.8-mile line of railroad between milepost 216.95 near Franklin, NE, and milepost 197.15 near Red Cloud, NE, in Franklin and Webster Counties, NE. The line traverses United States Postal Service Zip Codes 68972, 68939, 68952 and 68970.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 4, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 14, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 25, 2004, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by March 10, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

consummation by March 5, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 26, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–5002 Filed 3–4–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 03–10]

Recordation of Trade Name: ''Revolutionary Products, Inc''

AGENCY: Customs Service, Treasury.

ACTION: Notice of final action.

SUMMARY: This document provides notice that ''Revolutionary Products, Inc.'' is recorded by Customs as the trade name for Revolutionary Products, Inc., a California corporation organized under the laws of the State of California, located at 12910 Culver Boulevard, Suite G, Los Angeles, California 90066. This application for trade name recordation was properly submitted to Customs and published in the **Federal Register**. As no public comments in opposition to the recordation of this trade name were received by Customs within the 60-day comment period, the trade name is duly recorded with Customs and will remain in force as long as this trade name is used by this corporation, unless other action is required.

EFFECTIVE DATE: February 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, Office of Regulations & Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., (Mint Annex) Washington, DC 20229; (202) 572–8710.

SUPPLEMENTARY INFORMATION:

Background

Trade names adopted by business entities may be recorded with Customs to afford the particular business entity with increased commercial protection. Customs procedure for recording trade names is provided at § 133.12 of the Customs Regulations (19 CFR 133.12) pursuant to section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124). Pursuant to this regulatory provision, Revolutionary Products, Inc., a California corporation organized under the laws of the State of California, located at 12910 Culver Boulevard, Suite G, Los Angeles, California 90066, applied to Customs for protection of its trade name ''Revolutionary Products, Inc.''.

On Wednesday, December 18, 2002, a notice of application for the recordation of the trade name ''Revolutionary Products, Inc.'' was published in the **Federal Register** (67 FR 247). The notice advised that before final action was taken on the application, consideration would be give to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name and received not later than February 24, 2003. The comment period closed February 24, 2003. No comments were received during the comment period. Accordingly, as provided by § 133.12 of the Customs Regulations, ''Revolutionary Products, Inc.'' is recorded with Customs as the trade name of Revolutionary Products, Inc., and will remain in force as long as this trade name is used by this corporation, unless other action is required.

The application states applicant manufactures, advertises, distributes and sells an electrically driven rotating mechanical hairbrush in packaging and boxes labeled with the Revo Styler trademark and Revolutionary Products, Inc. trade name. Additionally, the trade name appears on a label affixed to the handle of the Revo Styler hairbrush, and is molded into the plastic of the electrical power plug.

The merchandise is manufactured in China and Hong Kong.

Dated: February 27, 2003.

George Frederick McCray,

Chief, Intellectual Property Rights Branch.

[FR Doc. 03–5118 Filed 3–4–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–485–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–485–89 (TD 8400), Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions) (Sections 1.988–0 through 1.988–5).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1131.

Regulation Project Number: INTL–485–89.

Abstract: Internal Revenue Code sections 988(c)(1)(D) and (E) allow taxpayers to make elections concerning the taxation of exchange gain or loss on certain foreign currency denominated transactions. In addition, Code sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions. This regulation provides guidance on making the elections and complying with the identification rules.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5174 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–92–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–92–90 (TD 8395), Special Valuation Rules (Sections 25.2701–2, 25.2701–4, and 301.6501(c)–1).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Special Valuation Rules.

OMB Number: 1545–1241.

Regulation Project Number: PS–92–90.

Abstract: Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests in the same entity. This regulation provides guidance on how taxpayers make these elections, what information is required, and how the transfer is to be disclosed on the gift tax return (Form 709).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 496 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5175 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8264

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8264, Application for Registration of a Tax Shelter.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration of a Tax Shelter.

OMB Number: 1545–0865.

Form Numbers: 8264.

Abstract: Under section 6111 of the Internal Revenue Code, organizers of certain tax shelters are required to register them with the IRS. Organizers filing a properly completed Form 8264 will receive a tax shelter registration number from the IRS. They must furnish the tax shelter registration number to investors in the tax shelter, who must provide the number to the IRS when they report any income or claim a deduction, loss, credit, or other tax benefit derived from the tax shelter on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 350.

Estimated Time Per Respondent: 41 hours, 5 minutes.

Estimated Total Annual Burden Hours: 14,382.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5176 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 5213

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5213, Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

OMB Number: 1545–0195.

Form Number: 5213.

Abstract: Section 183 of the Internal Revenue Code allows taxpayers to elect to postpone a determination as to whether an activity is entered into for profit or is in the nature of a nondeductible hobby. The election is made on Form 5213 and allows taxpayers 5 years (7 years for breeding, training, showing, or racing horses) to show a profit from an activity.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 10,730.

Estimated Time Per Respondent: 47 minutes.

Estimated Total Annual Burden Hours: 8,370.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5177 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–21–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary and final regulation, INTL–21–91 (TD 8656), Section 6662—Imposition of the Accuracy-Related Penalty (§ 1.6662–6).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Section 6662—Imposition of the Accuracy-Related Penalty.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91.

Abstract: These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 8 hours, 3 minutes.

Estimated Total Annual Burden Hours: 20,125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5178 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–30–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–30–92 (TD 8560), Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Nonapplicability of Section 357(c), (§§ 1.1502–31, 1.1502–32, 1.1502–33, 1.1502–76).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Nonapplicability of Section 357(c).

OMB Number: 1545–1344.

Regulation Project Number: CO–30–92.

Abstract: These regulations amend the consolidated return investment adjustment system, including the rules for earnings and profits and excess loss accounts. In addition, the regulations provide special rules for allocating consolidated income tax liability among members and modify the method for allocating income when a corporation enters or leaves a consolidated group.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 52,049.

Estimated Time Per Respondent: 22 minutes.

Estimated Total Annual Burden Hours: 18,600.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5179 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–62–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–62–89 (TD 8407), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards (Section 1.382–3).

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1260.

Regulation Project Number: CO–62–89 (Final).

Abstract: Internal Revenue Code section 382(l)(5) provides relief from the application of the section 382 limitation for bankruptcy reorganizations in which the pre-change shareholders and qualified creditors maintain a substantial continuing interest in the loss corporation. These regulations concern the election a taxpayer may make to treat as the change date the effective date of a plan of reorganization in a title 11 or similar case rather than the confirmation date of a plan.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10 hours.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1 hour.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5180 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7004, Application for Automatic Extension of Time To File Corporation Income Tax Return.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time To File Corporation Income Tax Return.

OMB Number: 1545–0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are three code reference additions, and one reference deletion for Form 7004.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 1,097,748.

Estimated Time Per Respondent: 10 hr., 13 min.

Estimated Total Annual Burden Hours: 11,048,280.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 24, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5181 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8281

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal RevenueService, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Information Return for Publicly Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: 8281.

Abstract: Internal Revenue Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicly offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 500.

Estimated Time Per Response: 6 hr., 7 min.

Estimated Total Annual Burden Hours: 3,060.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5184 Filed 3–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted in Fresno, California.

DATES: The meeting will be held Friday, March 7, 2003, and Saturday, March 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Friday, March 7, 2003, from 1 p.m. p.s.t. to 4:30 p.m. p.s.t. at the Courtyard By Marriott located at 1551 N Peach Ave, Fresno, California and Saturday, March 8, 2003, from 11 a.m. p.s.t. to 2 p.m. p.s.t. at the Mosqueda Community Center located at 4670 E. Butler, Fresno, California. The public is invited to make oral comments on Saturday March 8, 2003. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited space, notification of intent to participate must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 24, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–5170 Filed 2–28–03; 3:17 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting on Wednesday, March 19, 2003, at the Department of Veterans Affairs, Veterans Benefits Administration Education Conference Room 601V, 1800 G Street, NW., Washington, DC, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to review the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of Title 38, U.S.C.

The meeting will begin with opening remarks and an overview by Ms. Sandra Winborne, Committee Chair. During the morning session, the Committee will hear reports on VA outreach activities and progress on implementing an improved Licensing and Certification Approval System (LACAS). The afternoon session will include discussion on any old or new business.

Any member of the public wishing to attend the meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting or within 10 days after the meeting. Oral statements will be heard at 2 p.m.

Dated: February 26, 2003.

By Direction of the Secretary

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–5089 Filed 3–4–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 43

Wednesday, March 5, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange (CME): Proposed Amendments to the Weight Specifications, Speculative Position Limits, Delivery Locations, and Delivery Procedures for the Live Cattle Futures Contract

Correction

In notice document 03–1534 beginning on page 3231 in the issue of Thursday, January 23, 2003, make the following corrections:

1. On page 3232, in the first column, in the fifth paragraph, in the seventh line, ''$0.15'' should read, ''$.015''.

2. On page 3232, in the second column, under the **Background** heading, in the sixth line, ''an'' should read, ''no''.

[FR Doc. C3–1534 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–44–AD; Amendment 39–13006; AD 2002–26–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600,–700,–,700C,–800, and –900 Series Airplanes

Correction

In rule document 03–17 beginning on page 481 in the issue of Monday, January 6, 2003, make the following correction:

§ 39.13 [Corrected]

On page 483, in § 39.13, in the first column, in the second full paragraph, in the second line, ''changing'' should read, ''chafing''.

[FR Doc. C3–17 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–12423]

Qualification of Drivers; Exemption Applications; Vision

Correction

In notice document 03–4425 beginning on page 8794 in the issue of Tuesday, February 25, 2003, make the following corrections:

1. On page 8797, under the heading **Discussion of Comments**, in the third column, in the second full paragraph, in the second line, ''psychiatrist'' should read, ''physiatrist''.

2. On the same page, under the same heading, in the same column, in the same paragraph, in the fifth line, ''psychiatrist'' should read, ''physiatrist''.

[FR Doc. C3–4425 Filed 3–4–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
March 5, 2003

Part II

Department of Commerce

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774

Implementation of the 2002 Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 2, 3, 4, 5, 6, 7, 8, and 9 of the Commerce Control List, General Software Note, and Reporting Requirements; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, 772, and 774

[Docket No. 030127020–3020–01]

RIN 0694–AC65

Implementation of the 2002 Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 2, 3, 4, 5, 6, 7, 8, and 9 of the Commerce Control List, General Software Note, and Reporting Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, 7, 8, and 9 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the February 2002 meeting (and finalized in May 2002) and to make necessary revisions to reporting requirements, definitions, and the General Technology and Software Notes. The changes that affected microprocessors were published in a separate rule on January 14, 2003 (68 FR 1796).

EFFECTIVE DATE: This rule is effective: March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–5400.

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

This rule makes the following amendments to the list of items ineligible for export or reexport under License Exception GOV, to conform with revisions to the Wassenaar Arrangement's Annex 2 of the List of Dual-Use Goods and Technologies:

• For exports and reexports of commodities and software to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (EURATOM), reexports by IAEA and EURATOM for official international safeguard use:

(1) The following items are removed from the list of ineligible commodities and software: 1C012 (because commodities classified as 1C012 are under Department of State jurisdiction and must comply with the International Traffic in Arms Regulations (ITAR)), 9A011 (because commodities classified as 9A011 are under Department of State jurisdiction and must comply with the ITAR), 9D002 (because the ineligible software is under State Department jurisdiction as it pertains to production software for 9A011, which is under Department of State jurisdiction and must comply with ITAR), and 9D004 (because this software has been removed from Annex 2 of the Wassenaar Arrangement List of Dual-Use Goods and Technologies List);

(2) The following items are revised within the list of ineligible commodities and software:

(a) Narrowed the scope of 4D001 to only include software specially designed for the development or production of digital computers controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS;

(b) Added Note that applies to paragraph 740.11(a)(2)(iii) that reads as follows: ''Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by ''electronic assemblies'', which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds the CTP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.''

(c) Revised references to 5A001.b.4 to read 5A001.b.5, because the paragraph was redesignated in 5A001;

(d) Clarified the scope of 5D001.a; and

(e) Clarified the scope of 9D001 to harmonize with those items removed from the list of ineligible items.

(3) Added processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f to the list of ineligible commodities.

• For exports or reexports of items for official use within national territory by agencies of cooperating governments, and exports and reexports of items for diplomatic and consular missions of a cooperating government located in any country in Country Group B:

(1) The following items are removed from the list of ineligible commodities and software: 1C012 (because commodities classified as 1C012 are under Department of State jurisdiction and must comply with the International Traffic in Arms Regulations (ITAR)), 9A011 (because commodities classified as 9A011 are under Department of State jurisdiction and must comply with the ITAR), 9D002 (because the ineligible software is under State Department jurisdiction as it pertains to production software for 9A011, which is under Department of State jurisdiction and must comply with ITAR), and 9D004 (because this software has been removed from Annex 2 of the Wassenaar Arrangement List of Dual-Use Goods and Technologies List);

(2) The following items are revised within the list of ineligible commodities and software:

(a) Narrowed the scope of 4D001 to only include software specially designed for the development or production of digital computers controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS;

(b) Revised references to 5A001.b.4 to read 5A001.b.5, because the paragraph was redesignated in 5A001;

(c) Clarified the scope of 5D001.a;

(d) Clarified the scope of 9D001 to harmonize with those items removed from the list of ineligible items;

(e) Narrowed the scope of 1E001 by removing 1C012; and

(f) Narrowed the scope of 9E001 by removing 9A011 and 9D002.

(3) Added processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f to the list of ineligible commodities.

(4) Added 4E001, specially designed for the ''development'' or ''production'' of ''digital computers'' controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS to the list of ineligible technology; and

(5) Removed 9E002 from the list of ineligible technology.

• This rule clarifies the scope of Wassenaar reporting requirements that apply to License Exception GOV, and makes the following amendments to the Wassenaar Reporting Requirements in section 743.1 of the EAR to conform with changes made to the Wassenaar Arrangement's Annex 1 of the List of Dual-Use Goods and Technologies.

(1) This rule removes Wassenaar reporting requirements from part 743 for the following: 2B001.a, .b., .d, and .f; 4A001.b; and 4A003.b and .c.

(2) This rule revises the scope of Wassenaar reporting requirements under part 743 for the following: 1D002, 1E001, 2D001, 2E001, 2E002, 3D001, 3E001, 4D001, 4E001, 5B001, 5D001.a, 5D001.b, 5E001.a, 6A001.a.1.b, 6A006.g, 6D001, 6E001, 6E002, 8A002.b, 8A002.o.3, 8D001, 8E001, 9D001, and 9D002.

(3) This rule adds Wassenaar reporting requirements under part 743 for 9E003.a.1.

• This rule amends section 772.1 by:

(1) Adding new entries for: ''Circulation-controlled, anti-torque or circulation-controlled direction control systems'' and ''Time-modulated ultra-wideband'';

(2) Removing the entries ''Assembly'', ''Beat length'', ''Circulation'', ''Global interrupt latency time'', ''Fluoride fibers'', ''Gateway'', ''ISDN'', ''Integrated Services Digital Network'', ''Network access controller'', ''Optical fiber preforms'', and ''Sputtering'', and adding them to the Related Definitions sections of the appropriate ECCNs within the CCL;

(3) Revising the phrase ''Only those'' to read ''those'' in the entry ''civil aircraft'';

(4) Revising the phrase ''arithmetic logic'' to read ''arithmetic or logic'' in the entry ''computing element'';

(5) Revising the entry for ''electronically steerable phased array antenna'' to harmonize with the definition in the Wassenaar Arrangement List;

(6) Revising the phrase ''End-effectors'' include grippers,'' to read ''Grippers,'' in the entry for ''end-effectors'';

(7) Revising the phrase ''(f_2— f^1)'' to read ''(f_2—f_1) in the entry ''noise level'';

(8) Revising the entry heading ''Systems tracks'' to read ''System tracks''; and

(9) Revising the phrase ''product ''X'' that does not operate'' to read ''product ''X'' that operates'', and the word ''extending'' to read ''exceeding'' in the entry ''Required''.

This rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with February 2002 revisions to the Wassenaar List of Dual-Use Goods and Technologies. This rule also revises language to provide a complete or more accurate description of controls. A detailed description of the revisions to the CCL is provided below.

Specifically, this rule makes the following amendments to the Commerce Control List:

Category 2—Materials Processing

• ECCN 2A001 is amended by revising:

(a) Paragraph 2A001.a in the List of Items Controlled section to:

(1) Add ''all'' before ''tolerances'';

(2) Add ''both'' before ''rings''; and

(3) Replace ''balls or rollers'' with ''and rolling elements (ISO 5593)''; and

(b) Paragraph 2A001.b in the List of Items Controlled section to add ''all'' before ''tolerances''.

• ECCN 2B001 is amended by:

(a) Removing the License Requirements Notes referring to the Wassenaar reporting requirement in the License Requirements section; and

(b) Revising the Notes for 2B001.c by removing notes 3 and 4, and renumbering subsequent paragraphs.

• ECCN 2B003 is amended by revising the word ''controllers'' to read ''controls'' in the heading.

• ECCN 2B006 is amended by:

(a) Revising paragraph 2B006.b.1 in the List of Items Controlled section to add ''displacement'' after ''linear'';

(b) Adding a Technical Note after paragraph 2B006.b.1 that defines ''linear displacement''; and

(c) Revising paragraph 2B006.b.2 in the List of Items Controlled section to add ''displacement'' after ''angular''.

Category 3—Electronics

• ECCN 3A001 is amended by:

(a) Revising the parameter for paragraph 3A001.a.7.b (basic gate propagation delay time) from 0.40 ns to .1 ns; and

(b) Adding a Note 2 after 3A001.b.1 that explains that 3A001.b.1 does not control non-''space-qualified'' tubes which meet all of the characteristics in the new note.

• ECCN 3A002 is amended by:

(a) Adding a clarification note in the Related Definitions paragraph of the List of Items Controlled section; and

(b) Adding the words ''radio frequency'' before ''signal analyzers'' in paragraph 3A002.c.

• ECCN 3B001 (this change is from the Wassenaar 2000 agreements) is amended by:

(a) Revising the heading to add the phrase ''as follows (see List of Items Controlled)'';

(b) Modifying 3B001.c controls over etch equipment in order to control such equipment based on its capabilities rather than its characteristics. Specifically, for 3B001.c.1 and c.2, paragraph a. and b. have been redrafted.

(c) Modifying 3B001.d controls for CVD equipment in order to control such equipment based on its capabilities rather than its characteristics.

• ECCN 3B991 is amended by moving the definition for ''sputtering'' from section 772.1 of the EAR to the Related Definitions section of this entry, and exchanging the double quotes around the term to single quotes in the list of items controlled.

• ECCN 3C004 is amended by revising and moving the related control note to the list of items controlled section of this entry to harmonize with the Wassenaar Dual-Use List.

• ECCNs 3E001 and 3E002 are amended by revising the parameter in the Technical Note from ''two metal layers'' to ''three metal layers'' and from ''two polysilicon layers'' to ''three polysilicon layers''. In addition, the heading to 3E002 is revised to harmonize with Wassenaar.

• ECCN 3E003 is amended by adding a new paragraph 3E003.g to control electronic vacuum tubes operating at frequencies of 31 GHz or higher; and adding a sentence in the Related Controls paragraph of the List of Items Controlled section to read: Technology for the ''development'' or ''production'' of ''space qualified'' electronic vacuum tubes operating at frequencies of 31 GHz or higher, described in 3E003.g, is under the export license authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121)

Category 4—Computers

• ECCN 4A003 is amended by removing paragraph 4A003.d, graphics accelerators and graphics coprocessors; and removing the License Requirements Note that referred to a Wassenaar reporting requirement.

• ECCN 4D003 is amended by removing paragraph 4D003.d, operating

systems specially designed for ''real time processing'' equipment; and removing the License Requirements Note that referred to a Wassenaar reporting requirement.

• ECCN 4D993 is amended by revising the heading and paragraph 4D993.c to harmonize with the revisions made to 4D003, including revising the ''global interrupt latency time'' from ''less than 30'' to ''less than 20 microseconds'' to maintain AT controls on this software. In addition, the definition for ''global interrupt latency time'' has been moved from section 772.1 of the EAR to the Related Definition section of this ECCN.

Category 5—Part I—Telecommunications

• ECCN 5A001 is amended by adding a new paragraph 5A001.b.4, to add ''radio equipment employing ''time-modulated ultra-wideband'' techniques, having user programmable channelizing or scrambling codes'' to the list of items controlled under 5A001; and redesignate paragraphs 5A001.b.4 through 5A001.b.5 as paragraphs 5A001.b.5 through 5A001.b.6.

• ECCN 5A991 is amended by moving the definitions for ''integrated services digital network'' (ISDN) and ''gateway'' from section 772.1 of the EAR to the Related Definitions section of this entry, and exchanging double quotes for single quotes around these terms in this entry.

• ECCN 5B001 is amended by removing the words ''not using semiconductor 'lasers' '' from the note for 5B001.a.

• ECCN 5E001 is amended by harmonizing the TSR License Exception paragraph to harmonize with revisions made to 5A001.b; and revising the control language in 5E001.b.3 for the ''technology'' for the ''development'' of digital cellular radio systems.

• ECCN 5E991 is amended by adding definitions for 'Synchronous digital hierarchy' ('SDH') and 'Synchronous optical network' ('SONET') to the Related Definitions paragraph of the List of Items Controlled section; and changing the double quotes to single quotes around these terms in 5E991.a.2.

Category 5—Part II—Information Security

• ECCN 5A002 is amended by:

(1) Revising the Heading to add ''as follows (see List of Items Controlled)'';

(2) Revising the Related Controls paragraph in the List of Items Controlled section to add the phrase ''contents stored on'' to (d)(2)(a);

(3) Adding a new paragraph 5A002.a.6, to control ''Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security,'' and other specially designed components that are designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for ''time-modulated ultra-wideband'' systems; and by redesignating paragraphs 5A002.a.6 and 5A002.a.7 as 5A002.a.7 and 5A002.a.8;

• ECCN 5B002 is amended by removing the License Requirement Note referencing a Wassenaar reporting requirement.

• ECCN 5E002 is amended by removing the License Requirement Note referencing a Wassenaar reporting requirement.

Category 6—Sensors

• ECCN 6A001 is amended by:

(1) Fixing the abbreviations for the various units of measurement in 6A001a.1.b, a.1.c., a.2.a.3, and the technical note after a.2.a.5; and

(2) Removing the ''or'' at the end of 6A001.a.1.d.

• ECCN 6A005 is amended by:

(1) Revising the text ''having all'' to read ''having any'' in 6A005.b.1;

(2) Revising the text in 6A005.b.1.a that reads ''A wavelength of less than'' to read ''A wavelength equal to or less than'';

(3) Revising the text in 6A005.b.1.a that describes the parameter for wavelength: from ''950 nm'' to ''1500 nm''; and

(4) Revising the text in 6A005.b.1.a ''or more than 2000 nm; and'' to read ''and having an average or CW output power exceeding 1.5 W; or''.

(5) Revising the text in 6A005.b.1.b ''An average or CW output power exceeding 100 mW'' to read ''A wavelength greater than 1510 nm, and having an average or CW output power exceeding 500 mW''

• ECCN 6A008 is amended by revising the phrase ''any of the characteristics'' to read ''any of the following characteristics'' in the heading.

• ECCN 6C992 has been revised by moving the definition for ''beat length'' from section 772.1 of the EAR to the Related Definition section of this ECCN and exchanging the double quotes for single quotes around this term as it appears in this entry.

• ECCN 6C994 has been revised by moving the definition for ''fluoride fibers'' and ''optical fiber preforms'' from section 772.1 of the EAR to the Related Definitions section of this ECCN, and exchanging the double quotes for single quotes around these terms as they appear in this entry.

• ECCN 6D003 is amended by:

(1) Harmonizing the text of 6D003.a.3 with that of the Wassenaar Arrangement; and

(2) Adding paragraph 6D003.a.4, ''source code'' for the ''real time processing'' of acoustic data for passive reception using bottom or bay cable systems.

Category 7—Navigation and Avionics

• ECCN 7A003 is amended by:

(1) Adding the abbreviation (INS) after Inertial Navigation Systems in the heading and removing the detailed description of INS from the heading;

(2) Adding the definition for ''Data-Based Referenced Navigation'' (''DBRN'') to the Related Definitions section;

(3) Reformatting paragraphs 7A003.a and 7A003.b.;

(4) Adding Technical Notes 1 and 2 after Note 2.

• ECCN 7D002 is amended by harmonizing the heading text with that of the Wassenaar Arrangement.

• ECCN 7D003 is amended by:

(1) Adding the definition for ''Data-Based Referenced Navigation'' (''DBRN'') to the Related Definitions section;

(2) Removing the text ''navigation data'' from the end of paragraph 7D003.b;

(3) Adding the word ''data'' after the word ''velocity'' in paragraph 7D003.b.1; and

(4) Revising paragraph 7D003.b.3 from reading ''Terrain data from data bases'' to read ''Data from ''Data-Based Referenced Navigation'' (''DBRN'')''.

Category 8—Marine

• ECCN 8A002 is amended by:

(1) Revising the Related Controls paragraph of the List of Items Controlled section to include ''8A002 does not control closed and semi-closed circuit (rebreathing) apparatus that is controlled under 8A018.a. See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note.''

(2) Adding paragraph 8A002.q and the 8A002.q Note to harmonize with the Wassenaar Arrangement List.

• ECCN 8A018 is amended by:

(1) Revising the Related Controls paragraph of the List of Items Controlled section to include a reference to 8A002 and 8A992.

(2) Revising the phrase in paragraph 8A018.a ''Closed and semi-closed circuit (rebreathing) apparatus for diving and underwater swimming'' to read ''Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use'', to harmonize with the Wassenaar Arrangement.

• ECCN 8A992 is amended by revising the Related Controls paragraph of the List of Items Controlled section to include a reference to 8A002 and 8A018.

Category 9—Propulsion Systems

• Adding a new entry: ECCN 9A012 ''Unmanned aerial vehicles * * * ''.

• ECCN 9A120 is deleted and incorporating it into ECCN 9A012.

• ECCNs 9D001 and 9D002 are amended by:

(1) Revising the phrase ''Software required for'' to read ''Software specially designed or modified for'' in the heading to harmonize with Wassenaar Arrangement text; and

(2) Revising the License Requirement section of to harmonize with the incorporation of 9A120 into 9A012.

• ECCN 9D003 is amended by Revising the phrase ''Software required for'' to read ''Software specially designed or modified for'' in the heading to harmonize with Wassenaar Arrangement text.

• ECCN 9D102 is amended by revising the heading to harmonize with the incorporation of 9A120 into 9A012.

All items removed from national security (NS) controls as a result of changes to the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

In addition, this rule makes revisions to the Supplement No. 2 to part 774, General Technology and Software Notes to harmonize with the Wassenaar's Arrangements General Technology and Software Notes.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by the Notice of August 14, 2002 (67 FR 53721, August 16, 2002), continues the Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport without a license, under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until April 4, 2003. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for June 3, 2003, BIS will accept license applications for items described either by the entries in effect immediately before March 5, 2003, or the entries described in this rule.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 740 and 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign Trade, Reporting and recordkeeping requirements.

Accordingly, parts 740, 743, 772, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

2. Section 740.11 is amended by revising paragraph (a)(2), to read as follows:

§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 5A001.b.5, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., ; and

(i) ''Composite'' structures or laminates controlled by 1A002.a, having an organic ''matrix'' and made from materials listed under 1C010.c or 1C010.d; and

(ii) ''Digital'' computers controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(iii) ''Electronic assemblies'' controlled by 4A003.c and capable of enhancing performance by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds 190,000 MTOPS; and

Note to paragraph 740.11(a)(2)(iii): Nationals of countries in Country Group E:1 may not physically or computationally access computers that have been enhanced by ''electronic assemblies'', which have been exported or reexported under License Exception GOV and have been used to enhance such computers by aggregation of ''computing elements'' so that the CTP of the

aggregation exceeds the CTP parameter set forth in ECCN 4A003.b. of the Commerce Control List in Supplement No. 1 to part 774 of the EAR, without prior authorization from the Bureau of Industry and Security.

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled; by 6A001.a.2.f; and

(vi) ''Software'', as follows:

(A) Controlled by 4D001, specially designed for the ''development'' or ''production'' of ''digital computers'' controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the ''development'' of ''technology'' controlled by 9E003.a.1 or 9E003.a.3.a.

* * * * *

3. Supplement Number 1 to § 740.11 is revised to read as follows:

Supplement No. 1 to § 740.11—Additional Restrictions on Use of License Exception Gov

(a) *Items for official use within national territory by agencies of a Cooperating Government.* License Exception GOV is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., ; and

(i) ''Composite'' structures or laminates controlled by 1A002.a, having an organic ''matrix'' and made from materials listed under 1C010.c or 1C010.d; and

(ii) [Reserved]

(iii) [Reserved]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) ''Software'', as follows:

(A) Controlled by 4D001, specially designed for the ''development'' or ''production'' of ''digital computers'' controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the ''development'' of ''technology'' controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) ''Technology'', as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) Controlled by 4E001, specially designed for the ''development'' or ''production'' of ''digital computers'' controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(C) Controlled by 5E001.a for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for ''software'' specially designed for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.2.a.1, 6A001.a.25.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [Reserved]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

(b) *Diplomatic and consular missions of a cooperating government.* License Exception GOV is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 5A001.b.5, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., ; and

(i) ''Composite'' structures or laminates controlled by 1A002.a, having an organic ''matrix'' and made from materials listed under 1C010.c or 1C010.d; and

(ii) [Reserved]

(iii) [Reserved]

(iv) Processing equipment controlled by 6A001.a.2.c and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Processing equipment, specially designed for real time application bottom or bay cable systems controlled by 6A001.a.2.f; and

(vi) ''Software'', as follows:

(A) Controlled by 4D001, specially designed for the ''development'' or ''production'' of ''digital computers'' controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(B) Controlled by 5D001.a, specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the ''development'' of ''technology'' controlled by 9E003.a.1 or 9E003.a.3.a.

(vii) ''Technology'', as follows:

(A) Controlled by 1E001 for items controlled by 1A002.a as described by paragraph (a)(1)(i) of this Supplement, or 1C001; and

(B) Controlled by 4E001, specially designed for the ''development'' or ''production'' of ''digital computers'' controlled by 4A003.b and having a CTP exceeding 190,000 MTOPS; and

(C) Controlled by 5E001.a for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; or 5D001.a for ''software'' specially designed for the ''development'' or ''production'' of digitally controlled radio receivers controlled by 5A001.b.5; and

(D) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A001.a.2.f, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(F) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(G) Controlled by 9E001 for items controlled by 9D001; and

(H) [Reserved]

(I) Controlled by 9E003.a.1; and

(J) Controlled by 9E003.a.3.a;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

PART 743—[AMENDED]

4. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq; Pub. L. 106–508; 50 U.S.C. 1701 et seq; E.O. 13206, 66 FR 18397, April 9, 2001.

5. Section 743.1 is amended by revising paragraphs (b)(1) and (c), and removing and reserving paragraph (e)(2), to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(b) * * *

(1) Exports authorized under License Exceptions GBS, CIV, TSR, LVS, CTP, and the cooperating government portions (§§ 740.11(b)(2)(iii) and 740.11(b)(2)(iv) of the EAR) of GOV (see part 740 of the EAR). Note that exports of technology and source code under License Exception TSR to foreign nationals located in the U.S. should not be reported; and

* * * * *

(c) *Items for which reports are required.* (1) You must submit reports to BIS under the provisions of this section only for exports of items controlled under the following ECCNs:

(i) *Category 1:* 1A002; 1C007.c and .d; 1C010.c and .d; 1D002 for ''development'' of 1A002, 1C007.c and .d, and 1C010.c and .d; 1E001 for ''development'' and ''production'' of 1A002, 1C007.c and .d, and 1C010.c and .d ; 1E002.e and .f;

(ii) *Category 2:* 2B003, 2D001 (certain items only; see Note to this paragraph), 2E001 (certain items only; see Note to this paragraph), and 2E002 (certain items only; see Note to this paragraph);

Note *to Paragraph (c)(1)(ii):* Reports for 2D001, are for ''software'', other than that controlled by 2D002, specially designed for the ''development'' or ''production'' of the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a) of the Commerce Control List (CCL). Reports for 2E001, are for ''technology'' according to the General Technology Note for ''development'' of the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.17mu;m in 2B001.a.1 and 2B001.b.1.a), or ''software'' in 2D001 of the CCL for the ''development'' or ''production'' of the equipment in 2B003. Reports for 2E002, are for ''technology'' according to the General Technology Note for ''production'' of the equipment in 2B003 or 2B001.a or .b (changing 6μm to 5.1μm in 2B001.a.1 and 2B001.b.1.a) of the CCL.

(iii) *Category 3:* 3A002.g.2, 3B001.a.2, 3D001 for ''development'' or ''production'' of 3A002.g.2 or 3B001.a.2, and 3E001 for ''development'' or ''production'' of 3A002.g.2 or 3B001.a.2;

(iv) *Category 4:* 4A001.a.2; 4D001 (see paragraph (c)(2) of this section); and 4E001 (see paragraph (c)(2) of this section);

(v) *Category 5:* 5A001.b.3; 5B001.a (items specially designed for 5A001.b.3); 5D001.a (specially designed for the ''development'' or ''production'' of equipment, function, or features in 5A001.b.3) and 5D001.b (specially designed or modified to support ''technology'' under 5E001.a); and 5E001.a (for the ''development'' or ''production'' of equipment, function, features, or ''software'' in 5A001.b.3, 5B001.a, 5D001.a and .b);

(vi) *Category 6:* 6A001.a.1.b (changing 10 kHz to 5 kHz in a.1.b.1 and a.1.b.2), .a.2.c, .a.2.d, and .a.2.e; 6A002.b; 6A004.c and d; 6A006.g (excluding compensators which provide only absolute values of the earth's magnetic field as output (*i.e.*, the frequency bandwidth of the output extends from DC to at least 0.8 Hz) and h; 6A008.d, .h, and .k; 6D001 (for 6A004.c); 6D003.a; 6E001 (for equipment and software listed in this paragraph); and 6E002 (for equipment and software listed in this paragraph);

(vii) *Category 8:* 8A001.c; 8A002.b (for 8A001.c), .h, .j, .o.3, and .p; 8D001 (for commodities listed in this paragraph); 8D002; 8E001 (for commodities listed in this paragraph); and 8E002.a; and

(viii) *Category* 9: 9B001.b; 9D001 (for 9B001.b and 9E003 (as described in this paragraph)); 9D002 (for 9B001.b); 9D004.a and .c; 9E001; 9E002; 9E003.a.1., .a.2, .a.3, .a.4, .a.5, .a.8, and .a.9.

(2) Reports for ''software'' controlled by 4D001 and ''technology'' controlled by 4E001 are required if specially designed for the ''development'' or ''production'' of computers controlled under 4A001.a.2, or for the ''development'' or ''production'' of ''digital computers'' having a CTP exceeding 75,000 MTOPS. For the calculation of CTP, *see* the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

* * * * *

PART 772—[AMENDED]

6. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

7. Section 772.1 is amended by:

(a) Adding new entries: ''Circulation-controlled, anti-torque or circulation-controlled direction control systems' and ''Time-modulated ultra-wideband'' in alphabetical order, to read as follows;

(b) Removing the entries ''Assembly'', ''Beat length'', ''Circulation'', ''Global interrupt latency time'', ''Fluoride fibers'', ''Gateway'', ''ISDN'', ''Integrated Services Digital Network'', ''Network access controller'', ''Optical fiber preforms'', and ''Sputtering';

(c) Revising the phrase ''Only those'' to read ''those'' in the entry ''civil aircraft';

(d) Revising the phrase ''arithmetic logic'' to read ''arithmetic or logic'' in the entry ''computing element';

(e) Revising the entry ''electronically steerable phased array antenna'', to read as follows;

(f) Revising the phrase ''End-effectors'' include grippers,'' to read ''Grippers,'' in the entry for ''end-effectors';

(g) Revising the phrase ''(f_2–f^1)'' to read ''(f_2–f_1) in the entry ''noise level'';

(h) Revising the phrase ''product ''X'' that does not operate'' to read ''product ''X'' that operates'', and the word ''extending'' to read ''exceeding'' in the entry ''Required''; and

(i) Revising the entry heading ''Systems tracks'' to read ''System tracks''.

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

''Circulation-controlled, anti-torque or circulation-controlled direction control

systems'' (Cat 7)—Control systems using air blown over aerodynamic surfaces to increase or control the forces generated by the surfaces.

* * * * *

''Electronically steerable phased array antenna''. (Cat 6)—An antenna that forms a beam by means of phase coupling (*i.e.,* the beam direction is controlled by the complex excitation coefficients of the radiating elements) and the direction of that beam can be varied (both in transmission and reception) in azimuth or in elevation, or both, by application of an electrical signal.

* * * * *

''Time-modulated ultra-wideband''. (Cat 5 part 1 and Cat 5 part 2) The technique in which very short precisely time-controlled RF pulses are modulated in accordance with communications data by shifting pulse positions (usually called Pulse Position Modulation, PPM) channelized or scrambled in accordance with pseudo-random noise codes by PPM, then transmitted and received in the direct pulse form without using any carrier frequencies, consequently having extremely low power density over ultra-wide frequency bands. It is also known as Impulse Radio.

* * * * *

PART 774—[AMENDED]

8. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, the following Export Control Classification Numbers (ECCNs) are amended:

(a) Revise the Heading of product group A at the beginning of Category 2 from ''Equipment, Assemblies and Components'' to read ''Systems, Equipment and Components';

(b) Revising the *Items* paragraph in the List of Items Controlled section of ECCNs 2A001 and 2B006;

(c) Revising the Heading, removing the *License Requirement Notes* paragraph at the end of the License requirements section, and revising the *Items* paragraph of the List of Items Controlled section of ECCN 2B001; and

(d) Revising the Heading of 2B003, to read as follows:

* * * * *

2A001 Anti-friction bearings and bearing systems, as follows, (*see* List of Items Controlled) and components therefor.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note: 2A001 does not control balls with tolerance specified by the manufacturer in accordance with ISO 3290 as grade 5 or worse.

a. Ball bearings and solid roller bearings having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 4 (or ANSI/ABMA Std 20 Tolerance Class ABEC–7 or RBEC–7, or other national equivalents), or better, and having both ringsand rolling elements (ISO 5593) made from monel or beryllium;

Note: 2A001.a does not control tapered roller bearings.

b. Other ball bearings and solid roller bearings having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better;

Note: 2A001.b does not control tapered roller bearings.

c. Active magnetic bearing systems using any of the following:

c.1. Materials with flux densities of 2.0 T or greater and yield strengths greater than 414 MPa;

c.2. All-electromagnetic 3D homopolar bias designs for actuators; *or*

c.3. High temperature (450 K (177oC) and above) position sensors.

2B001 Machine tools (see List of Items Controlled) and any combination thereof, for removing (or cutting) metals, ceramics or ''composites'', which, according to the manufacturer's technical specification, can be equipped with electronic devices for ''numerical control''.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: 2B001 does not control special purpose machine tools limited to the manufacture of gears. For such machines, *see* 2B003.

Note 2: 2B001 does not control special purpose machine tools limited to the manufacture of any of the following parts:

a. Crank shafts or cam shafts;
b. Tools or cutters;
c. Extruder worms;
d. Engraved or faceted jewellery parts.

a. Machine tools for turning, having all of the following characteristics:

a.1. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; *and*

a.2. Two or more axes which can be coordinated simultaneously for ''contouring control'';

Note: 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:

b.1. Having all of the following:

b.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; *and*

b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';

b.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

b.3. A positioning accuracy for jig boring machines, with ''all compensations available'', of less (better) than 4 μm along any linear axis; or

b.4. Fly cutting machines, having all of the following characteristics:

b.4.a. Spindle ''run-out'' and ''camming'' less (better) than 0.0004 mm TIR; and

b.4.b. Angular deviation of slide movement (yaw, pitch and roll) less (better) than 2 seconds of arc, TIR, over 300 mm of travel.

c. Machine tools for grinding, having any of the following characteristics: c.1. Having all of the following:

c.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 4 μm along any linear axis; *and*

c.1.b. Three or more axes which can be coordinated simultaneously for ''contouring control''; *or*

c.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

Notes: 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:

a. Limited to cylindrical grinding; and

b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.

2. Machines designed specifically as jig grinders having any of following characteristics:

a. The c-axis is used to maintain the grinding wheel normal to the work surface; or

b. The a-axis is configured to grind barrel cams.

3. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for ''contouring control'';

e. Machine tools for removing metals, ceramics or ''composites'' having all of the following characteristics:

e.1. Removing material by means of any of the following:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; *or*

e.1.c. ''Laser'' beam; *and*

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for ''contouring control''; *and*

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

2B003 ''Numerically controlled'' or manual machine tools, and specially designed components, controls and accessories therefor, specially designed for the shaving, finishing, grinding or honing of hardened (R_c = 40 or more) spur, helical and double-helical gears with a pitch diameter exceeding 1,250 mm and a face width of 15% of pitch diameter or larger finished to a quality of AGMA 14 or better (equivalent to ISO 1328 class 3).

* * * * *

2B006 Dimensional inspection or measuring systems and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

ECCN Controls: * * *

Items:

a. Computer controlled, ''numerically controlled'' or ''stored program controlled'' dimensional inspection machines, having a three dimensional length (volumetric) ''measurement uncertainty'' equal to or less (better) than (1.7 + L/1,000) µm (L is the measured length in mm) tested according to ISO 10360–2;

b. Linear and angular displacement measuring instruments, as follows:

b.1. Linear displacement measuring instruments having any of the following:

Technical Note: For the purpose of 2B006.b.1 ''linear displacement'' means the change of distance between the measuring probe and the measured object.

b.1.a. Non-contact type measuring systems with a ''resolution'' equal to or less (better) than 0.2 µm within a measuring range up to 0.2 mm;

b.1.b. Linear voltage differential transformer systems having all of the following characteristics:

b.1.b.1. ''Linearity'' equal to or less (better) than 0.1% within a measuring range up to 5 mm; *and*

b.1.b.2. Drift equal to or less (better) than 0.1% per day at a standard ambient test room temperature ± 1 K; *or*

b.1.c. Measuring systems having all of the following:

b.1.c.1. Containing a ''laser''; *and*

b.1.c.2. Maintaining, for at least 12 hours, over a temperature range of ±1 K around a standard temperature and at a standard pressure, all of the following:

b.1.c.2.a. A ''resolution'' over their full scale of 0.1 µm or less (better); *and*

b.1.c.2.b. A ''measurement uncertainty'' equal to or less (better) than (0.2 + L/2,000) µm (L is the measured length in mm);

Note: 2B006.b.1 does not control measuring interferometer systems, without closed or open loop feedback, containing a ''laser'' to measure slide movement errors of machine-tools, dimensional inspection machines or similar equipment.

b.2. Angular displacement measuring instruments having an ''angular position deviation'' equal to or less (better) than 0.00025 °;

Note: 2B006.b.2 does not control optical instruments, such as autocollimators, using collimated light to detect angular displacement of a mirror.

c. Equipment for measuring surface irregularities, by measuring optical scatter as a function of angle, with a sensitivity of 0.5 nm or less (better).

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, the following Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 3A001;

(b) Revising the *Related Definitions* and the *Items* paragraphs in the List of Items Controlled section of ECCN 3A002;

(c) Revising the heading, and the *Items* paragraph in the List of Items Controlled section of ECCN 3B001;

(d) Revising the *Related Definitions* and the *Items* paragraphs in the List of Items Controlled section of 3B991;

(e) Revising the *Related Controls* and the *Items* paragraphs in the List of Items Controlled section of 3C004;

(f) Revising the *Items* paragraph in the List of Items Controlled section of 3E001;

(g) Revising the heading and the *Items* paragraph in the List of Items Controlled section of 3E002; and

(h) Revising the *TSR* paragraph in the License Exceptions section and revising the *Related Controls* and the *Items* paragraphs in the List of Items Controlled section of 3E003, to read as follows:

3A001 Electronic components, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. General purpose integrated circuits, as follows:

Note 1: The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

Note 2: Integrated circuits include the following types:

Monolithic integrated circuits'';

''Hybrid integrated circuits'';

''Multichip integrated circuits'';

''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;

''Optical integrated circuits''.

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5×10^3 Gy (Si), or higher; *or*

a.1.b. A dose rate upset of 5×10^6 Gy (Si)/s, or higher;

a.2. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', microcontroller microcircuits, storage integrated circuits manufactured from a compound semiconductor, analog-to-digital converters, digital-to-analog converters, electro-optical or ''optical integrated circuits'' designed for ''signal processing'', field programmable logic devices, neural network integrated circuits, custom integrated circuits for which either the function is unknown or the control status of the equipment in which the integrated circuit will be used in unknown, Fast Fourier Transform (FFT) processors, electrical erasable programmable read-only memories (EEPROMs), flash memories or static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125°C); *or*

a.2.b. Rated for operation at an ambient temperature below 218 K (− 55°C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55°C) to 398 K (125° C);

Note: 3A001.a.2 does not apply to integrated circuits for civil automobile or railway train applications.

a.3. ''Microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits, having any of the following characteristics:

Note: 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. [Reserved]

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate exceeding 150 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time of less than 5 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bit with a total conversion time of less than 2 µs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a ''settling time'' of less than 10 ns;

Technical Note: 1. A resolution of n bit corresponds to a quantization of 2 levels.

2. Total conversion time is the inverse of the sample rate.

a.6. Electro-optical and ''optical integrated circuits'' designed for ''signal processing'' having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable logic devices having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates);

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; *or*

a.7.c. A toggle frequency exceeding 133 MHz;

Note: 3A001.a.7 includes: Simple Programmable Logic Devices (SPLDs), Complex Programmable Logic Devices (CPLDs), Field Programmable Gate Arrays (FPGAs), Field Programmable Logic Arrays (FPLAs), and Field Programmable Interconnects (FPICs).

N.B.: Field programmable logic devices are also known as field programmable gate or field programmable logic arrays.

a.8. [Reserved]

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 1,000 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.1 ns; *or*

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having a rated execution time for an N-point complex FFT of less than (N log2 N)/20,480 ms, where N is the number of points;

Technical Note: When N is equal to 1,024 points, the formula in 3A001.a.12 gives an execution time of 500 μs.

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

Note 1: 3A001.b.1 does not control tubes designed or rated for operation in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.1 does not control non-''space-qualified'' tubes which meet all the following characteristics:

(a) An average output power equal to or less than 50 W; and

(b) Designed or rated for operation in any frequency band which meets all of the following characteristics:

(1) Exceeds 31 GHz but does not exceed 43.5 GHz; *and*

(2) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies exceeding 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with a ''fractional bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; or

b.1.a.4.c. Being ''space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes producing a continuous emission current density at rated operating conditions exceeding 5 A/cm^2;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing ''monolithic integrated circuits'' having one or more active circuit elements; and

b.2.b. Operating at frequencies above 3 GHz;

Note 1: 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in any frequency band which meets all of the following characteristics:

(a) Does not exceed 31 GHz; and

(b) Is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

Note 2: 3A001.b.2 does not control broadcast satellite equipment designed or rated to operate in the frequency range of 40.5 to 42.5 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an ''instantaneous bandwidth'' of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band (f_{max}/f_{min}) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave ''assemblies'' capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 cm^3;

Note: 3A001.b.8 does not control equipment designed or rated for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (*i.e.,* ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than 10^{-14} J; *or*

d.2. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

Note: 3A001.e.1 does not control batteries with volumes equal to or less than 27 cm3 (*e.g.*, standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30° C) to above 343 K (70° C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours © being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20° C) to above 333 K (60° C);

Technical Note: Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/m^2 at an operating temperature of 301 K (28° C) under a tungsten illumination of 1 kW/m^2 at 2,800 K (2,527° C);

e.2. High energy storage capacitors, as follows:

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

Note: 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging(MRI) medical equipment.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/mm^2;

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; or

f.2. An accuracy better than ± 2.5 seconds of arc.

3A002 General purpose electronic equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: Constant percentage bandwidth filters are also known as octave or fractional octave filters.

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (*e.g.*, using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; or a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ±0.1 μs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; or a.3.b. Being ''space qualified'';

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. ''Frequency synthesizer'', ''electronic assemblies'' having a ''frequency switching time'' from one selected frequency to another of less than 1 ms;

c. Radio frequency ''signal analyzers'', as follows:

c.1. ''Signal analyzers'' capable of analyzing frequencies exceeding 31 GHz;

c.2. ''Dynamic signal analyzers'' having a ''real-time bandwidth'' exceeding 500 kHz;

Note: 3A002.c.2 does not control those ''dynamic signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A ''frequency switching time'' from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1 x 10^{-11}/month; *or* g.2. Being ''space qualified''.

Note: 3A002.g.1 does not control non-''space qualified'' rubidium standards.

3B001 Equipment for the manufacturing of semiconductor devices or materials, as follows (see List of Items Controlled), and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Stored program controlled'' equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. ''Stored program controlled'' equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material ''substrate'';

c. ''Stored program controlled'' anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Designed or optimized to produce critical dimensions of 0.3μm or less with ±5% 3 sigma precision; *or*

c.1.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

c.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

c.2.a. Designed or optimized to produce critical dimensions of 0.3 μm or less with ±5% 3 sigma precision; *or*

c.2.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

d. ''Stored program controlled'' plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Designed or optimized to produce critical dimensions of 0.3μm or less with ±5% 3 sigma precision; *or*

d.1.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

d.2. Equipment specially designed for equipment controlled by 3B001.e. and having any of the following:

d.2.a. Designed or optimized to produce critical dimensions of 0.3μm or less with ±5% 3 sigma precision; *or*

d.2.b. Designed for generating less than 0.04 particles/cm^2 with a measurable particle size greater than 0.1 μm in diameter;

e. ''Stored program controlled'' automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

Note: 3B001.e. does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. ''Stored program controlled'' lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.5 μm or less;

Technical Note: The minimum resolvable feature size is calculated by the following formula:

$$\text{MRF} = \frac{(\text{an exposure light source wavelength in } \mu\text{m}) \times (\text{K factor})}{\text{numerical aperture}}$$

where the K factor = 0.7.

MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focused electron beam, ion beam or ''laser'' beam, having any of the following:

f.2.a. A spot size smaller than 0.2 μm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 μm; *or*

f.2.c. An overlay accuracy of better than ± 0.20 μm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: 'Sputtering' is an overlay coating process wherein positively charged ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on the substrate. (**NOTE:** Triode, magnetron or radio frequency sputtering to increase adhesion of coating and rate of deposition are ordinary modifications of the process.)

Items: a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and ''electronic assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

Note: 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices, electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

Note: 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

Note: 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 m^2 per minute;

b.1.c.2. ''Stored program controlled'' crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5x10^5 Pa; *or*

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. ''Stored program controlled'' equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than +3.5%; *or*

b.1.d.2. Rotation of individual wafers during processing;

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced 'sputtering' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3. Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated ''substrate'';

b.1.h. ''Stored program controlled'' equipment for the selective removal (etching) by means of anisotropic dry methods (*e.g.*, plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

Notes: 1. ''Batch types'' refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, *e.g.*, RF power, temperature, etch gas species, flow rates.

2. ''Single wafer types'' refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, *e.g.,* RF power or end point, can be independently determined for each individual wafer.

b.1.i. ''Chemical vapor deposition'' (CVD) equipment, *e.g.,* plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. ''Chemical vapor deposition'' equipment operating below 10^5 Pa; *or*

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling; 9

Note: 3B991.b.1.i does not control low pressure ''chemical vapor deposition'' (LPCVD) systems or reactive ''sputtering'' equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

Note: 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

Note: 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. ''Stored program controlled'' equipment using ''lasers'' for the repair or trimming of ''monolithic integrated circuits'' with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask ''substrates'', mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

Note: The term ''masks'' refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; *or*

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or ''software'';

b.2.b. Mask ''substrates'' as follows:

b.2.b.1. Hard surface (*e.g.*, chromium, silicon, molybdenum) coated ''substrates'' (*e.g.*, glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm x 125 mm; *or*

b.2.b.2. ''Substrates'' specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm x 100 mm, or capable of producing a single exposure larger than 6 mm x 6 mm in the image (*i.e.*, focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the ''substrate'';

b.2.d.2. Mask or reticle fabrication equipment using ion or ''laser'' beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

Note: 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. ''Stored program controlled'' equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

Note: 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

Note: 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ± 0.3 micrometer; *or*

b.2.f.4. A light source wavelength shorter than 400 nm;

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

Note: For focused, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using ''lasers'' for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. ''Stored program controlled'' die bonders having all of the following characteristics:

b.3.a.1. Specially designed for ''hybrid integrated circuits'';

b.3.a.2. X-Y stage positioning travel exceeding 37.5 x 37.5 mm; *and*

b.3.a.3. Placement accuracy in the X-Y plane of finer than ± 10 micrometer;

b.3.b. ''Stored program controlled'' equipment for producing multiple bonds in a single operation (*e.g.*, beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

Note: 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 m^3 and filter materials therefor.

3C004 Hydrides of phosphorus, arsenic or antimony, having a purity better than 99.999%, even diluted in inert gases or hydrogen.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: N/A
Related Definition: * * *
Items:
The list of items controlled is contained in the ECCN heading.

Note: This entry does not control hydrides containing 20% molar or more of inert gases or hydrogen.

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definition: * * *
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E001 does not control ''technology'' for the ''development'' or ''production'' of:
(a) Microwave transistors operating at frequencies below 31 GHz;
(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:
(b.1) Using ''technology'' of 0.7 micrometer or more; *and*
(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

3E002 ''Technology'' according to the General Technology Note other than that controlled in 3E001 for the ''development'' or ''production'' of ''microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits having a ''composite theoretical performance'' (''CTP'') of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: ** *
Items:
The list of items controlled is contained in the ECCN heading.

Note: 3E002 does not control ''technology'' for the ''development'' or ''production'' of:
(a) Microwave transistors operating at frequencies below 31 GHz;
(b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following:
(b.1) Using ''technology'' of 0.7 micrometer or more; *and*
(b.2) Not incorporating multi-layer structures.

Technical Note: The term multi-layer structures in Note b.2 does not include devices incorporating a maximum of three metal layers and three polysilicon layers.

3E003 Other ''technology'' for the ''development'' or ''production'' of items described in the List of Items Controlled.

* * * * *

License Exceptions

CIV: * * *
TSR: Yes, except .f and .g

List of Items Controlled

Unit: * * *
Related Controls: (1) Technology for the ''development'' or ''production'' of ''space qualified'' electronic vacuum tubes operating at frequencies of 31 GHz or higher, described in 3E003.g, is under the export license authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121); (2) See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production'' related to radiation hardening of integrated circuits.
Related Definitions: * * *
Items:
a. Vacuum microelectronic devices;
b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;
c. ''Superconductive'' electronic devices;
d. Substrates of films of diamond for electronic components;
e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;
f. Substrates of silicon carbide for electronic components;
g. Electronic vacuum tubes operating at frequencies of 31 GHz or higher.

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, the following Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the License Requirements section, and the *GBS* paragraph in the License Exception section, and the *Items* paragraph in the List of Items Controlled section of ECCN 4A003;

(b) Amending the License Requirements section by removing the *License Requirement Notes* paragraph from the end of this section, and revising the *Items* paragraph in the List of Items Controlled section of ECCN 4D003; and

(c) Revising the *Related Definitions* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 4D993.

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country Chart
NS applies to 4A003.b and .c.	NS Column 1
NS applies to 4A003.a, .e, and .g.	NS Column 2
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006..	MT Column 1
CC applies to ''digital computers'' for computerized finger-print equipment.	CC Column 1
AT applies to entire entry (refer to 4A994 for controls on ''digital computers'' with a CTP ≥6 but ≤ to 28,000 MTOPS).	AT Column 1

NP applies, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to ''digital computers'' with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See § 742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, no license is required (NLR) for computers with a CTP not greater than 28,000 MTOPS and for ''electronic assemblies'' described in 4A003.c that are not capable of exceeding a CTP greater than 28,000 MTOPS in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Exceptions

LVS: * * *
GBS: Yes, for 4A003.e, and .g and specially designed components therefor, exported separately or as part of a system.
CTP: * * *
CIV: * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:

Note 1: 4A003 includes the following:
a. Vector processors;
b. Array processors;
c. Digital signal processors;
d. Logic processors;
e. Equipment designed for ''image enhancement'';
f. Equipment designed for ''signal processing''.

Note 2: The control status of the ''digital computers'' and related equipment described

in 4A003 is determined by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; and

N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.

N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Designed or modified for ''fault tolerance'';

Note: For the purposes of 4A003.a., ''digital computers'' and related equipment are not considered to be designed or modified for ''fault tolerance'' if they utilize any of the following:

1. Error detection or correction algorithms in ''main storage'';

2. The interconnection of two ''digital computers'' so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by ''software'' so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 28,000 million theoretical operations per second (MTOPS);

c. ''Electronic assemblies'' specially designed or modified to be capable of enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e

Note 2: 4A003.c does not control ''electronic assemblies'' specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. [Reserved]

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. [Reserved]

g. Equipment specially designed to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

Note: 4A003.g does not control internal interconnection equipment (*e.g.,* backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.

4D003 Specific ''software'', as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Operating system ''software'', ''software'' development tools and compilers specially designed for ''multi-data-stream processing'' equipment, in ''source code'';

b. [Reserved]

c. ''Software'' having characteristics or performing functions exceeding the limits in Category 5, Part 2 (''Information Security'').

4D993 ''Program'' proof and validation ''software'', ''software'' allowing the automatic generation of ''source codes'', and operating system ''software'' specially designed for real time processing equipment.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: ''Global interrupt latency time'' is the time taken by the computer system to recognize an interrupt due to the event, service the interrupt and perform a context switch to an alternate memory-resident task waiting on the interrupt.

Items:

a. ''Program'' proof and validation ''software'' using mathematical and analytical techniques and designed or modified for ''programs'' having more than 500,000 ''source code'' instructions;

b. ''Software'' allowing the automatic generation of ''source codes'' from data acquired on line from external sensors described in the Commerce Control List;

c. Operating system ''software'' specially designed for ''real time processing'' equipment that guarantees a ''global interrupt latency time'' of less than 20 microseconds.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications, Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the License Exceptions section, and the *Unit* and *Items* paragraphs in the List of Items Controlled section of ECCN 5A001;

(b) Revising the *Related Definitions* paragraph in the List of Items Controlled section of ECCN 5A991;

(c) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 5B001;

(d) Revising the *TSR* paragraph in the License Exception section and the *Items* paragraph in the List of Items Controlled section of ECCN 5E001; and

(e) Revising the *Related Definitions* paragraph and the Items paragraph in the List of Items Controlled section of ECCN 5E991, to read as follows:

5A001 Telecommunications systems, equipment, and components.

* * * * *

License Exceptions

LVS: N/A for 5A001.a and b.5 $5000 for 5A001b.1, b.2, b.3, b.6, and .d $3000 for 5A001.c

GBS: Yes, except 5A001.a and b.5

CIV: Yes, except 5A001.a, b.3 and b.5

List of Items Controlled

Unit: Equipment in number; cable and fiber in meters/feet, components and accessories in $ value

Related Controls: * * *

Related Definitions: * * *

Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; or

a.3. Specially designed to operate outside the temperature range from 218 K (−55° C) to 397 K (124° C).

Note: 5A001.a.3 applies only to electronic equipment.

Note: 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; *or*

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and ''total digital

transfer rates'' per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 MHz to 30 MHz frequency range or 250 W or more in the 30 MHz to 87.5 MHz frequency range, over an ''instantaneous bandwidth'' of one octave or more and with an output harmonic and distortion content of better than −80 dB;

b.3. Being radio equipment employing ''spread spectrum'' techniques, including ''frequency hopping'' techniques, having any of the following characteristics:

b.3.a. User programmable spreading codes; *or*

b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

Note: 5A001.b.3.b does not control radio equipment specially designed for use with civil cellular radio-communications systems.

Note: 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4 Being radio equipment employing ''time-modulated ultra-wideband'' techniques, having user programmable channelizing or scrambling codes;

b.5. Being digitally controlled radio receivers having all of the following:

b.5.a. More than 1,000 channels;

b.5.b. A ''frequency switching time'' of less than 1 ms;

b.5.c. Automatic searching or scanning of a part of the electromagnetic spectrum; *and*

b.5.d. Identification of the received signals or the type of transmitter; *or*

Note: 5A001.b.5 does not control radio equipment specially designed for use with civil cellular radio-communications systems.

b.6. Employing functions of digital ''signal processing'' to provide voice coding at rates of less than 2,400 bit/s.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2×10^9 N/m^2 or more;

Technical Note: Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity 40%. Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

Note: 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. ''Electronically steerable phased array antennae'' operating above 31 GHz.

Note: 5A001.d does not control ''electronically steerable phased array antennae'' for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

5A991 Telecommunication equipment, not controlled by 5A001.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) *'Bandwidth of one voice channel'* is data communication equipment designed to operate in one voice channel of 3,100 Hz, as defined in CCITT Recommendation G.151. (2) *'Communications channel controller'* is the physical interface that controls the flow of synchronous or asynchronous digital information. It is an assembly that can be integrated into computer or telecommunications equipment to provide communications access. (3) *'Datagram'* is a self-contained, independent entity of data carrying sufficient information to be routed from the source to the destination data terminal equipment without reliance on earlier exchanges between this source and destination data terminal equipment and the transporting network. (4) *'Fast select'* is a facility applicable to virtual calls that allows data terminal equipment to expand the possibility to transmit data in call set-up and clearing 'packets' beyond the basic capabilities of a virtual call. (5) *'Gateway'* is the function, realized by any combination of equipment and ''software'', to carry out the conversion of conventions for representing, processing or communicating information used on one system into the corresponding, but different conventions used in another system. (6) *'Integrated Services Digital Network'* (ISDN) is a unified end-to-end digital network, in which data originating from all types of communication (*e.g.*, voice, text, data, still and moving pictures) are transmitted from one port (terminal) in the exchange (switch) over one access line to and from the subscriber.(7) *'Packet'* is a group of binary digits including data and call control signals that is switched as a composite whole. The data, call control signals, and possible error control information are arranged in a specified format.

Items: * * *

5B001 Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definition: * * *

Items:

a. Equipment and specially designed components or accessories therefor, specially designed for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

Note: 5B001.a. does not control optical fiber characterization equipment.

b. Equipment and specially designed components or accessories therefor, specially designed for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

b.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

b.2. Equipment employing a ''laser'' and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing ''optical amplification'';

b.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5B001.b.2.d. does not include equipment specially designed for the ''development'' of commercial TV systems.

b.3. Equipment employing ''optical switching'';

b.4. Radio equipment employing quadrature-amplitude-modulation (QAM) techniques above level 128;

b.5. Equipment employing ''common channel signaling'' operating in either non-associated mode of operation or quasi-associated mode of operation.

5E001 ''Technology'', (see List of Items Controlled).

* * * * *

License Exceptions

CIV: * * *

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' controlled by 5E001.a for the ''development'' or ''production'' of the following:

(1) Items controlled by 5A001.b.5; or

(2) ''Software'' controlled by 5D001.a that is specially designed for the ''development'' or ''production'' of equipment, functions or features controlled by 5A001.b.5.

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features or ''software'' controlled by 5A001, 5B001 or 5D001.

b. Specific ''technologies'', as follows:

b.1. ''Required'' ''technology'' for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio base station receiving equipment whose reception capabilities that allow multi-band, multi-channel, multi-mode, multi-coding algorithm or multi-protocol operation can be modified by changes in ''software''

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' techniques, including ''frequency hopping'' techniques.

c. ''Technology'' according the General Technology Note for the ''development'' or ''production'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment, functions or features:

c.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing ''optical amplification'' using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analog techniques and having a bandwidth exceeding 2.5 GHz;

Note: 5E001.c.2.e. does not control ''technology'' for the ''development'' or ''production'' of commercial TV systems.

c.3. Equipment employing ''optical switching'';

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

Note: 5E001.c.4.b. does not control ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any frequency band which is ''allocated by the ITU'' for radio-communications services, but not for radio-determination.

c.5. Equipment employing ''common channel signaling'' operating in either non-associated or quasi-associated mode of operation.

5E991 ''Technology'' for the ''development'', ''production'' or ''use'' of equipment controlled by 5A991 or 5B991, or ''software'' controlled by 5D991, and other ''technologies'' as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) ''Synchronous digital hierarchy'' (SDH) is a digital hierarchy providing a means to manage, multiplex, and access various forms of digital traffic using a synchronous transmission format on different types of media. The format is based on the Synchronous Transport Module (STM) that is defined by CCITT Recommendation G.703, G.707, G.708, G.709 and others yet to be published. The first level rate of 'SDH' is 155.52 Mbits/s. (2) 'Synchronous optical network' (SONET) is a network providing a means to manage, multiplex and access various forms of digital traffic using a synchronous transmission format on fiber optics. The format is the North America version of 'SDH' and also uses the Synchronous Transport Module (STM). However, it uses the Synchronous Transport Signal (STS) as the basic transport module with a first level rate of 51.81 Mbits/s. The SONET standards are being integrated into those of 'SDH'.

Items:

a. Specific ''technologies'' as follows:

a.1. ''Technology'' for the processing and application of coatings to optical fiber specially designed to make it suitable for underwater use;

a.2. ''Technology'' for the ''development'' of equipment employing 'Synchronous Digital Hierarchy' ('SDH') or 'Synchronous Optical Network' ('SONET') techniques.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part II—''Information Security'' is amended by:

(a) Revising the Heading and the *Related Controls* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 5A002, to read as set forth below; and

(b) Amending the License Requirements section of ECCNs 5B002 and 5E002 by removing the *License Requirements Notes* paragraph at the end of this section.

5A002 Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security'', as follows (see List of Items Controlled), and other specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 5A992. This entry does not control:

(a) ''Personalized smart cards'' where the cryptographic capability is restricted for use in equipment or systems excluded from control paragraphs (b) through (f) of this note. Note that if a ''personalized smart card'' has multiple functions, the control status of each function is assessed individually;

(b) Receiving equipment for radio broadcast, pay television or similar restricted audience broadcast of the consumer type, without digital encryption except that exclusively used for sending the billing or program-related information back to the broadcast providers;

(c) Portable or mobile radiotelephones for civil use (*e.g.*, for use with commercial civil cellular radio communications systems) that are not capable of end-to-end encryption;

(d) Equipment where the cryptographic capability is not user-accessible and which is specially designed and limited to allow any of the following:

(1) Execution of copy-protected ''software'';

(2) access to any of the following:

(a) Copy-protected contents stored on read-only media; *or*

(b) Information stored in encrypted form on media (*e.g.*, in connection with the protection of intellectual property rights) where the media is offered for sale in identical sets to the public; *or*

(3) one-time encryption of copyright protected audio/video data;

(e) Cryptographic equipment specially designed and limited for banking use or money transactions;

(f) Cordless telephone equipment not capable of end-to-end encryption where the maximum effective range of unboosted cordless operation (*e.g.*, a single, unrelayed hop between terminal and home basestation) is less than 400 meters according to the manufacturer's specifications. These items are controlled under ECCN 5A992.

Related Definitions: * * *

Items:

Technical Note: Parity bits are not included in the key length.

a. Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security'', and other specially designed components therefor:

a.1. Designed or modified to use ''cryptography'' employing digital techniques performing any cryptographic function other than authentication or digital signature having any of the following:

Technical Notes: 1. Authentication and digital signature functions include their associated key management function.

2. Authentication includes all aspects of access control where there is no encryption of files or text except as directly related to the protection of passwords, Personal Identification Numbers (PINs) or similar data to prevent unauthorized access.

3. ''Cryptography'' does not include ''fixed'' data compression or coding techniques.

Note: 5A002.a.1 includes equipment designed or modified to use ''cryptography'' employing analog principles when implemented with digital techniques.

a.1.a. A ''symmetric algorithm'' employing a key length in excess of 56-bits; *or*

a.1.b. An ''asymmetric algorithm'' where the security of the algorithm is based on any of the following:

a.1.b.1. Factorization of integers in excess of 512 bits (*e.g.*, RSA);

a.1.b.2. Computation of discrete logarithms in a multiplicative group of a finite field of size greater than 512 bits (*e.g.*, Diffie-Hellman over Z/pZ); *or*

a.1.b.3. Discrete logarithms in a group other than mentioned in 5A002.a.1.b.2 in excess of 112 bits (*e.g.*, Diffie-Hellman over an elliptic curve);

a.2. Designed or modified to perform cryptanalytic functions;

a.3. [Reserved]

a.4. Specially designed or modified to reduce the compromising emanations of

information-bearing signals beyond what is necessary for health, safety or electromagnetic interference standards;

a.5. Designed or modified to use cryptographic techniques to generate the spreading code for ''spread spectrum'' systems, including the hopping code for ''frequency hopping'' systems;

a.6. Designed or modified to use cryptographic techniques to generate channelizing or scrambling codes for ''time-modulated ultra-wideband'' systems;

a.7. Designed or modified to provide certified or certifiable ''multilevel security'' or user isolation at a level exceeding Class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) or equivalent;

a.8. Communications cable systems designed or modified using mechanical, electrical or electronic means to detect surreptitious intrusion.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors is amended by:

(a) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 6A001;

(b) Revising the *Unit* and *Items* paragraphs in the List of items Controlled section of ECCN 6A005;

(c) Revising the Heading of ECCN 6A008;

(d) Revising the Heading and the *Related Definitions* paragraph in the List of Items Controlled section of ECCN 6C992;

(e) Revising the *Related Definitions* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 6C994;

(f) Revising the *Items* paragraph in the List of Items Controlled section of ECCN 6D003, to read as follows:

6A001 Acoustics.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Marine acoustic systems, equipment and specially designed components therefor, as follows:

a.1. Active (transmitting or transmitting-and-receiving) systems, equipment and specially designed components therefor, as follows:

Note: 6A001.a.1 does not control:

a. Depth sounders operating vertically below the apparatus, not including a scanning function exceeding ± 20°, and limited to measuring the depth of water, the distance of submerged or buried objects or fish finding;

b. Acoustic beacons, as follows:

1. Acoustic emergency beacons;

2. Pingers specially designed for relocating or returning to an underwater position.

a.1.a. Wide-swath bathymetric survey systems designed for sea bed topographic mapping, having all of the following:

a.1.a.1. Being designed to take measurements at an angle exceeding 20° from the vertical;

a.1.a.2. Being designed to measure depths exceeding 600 m below the water surface; *and*

a.1.a.3. Being designed to provide any of the following:

a.1.a.3.a. Incorporation of multiple beams any of which is less than 1.9°; *or*

a.1.a.3.b. Data accuracies of better than 0.3% of water depth across the swath averaged over the individual measurements within the swath;

a.1.b. Object detection or location systems having any of the following:

a.1.b.1. A transmitting frequency below 10 kHz;

a.1.b.2. Sound pressure level exceeding 224 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band from 10 kHz to 24 kHz inclusive;

a.1.b.3. Sound pressure level exceeding 235 dB (reference 1 μPa at 1 m) for equipment with an operating frequency in the band between 24 kHz and 30 kHz;

a.1.b.4. Forming beams of less than 1° on any axis and having an operating frequency of less than 100 kHz;

a.1.b.5. Designed to operate with an unambiguous display range exceeding 5,120 m; *or*

a.1.b.6. Designed to withstand pressure during normal operation at depths exceeding 1,000 m and having transducers with any of the following:

a.1.b.6.a. Dynamic compensation for pressure; *or*

a.1.b.6.b. Incorporating other than lead zirconate titanate as the transduction element;

a.1.c. Acoustic projectors, including transducers, incorporating piezoelectric, magnetostrictive, electrostrictive, electrodynamic or hydraulic elements operating individually or in a designed combination, having any of the following:

Notes: 1. The control status of acoustic projectors, including transducers, specially designed for other equipment is determined by the control status of the other equipment.

2. 6A001.a.1.c does not control electronic sources that direct the sound vertically only, or mechanical (*e.g.*, air gun or vapor-shock gun) or chemical (*e.g.*, explosive) sources.

a.1.c.1. An instantaneous radiated acoustic power density exceeding 0.01 $mW/mm^2/Hz$ for devices operating at frequencies below 10 kHz;

a.1.c.2. A continuously radiated acoustic power density exceeding 0.001 $Mw/mm^2/Hz$ for devices operating at frequencies below 10 kHz; *or*

Technical Note: Acoustic power density is obtained by dividing the output acoustic power by the product of the area of the radiating surface and the frequency of operation.

a.1.c.3. Side-lobe suppression exceeding 22 dB;

a.1.d. Acoustic systems, equipment and specially designed components for determining the position of surface vessels or underwater vehicles designed to operate at a range exceeding 1,000 m with a positioning accuracy of less than 10 m rms (root mean square) when measured at a range of 1,000 m;

Note: 6A001.a.1.d includes:

a. Equipment using coherent ''signal processing'' between two or more beacons and the hydrophone unit carried by the surface vessel or underwater vehicle;

b. Equipment capable of automatically correcting speed-of-sound propagation errors for calculation of a point.

a.2. Passive (receiving, whether or not related in normal application to separate active equipment) systems, equipment and specially designed components therefor, as follows:

a.2.a. Hydrophones having any of the following characteristics:

Note: The control status of hydrophones specially designed for other equipment is determined by the control status of the other equipment.

a.2.a.1. Incorporating continuous flexible sensors or assemblies of discrete sensor elements with either a diameter or length less than 20 mm and with a separation between elements of less than 20 mm;

a.2.a.2. Having any of the following sensing elements:

a.2.a.2.a. Optical fibers;

a.2.a.2.b. Piezoelectric polymers; *or*

a.2.a.2.c. Flexible piezoelectric ceramic materials;

a.2.a.3. A hydrophone sensitivity better than −180dB at any depth with no acceleration compensation;

a.2.a.4. When designed to operate at depths exceeding 35 m with acceleration compensation; *or*

a.2.a.5. Designed for operation at depths exceeding 1,000 m;

Technical Note: Hydrophone sensitivity is defined as twenty times the logarithm to the base 10 of the ratio of rms output voltage to a 1 V rms reference, when the hydrophone sensor, without a pre-amplifier, is placed in a plane wave acoustic field with an rms pressure of 1 μPa. For example, a hydrophone of -160 dB (reference 1 V per μPa) would yield an output voltage of 10^{-8} V in such a field, while one of −180 dB sensitivity would yield only 10^{-9} V output. Thus, −160 dB is better than −180 dB.

a.2.b. Towed acoustic hydrophone arrays having any of the following:

a.2.b.1. Hydrophone group spacing of less than 12.5 m;

a.2.b.2. Designed or ''able to be modified'' to operate at depths exceeding 35m;

Technical Note: ''Able to be modified'' in 6A001.a.2.b.2 means having provisions to allow a change of the wiring or interconnections to alter hydrophone group spacing or operating depth limits. These provisions are: spare wiring exceeding 10% of the number of wires, hydrophone group spacing adjustment blocks or internal depth limiting devices that are adjustable or that control more than one hydrophone group.

a.2.b.3. Heading sensors controlled by 6A001.

a.2.d; a.2.b.4. Longitudinally reinforced array hoses;

a.2.b.5. An assembled array of less than 40 mm in diameter;

a.2.b.6. Multiplexed hydrophone group signals designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m; or

a.2.b.7. Hydrophone characteristics controlled by 6A001.a.2.a;

a.2.c. Processing equipment, specially designed for towed acoustic hydrophone arrays, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

a.2.d. Heading sensors having all of the following:

a.2.d.1. An accuracy of better than ± 0.5°; *and*

a.2.d.2. Designed to operate at depths exceeding 35 m or having an adjustable or removable depth sensing device in order to operate at depths exceeding 35 m;

a.2.e. Bottom or bay cable systems having any of the following:

a.2.e.1. Incorporating hydrophones controlled by 6A001.a.2.a; *or*

a.2.e.2. Incorporating multiplexed hydrophone group signal modules having all of the following characteristics:

a.2.e.2.a. Designed to operate at depths exceeding 35 m or having an adjustable or removal depth sensing device in order to operate at depths exceeding 35 m; *and*

a.2.e.2.b. Capable of being operationally interchanged with towed acoustic hydrophone array modules;

a.2.f. Processing equipment, specially designed for bottom or bay cable systems, having ''user accessible programmability'' and time or frequency domain processing and correlation, including spectral analysis, digital filtering and beamforming using Fast Fourier or other transforms or processes;

b. Correlation-velocity sonar log equipment designed to measure the horizontal speed of the equipment carrier relative to the sea bed at distances between the carrier and the sea bed exceeding 500 m.

6A005 ''Lasers'', components and optical equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number; components and accessories in $ value

Related Controls: * * *

Related Definitions: * * *

Items:

a. Gas ''lasers'', as follows:

a.1. Excimer ''lasers'', having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; *or*

a.1.a.2. An average output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.b.2. An average output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; *or*

a.1.c.2. An average output power exceeding 500 W; *or*

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.d.2. An average output power exceeding 30 W;

N.B. For excimer ''lasers'' specially designed for lithography equipment, see 3B001.

a.2. Metal vapor ''lasers'', as follows:

a.2.a. Copper (Cu) ''lasers'' having an average output power exceeding 20 W;

a.2.b. Gold (Au) ''lasers'' having an average output power exceeding 5 W;

a.2.c. Sodium (Na) ''lasers'' having an output power exceeding 5 W;

a.2.d. Barium (Ba) ''lasers'' having an average output power exceeding 2 W;

a.3. Carbon monoxide (CO) ''lasers'' having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 5 kW; *or*

a.3.b. An average or CW output power exceeding 5 kW;

a.4. Carbon dioxide (CO_2) ''lasers'' having any of the following:

a.4.a. A CW output power exceeding 15 kW;

a.4.b. A pulsed output having a ''pulse duration'' exceeding 10 μs and having any of the following:

a.4.b.1. An average output power exceeding 10 kW; *or*

a.4.b.2. A pulsed ''peak power'' exceeding 100 kW; *or*

a.4.c. A pulsed output having a ''pulse duration'' equal to or less than 10 μs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; *or*

a.4.c.2. An average output power exceeding 2.5 kW;

a.5. ''Chemical lasers'', as follows:

a.5.a. Hydrogen Fluoride (HF) ''lasers'';

a.5.b. Deuterium Fluoride (DF) ''lasers'';

a.5.c. ''Transfer lasers'', as follows:

a.5.c.1. Oxygen Iodine (O_2-I) ''lasers'';

a.5.c.2. Deuterium Fluoride-Carbon dioxide ($DF–CO_2$) ''lasers'';

a.6. Krypton ion or argon ion ''lasers'' having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas ''lasers'', having any of the following:

Note: 6A005.a.7 does not control nitrogen ''lasers''.

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; *or*

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed ''peak power'' exceeding 10 W; *or*

a.7.c.2. An average or CW output power exceeding 10 W; *or*

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor ''lasers'', as follows:

b.1. Individual single-transverse mode semiconductor ''lasers'' having any of the following:

b.1.a. A wavelength equal to or less than 1510 nm, and having an average or CW output power exceeding 1.5 W; *or*

b.1.b. A wavelength greater than 1510 nm, and having an average or CW output power exceeding 500 mW;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'' having all of the following:

b.2.a. A wavelength of less than 950 nm or more than 2000 nm; *and*

b.2.b. An average or CW output power exceeding 10 W.

b.3. Individual arrays of individual semiconductor ''lasers'', having any of the following:

b.3.a. A wavelength of less than 950 nm and an average or CW output power exceeding 60 W; *or*

b.3.b. A wavelength equal to or greater than 2000 nm and an average or CW output power exceeding 10 W;

Technical Note: Semiconductor ''lasers'' are commonly called ''laser'' diodes.

Note 1: 6A005.b includes semiconductor ''lasers'' having optical output connectors (*e.g.* fiber optic pigtails).

Note 2: The control status of semiconductor ''lasers'' specially designed for other equipment is determined by the control status of the other equipment.

c. Solid state ''lasers'', as follows:

c.1. ''Tunable'' ''lasers'' having any of the following:

Note: 6A005.c.1 includes titanium—sapphire (Ti: Al_2O_3), thulium—YAG (Tm: YAG), thulium—YSGG (Tm: YSGG), alexandrite (Cr: $BeAl_2O_4$) and color center ''lasers''.

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed ''peak power'' exceeding 20 W; *or*

c.1.b.2. An average or CW output power exceeding 20 W; *or*

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-''tunable'' ''lasers'', as follows:

Note: 6A005.c.2 includes atomic transition solid state ''lasers''.

c.2.a. Neodymium glass ''lasers'', as follows:

c.2.a.1. ''Q-switched lasers'' having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; *or*

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-''Q-switched lasers'' having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; *or*

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) ''lasers'', having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

N.B.: For neodymium-doped (other than glass) ''lasers'' having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.

c.c.2.b.1. Pulse-excited, mode-locked, ''Q-switched lasers'' having a ''pulse duration'' of less than 1 ns and having any of the following:

c.2.b.1.a. A ''peak power'' exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; *or*

c.2.b.1.c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, ''Q-switched lasers'' having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A ''peak power'' exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; *or*

c.2.b.2.a.3. A pulsed energy exceeding 2 J; *or*

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A ''peak power'' exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; *or*

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-''Q-switched lasers'', having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A ''peak power'' exceeding 500 kW; *or*

c.2.b.3.a.2. An average output power exceeding 150 W; *or*

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A ''peak power'' exceeding 1 MW; *or*

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited ''lasers'' having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A ''peak power'' exceeding 500 kW; *or*

c.2.b.4.a.2. An average or CW output power exceeding 150 W; *or*

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A ''peak power'' exceeding 1 MW; *or*

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-''tunable'' ''lasers'', having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; *or*

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. ''Q-switched lasers'' having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode ''lasers'';

c.2.c.3.a.2.b. 30 W for multimode ''lasers'';

c.2.c.3.b. Non-''Q-switched lasers'' having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

c.2.c.3.b.2. An average or CW output power exceeding 50 W; *or*

c.2.c.4. A wavelength exceeding 1,400 nm *and* having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid ''lasers'', having any of the following:

d.1. A wavelength less than 150 nm and:

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; *or*

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 kHz if the ''pulse duration'' is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 10 W; *or*

d.3.b. An average or CW output power exceeding 10 W; *or*

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

Technical Note: Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled ''lasers'';

f. Optical equipment, as follows:

N.B. For shared aperture optical elements, capable of operating in ''Super-High Power Laser'' (''SHPL'') applications, see the U.S. Munitions List (22 CFR part 121).

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; *or*

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. ''Laser'' diagnostic equipment capable of measuring ''SHPL'' system angular beam steering errors of equal to or less than 10 μrad;

f.3. Optical equipment and components specially designed for a phased-array ''SHPL'' system for coherent beam combination to an accuracy of lambda/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with ''SHPL'' systems.

6A008 Radar systems, equipment and assemblies having any of the following characteristics (see List of Items Controlled), and specially designed components therefor.

* * * * *

6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a 'beat length' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by 'mole fraction'.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) 'Mole fraction' is defined as the ratio of moles of ZnTe to the sum of the moles of CdTe and ZnTe present in the crystal. (2) 'Beat length' is the distance over which two orthogonally polarized signals, initially in phase, must pass in order to achieve a 2 Pi radian(s) phase difference.

Items: * * *

6C994 Optical materials.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: (1) 'Fluoride fibers' are fibers manufactured from bulk fluoride compounds. (2) 'Optical fiber preforms' are bars, ingots, or rods of glass, plastic or other materials that have been specially processed for use in fabricating optical fibers. The characteristics of the preform determine the basic parameters of the resultant drawn optical fibers.

Items:

a. Low optical absorption materials, as follows:

a.1. Bulk fluoride compounds containing ingredients with a purity of 99.999% or better; *or*

Note: 6C994.a.1 controls fluorides of zirconium or aluminum and variants.

a.2. Bulk fluoride glass made from compounds controlled by 6C004.e.1;

b. 'Optical fiber preforms' made from bulk fluoride compounds containing ingredients with a purity of 99.999% or better, specially designed for the manufacture of 'fluoride fibers' controlled by 6A994.b.

6D003 Other ''software'', as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. Acoustics ''software'', as follows:

a.1. ''Software'' specially designed for acoustic beam forming for the ''real time processing'' of acoustic data for passive reception using towed hydrophone arrays;

a.2. ''Source code'' for the ''real time processing'' of acoustic data for passive reception using towed hydrophone arrays;

a.3. ''Software'' specially designed for acoustic beam forming for the ''real time processing'' of acoustic data for passive reception using bottom or bay cable systems;

a.4. ''Source code'' for the ''real time processing'' of acoustic data for passive reception using bottom or bay cable systems;

b. Optical sensors. None.

c. Cameras. None.

d. Optics. None.

e. Lasers. None

f. Magnetometers.

f.1. ''Software'' specially designed for magnetic compensation systems for magnetic sensors designed to operate on mobile platforms;

f.2. ''Software'' specially designed for magnetic anomaly detection on mobile platforms;

g. Gravimeters. ''Software'' specially designed to correct motional influences of gravity meters or gravity gradiometers;

h. Radar ''software'', as follows:

h.1. Air Traffic Control ''software'' application ''programs'' hosted on general purpose computers located at Air Traffic Control centers and capable of any of the following:

h.1.a. Processing and displaying more than 150 simultaneous ''system tracks''; *or*

h.1.b. Accepting radar target data from more than four primary radars;

h.2. ''Software'' for the design or ''production'' of radomes which:

h.2.a. Are specially designed to protect the ''electronically steerable phased array antennae'' controlled by 6A008.e.; *and*

h.2.b. Result in an antenna pattern having an ''average side lobe level'' more than 40 dB below the peak of the main beam level.

Technical Note: ''Average side lobe level'' in 6D003.h.2.b is measured over the entire array excluding the angular extent of the main beam and the first two side lobes on either side of the main beam.

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, the following Export Control Classification Numbers (ECCNs) are amended by:

(a) Revising the Heading and the *Related Controls* paragraph, the *Related Definitions* paragraph, and the *Items* paragraph in the List of Items Controlled section of ECCN 7A003;

(b) Revising the Heading of ECCN 7D002; and

(c) Revising the *Related Definitions* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCN 7D003, to read as follows:

7A003 Inertial Navigation Systems (INS) and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 7A103 and 7A994. Inertial Navigation Systems (INS) and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (*See* 22 CFR part 121.)

Related Definitions: ''Data-Based Referenced Navigation'' (''DBRN'') systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar maps, gravity maps, magnetic maps or 3–D digital terrain maps.

Items:

a. Inertial navigation systems (gimballed or strapdown) and inertial equipment designed for ''aircraft'', land vehicle or ''spacecraft'' for attitude, guidance or control, having any of the following characteristics, and specially designed components therefor:

a.1. Navigation error (free inertial) subsequent to normal alignment of 0.8 nautical mile per hour (nm/hr) Circular Error Probable (CEP) or less (better); *or*

a.2. Specified to function at linear acceleration levels exceeding 10 g.

b. Hybrid Inertial Navigation Systems embedded with Global Navigation Satellite System(s) (GNSS) or with ''Data-Based Referenced Navigation'' (''DBRN'') System(s) for attitude, guidance or control, subsequent to normal alignment, having an INS navigation position accuracy, after loss of GNSS or ''DBRN'' for a period of up to 4 minutes, of less (better) than 10 meters Circular Error Probable (CEP).

Note 1: The parameters of 7A003.a and 7A003.b are applicable with any of the following environmental conditions:

1. Input random vibration with an overall magnitude of 7.7 g rms in the first half hour and a total test duration of one and one half hour per axis in each of the three perpendicular axes, when the random vibration meets the following:

a. A constant power spectral density (PSD) value of 0.04 g^2/Hz over a frequency interval of 15 to 1,000 Hz; *and*

b. The PSD attenuates with frequency from 0.04 g^2/Hz to 0.01 g^2/Hz over a frequency interval from 1,000 to 2,000 Hz; *or*

2. A roll and yaw rate of equal to or more than +2.62 radian/s (150 deg/s); *or*

3. According to national standards equivalent to 1. or 2. of this note.

Note 2: 7A003 does not control inertial navigation systems that are certified for use on ''civil aircraft'' by civil authorities of a country in Country Group A:1.

Technical Notes: 1. 7A003.b refers to systems in which an INS and other independent navigation aids are built into a single unit (embedded) in order to achieve improved performance.

2. ''Circular Error Probable'' (''CEP'')—In a circular normal distribution, the radius of the circle containing 50 percent of the individual measurements being made, or the radius of the circle within which there is a 50 percent probability of being located.

7D002 Source code'' for the ''use'' of any inertial navigation equipment including inertial equipment not controlled by 7A003 or 7A004, or Attitude and Heading Reference Systems (AHRS) (except gimballed AHRS).

* * * * *

7D003 Other ''software'', as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: 'Data-Based Referenced Navigation' ('DBRN') systems are systems which use various sources of previously measured geo-mapping data integrated to provide accurate navigation information under dynamic conditions. Data sources include bathymetric maps, stellar

maps, gravity maps, magnetic maps or 3–D digital terrain maps.

Items:

a. ''Software'' specially designed or modified to improve the operational performance or reduce the navigational error of systems to the levels controlled by 7A003 or 7A004;

b. ''Source code'' for hybrid integrated systems that improves the operational performance or reduces the navigational error of systems to the level controlled by 7A003 by continuously combining inertial data with any of the following:

b.1. Doppler radar velocity data;

b.2. Global navigation satellite systems (*i.e.*, GPS or GLONASS) reference data; *or*

b.3. Data from 'Data-Based Referenced Navigation' ('DBRN') systems;

c. ''Source code'' for integrated avionics or mission systems that combine sensor data and employ ''expert systems'';

d. ''Source code'' for the ''development'' of any of the following:

d.1. Digital flight management systems for ''total control of flight'';

d.2. Integrated propulsion and flight control systems;

d.3. Fly-by-wire or fly-by-light control systems;

d.4. Fault-tolerant or self-reconfiguring ''active flight control systems'';

d.5. Airborne automatic direction finding equipment;

d.6. Air data systems based on surface static data; *or*

d.7. Raster-type head-up displays or three dimensional displays;

e. Computer-aided-design (CAD) ''software'' specially designed for the ''development'' of ''active flight control systems'', helicopter multi-axis fly-by-wire or fly-by-light controllers or helicopter ''circulation controlled anti-torque or circulation-controlled direction control systems'' whose ''technology'' is controlled by 7E004.b, 7E004.c.1 or 7E004.c.2.

16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, is amended by:

(a) Revising the *Related Controls* paragraph and the *Items* paragraph in the List of Items Controlled section of ECCNs 8A002 and 8A018; and

(b) Revising the Heading and the *Related Controls* paragraph of the List of Items Controlled section of ECCN 8A992, to read as follows:

8A002 Systems and equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 8A992 and for underwater communications systems, *see* Category 5, Part I—Telecommunications). 8A002 does not control closed and semi-closed circuit (rebreathing) apparatus that is controlled under 8A018.a. See also 8A992 for self-contained underwater breathing apparatus that is not controlled by 8A002 or released for control by the 8A002.q Note.

Related Definitions: * * *

Items:

a. Systems and equipment, specially designed or modified for submersible vehicles, designed to operate at depths exceeding 1,000 m, as follows:

a.1. Pressure housings or pressure hulls with a maximum inside chamber diameter exceeding 1.5 m;

a.2. Direct current propulsion motors or thrusters;

a.3. Umbilical cables, and connectors therefor, using optical fiber and having synthetic strength members;

b. Systems specially designed or modified for the automated control of the motion of submersible vehicles controlled by 8A001 using navigation data and having closed loop servo-controls:

b.1. Enabling a vehicle to move within 10 m of a predetermined point in the water column;

b.2. Maintaining the position of the vehicle within 10 m of a predetermined point in the water column; *or*

b.3. Maintaining the position of the vehicle within 10 m while following a cable on or under the seabed;

c. Fiber optic hull penetrators or connectors;

d. Underwater vision systems, as follows:

d.1. Television systems and television cameras, as follows:

d.1.a. Television systems (comprising camera, monitoring and signal transmission equipment) having a limiting resolution when measured in air of more than 800 lines and specially designed or modified for remote operation with a submersible vehicle;

d.1.b. Underwater television cameras having a limiting resolution when measured in air of more than 1,100 lines;

d.1.c. Low light level television cameras specially designed or modified for underwater use containing all of the following:

d.1.c.1. Image intensifier tubes controlled by 6A002.a.2.a; *and*

d.1.c.2. More than 150,000 ''active pixels'' per solid state area array;

Technical Note: Limiting resolution in television is a measure of horizontal resolution usually expressed in terms of the maximum number of lines per picture height discriminated on a test chart, using IEEE Standard 208/1960 or any equivalent standard.

d.2. Systems, specially designed or modified for remote operation with an underwater vehicle, employing techniques to minimize the effects of back scatter, including range-gated illuminators or ''laser'' systems;

e. Photographic still cameras specially designed or modified for underwater use below 150 m having a film format of 35 mm or larger, and having any of the following:

e.1. Annotation of the film with data provided by a source external to the camera;

e.2. Automatic back focal distance correction; *or*

e.3. Automatic compensation control specially designed to permit an underwater camera housing to be usable at depths exceeding 1,000 m;

f. Electronic imaging systems, specially designed or modified for underwater use, capable of storing digitally more than 50 exposed images;

g. Light systems, as follows, specially designed or modified for underwater use:

g.1. Stroboscopic light systems capable of a light output energy of more than 300 J per flash and a flash rate of more than 5 flashes per second;

g.2. Argon arc light systems specially designed for use below 1,000 m;

h. ''Robots'' specially designed for underwater use, controlled by using a dedicated ''stored program controlled'' computer, having any of the following:

h.1. Systems that control the ''robot'' using information from sensors which measure force or torque applied to an external object, distance to an external object, or tactile sense between the ''robot'' and an external object; *or*

h.2. The ability to exert a force of 250 N or more or a torque of 250 Nm or more and using titanium based alloys or ''fibrous or filamentary'' ''composite'' materials in their structural members;

i. Remotely controlled articulated manipulators specially designed or modified for use with submersible vehicles, having any of the following:

i.1. Systems which control the manipulator using the information from sensors which measure the torque or force applied to an external object, or tactile sense between the manipulator and an external object; *or*

i.2. Controlled by proportional master-slave techniques or by using a dedicated ''stored program controlled'' computer, and having 5 degrees of freedom of movement or more;

Note: Only functions having proportional control using positional feedback or by using a dedicated ''stored program controlled'' computer are counted when determining the number of degrees of freedom of movement

j. Air independent power systems, specially designed for underwater use, as follows:

j.1. Brayton or Rankine cycle engine air independent power systems having any of the following:

j.1.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.1.b. Systems specially designed to use a monoatomic gas;

j.1.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz, or special mounting devices for shock mitigation; *or*

j.1.d. Systems specially designed:

j.1.d.1. To pressurize the products of reaction or for fuel reformation;

j.1.d.2. To store the products of the reaction; *and*

j.1.d.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.2. Diesel cycle engine air independent systems, having all of the following:

j.2.a. Chemical scrubber or absorber systems specially designed to remove carbon dioxide, carbon monoxide and particulates from recirculated engine exhaust;

j.2.b. Systems specially designed to use a monoatomic gas;

j.2.c. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.2.d. Specially designed exhaust systems that do not exhaust continuously the products of combustion;

j.3. Fuel cell air independent power systems with an output exceeding 2 kW having any of the following:

j.3.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *or*

j.3.b. Systems specially designed:

j.3.b.1. To pressurize the products of reaction or for fuel reformation;

j.3.b.2. To store the products of the reaction; *and*

j.3.b.3. To discharge the products of the reaction against a pressure of 100 kPa or more;

j.4. Stirling cycle engine air independent power systems, having all of the following:

j.4.a. Devices or enclosures specially designed for underwater noise reduction in frequencies below 10 kHz or special mounting devices for shock mitigation; *and*

j.4.b. Specially designed exhaust systems which discharge the products of combustion against a pressure of 100 kPa or more;

k. Skirts, seals and fingers, having any of the following:

k.1. Designed for cushion pressures of 3,830 Pa or more, operating in a significant wave height of 1.25 m (Sea State 3) or more and specially designed for surface effect vehicles (fully skirted variety) controlled by 8A001.f; *or*

k.2. Designed for cushion pressures of 6,224 Pa or more, operating in a significant wave height of 3.25 m (Sea State 5) or more and specially designed for surface effect vehicles (rigid sidewalls) controlled by 8A001.g;

l. Lift fans rated at more than 400 kW specially designed for surface effect vehicles controlled by 8A001.f or 8A001.g;

m. Fully submerged subcavitating or supercavitating hydrofoils specially designed for vessels controlled by 8A001.h;

n. Active systems specially designed or modified to control automatically the sea-induced motion of vehicles or vessels controlled by 8A001.f, 8A001.g, 8A001.h or 8A001.i;

o. Propellers, power transmission systems, power generation systems and noise reduction systems, as follows:

o.1. Water-screw propeller or power transmission systems, as follows, specially designed for surface effect vehicles (fully skirted or rigid sidewall variety), hydrofoils or small waterplane area vessels controlled by 8A001.f, 8A001.g, .8A001.h or 8A001.i:

o.1.a. Supercavitating, super-ventilated, partially-submerged or surface piercing propellers rated at more than 7.5 MW;

o.1.b. Contrarotating propeller systems rated at more than 15 MW;

o.1.c. Systems employing pre-swirl or post-swirl techniques for smoothing the flow into a propeller;

o.1.d. Light-weight, high capacity (K factor exceeding 300) reduction gearing;

o.1.e. Power transmission shaft systems, incorporating ''composite'' material components, capable of transmitting more than 1 MW;

o.2. Water-screw propeller, power generation systems or transmission systems designed for use on vessels, as follows:

o.2.a. Controllable-pitch propellers and hub assemblies rated at more than 30 MW;

o.2.b. Internally liquid-cooled electric propulsion engines with a power output exceeding 2.5 MW;

o.2.c. ''Superconductive'' propulsion engines, or permanent magnet electric propulsion engines, with a power output exceeding 0.1 MW;

o.2.d. Power transmission shaft systems, incorporating ''composite'' material components, capable of transmitting more than 2 MW;

o.2.e. Ventilated or base-ventilated propeller systems rated at more than 2.5 MW;

o.3. Noise reduction systems designed for use on vessels of 1,000 tons displacement or more, as follows:

o.3.a. Systems that attenuate underwater noise at frequencies below 500 Hz and consist of compound acoustic mounts for the acoustic isolation of diesel engines, diesel generator sets, gas turbines, gas turbine generator sets, propulsion motors or propulsion reduction gears, specially designed for sound or vibration isolation, having an intermediate mass exceeding 30% of the equipment to be mounted;

o.3.b. Active noise reduction or cancellation systems, or magnetic bearings, specially designed for power transmission systems, and incorporating electronic control systems capable of actively reducing equipment vibration by the generation of anti-noise or anti-vibration signals directly to the source;

p. Pumpjet propulsion systems having a power output exceeding 2.5 MW using divergent nozzle and flow conditioning vane techniques to improve propulsive efficiency or reduce propulsion-generated underwater-radiated noise.

q. Self-contained, closed or semi-closed circuit (rebreathing) diving and underwater swimming apparatus.

Note: 8A002.q does not control an individual apparatus for personal use when accompanying its user.

8A018 Items on the International Munitions List.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 8A002 and 8A992.

Related Definitions: * * *

Items:

a. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use, and specially designed components for use in the conversion of open-circuit apparatus to military use;

b. Naval equipment, as follows:

b.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;

b.2. Electric motors specially designed for submarines, *i.e.*, over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;

b.3. Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes. (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);

b.4. Marine boilers designed to have any of the following characteristics:

b.4.a. Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; *or*

b.4.b. Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83;

b.5. Submarine and torpedo nets; *and*

b.6. Components, parts, accessories, and attachments for the above.

8A992 Underwater systems or equipment, not controlled by 8A002 or 8A018, and specially designed parts therefor.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 8A002 and 8A018

Related Definitions: * * *

Items: * * *

17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, is amended by:

(a) Adding Export Control Classification number (ECCN) 9A012 following ECCN 9A011;

(b) Deleting ECCN 9A120;

(c) Revising the Heading and License Requirement section of ECCNs 9D001 and 9D002;

(d) Revising the Heading and the *Related Controls* paragraph of the List of Items Controlled section of ECCN 9D003; *and*

(e) Revising the Heading of ECCN 9D102, to read as follows:

9A012 Non-military unmanned aerial vehicles, having any of the following characteristics (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to entire entry ..	NS Column 1
MT applies to non-military unmanned air vehicle systems (UAVs) and remotely piloted vehicles (RPVs) that are capable of a maximum range of at least 300 kilometers (km), regardless of payload.	MT Column 1

Control(s)	Country Chart
AT applies to entire entry ..	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value

Related Controls: See the U.S. Munitions List Category VIII (22 CFR part 121).

Related Definitions: N/A

Items:

a. An autonomous flight control and navigation capability (*e.g.*, an autopilot with an Inertial Navigation System); *or*

b. Capability of controlled-flight out of the direct vision range involving a human operator (*e.g.*, televisual remote control).

Note: 9A012 does not control model aircraft.

9D001 ''Software'' specially designed or modified for the ''development'' of equipment or ''technology'' controlled by 9A (except 9A018, 9A990 or 9A991), 9B (except 9B990 or 9B991) or 9E003.

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to ''software'' for items controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, 9E003.	NS Column 1
MT applies to ''software'' for equipment controlled by 9A001, 9A012, 9A101, 9A106, 9B001, 9B002, 9B003, 9B004, 9B005, 9B007, 9B116 for MT reasons.	MT Column 1
AT applies to entire entry ..	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

9D002 ''Software'' specially designed or modified for the ''production'' of equipment controlled by 9A (except 9A018, 9A990 or 9A991) or 9B (except 9B990 or 9B991).

License Requirements

Reason for Control: NS, MT, AT

Control(s)	Country Chart
NS applies to ''software'' for equipment controlled by 9A001 to 9A003, 9A012, 9B001 to 9B009, or 9E003.	NS Column 1
MT applies to ''software'' for equipment controlled by 9A001, 9A012, 9A101, 9A106, 9B001, 9B002, 9B003, 9B004, 9B005, 9B007 9B116 for MT reasons.	MT Column 1
AT applies to entire entry ..	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

9D003 ''Software'' specially designed or modified for the ''use'' of full authority digital electronic engine controls (FADEC) for propulsion systems controlled by 9A (except 9A018, 9A990 or 9A991) or equipment controlled by 9B (except 9B990 or 9B991), as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: (1) See also 9D103. (2) ''Software'' ''required'' for the ''use'' of equipment or ''technology'' subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls is also subject to the same licensing jurisdiction. (See 22 CFR part 121.)

Related Definitions: * * *

Items: * * *

9D102 ''Software'' specially designed for the ''use'' of items controlled by 9A012 (for MT controlled items only), 9A101, 9A106, and 9A110.

* * * * *

18. Supplement No. 2 to part 774 (General Technology and Software Notes) is revised to read as follows:

1. *General Technology Note.* The export of ''technology'' that is ''required'' for the ''development'', ''production'', or ''use'' of items on the Commerce Control List is controlled according to the provisions in each Category.

''Technology'' ''required'' for the ''development'', ''production'', or ''use'' of a controlled product remains controlled even when applicable to a product controlled at a lower level.

License Exception TSU is available for ''technology'' that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for License Exceptions or that are exported under a license.

N.B.: This does not allow release under a License Exception of the repair ''technology'' controlled by 1E002.e, 1E002.f, 8E002.a, or 8E002.b.

N.B.: The 'minimum necessary' excludes ''development'' or ''production'' technology and permits ''use'' technology only to the extent ''required'' to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of ''minimum necessary'' information.

2. *General Software Note.* License Exception TSU (''mass market'' software) is available to all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, for release of software that is generally available to the public by being:

a. Sold from stock at retail selling points, without restriction, by means of:

1. Over the counter transactions;
2. Mail order transactions;
3. Electronic transactions; *or*
4. Telephone call transactions; *and*

b. Designed for installation by the user without further substantial support by the supplier.

Note: The General Software Note does not apply to ''software'' controlled by Category 5—part 2 (''Information Security''). For ''software'' controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2, Note 3—Cryptography Note.

Dated: February 25, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–4788 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–33–P

Federal Register

Wednesday,
March 5, 2003

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–3041–07]

RIN 0660–ZA11

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of closing date for solicitation of radio and nonbroadcast applications.

SUMMARY: Subject to the availability of fiscal year (FY) 2003 funds, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public radio and nonbroadcast facilities under the Public Telecommunications Facilities Program (PTFP).

DATES: Pursuant to 15 CFR 2301.8(b), the NTIA Administrator hereby establishes the following closing date for the filing of radio and nonbroadcast applications for PTFP grants. The closing date selected for the submission of all radio and nonbroadcast applications for FY 2003 is Friday, April 4, 2003. Applications must be received prior to 6 p.m. Friday, April 4, 2003. Applications submitted by facsimile or electronic means are not acceptable.

ADDRESSES: Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*). To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via the Internet (http://www.ntia.doc.gov/ptfp).

SUPPLEMENTARY INFORMATION:

I. Closing Date

NTIA announces that all radio and nonbroadcast applicants for matching grants under the PTFP must file their applications on or before 6 p.m., April 4, 2003. Issuance of grants is subject to the availability of FY 2003 funds. Congress has recently passed an appropriation of $43.5 million for the PTFP. NTIA intends to divide the funds appropriated by the Congress into two parts. One portion of the appropriation will be set aside to fund radio and nonbroadcast applications submitted in response to this Notice as well as television broadcast applications submitted in response to the Notice of Closing Date published by NTIA on October 17, 2002. A second portion of the appropriation will be set aside to fund additional phases of multi-phase projects initially funded in FY 2000, FY 2001 and FY 2002. NTIA will shortly publish a Notice in the **Federal Register** indicating the funds set aside for each portion. In awarding grants, NTIA will strive to maintain an appropriate balance between traditional grants and those to stations converting to digital broadcasting. Information regarding radio projects is included in Section VI of this document and information regarding nonbroadcast projects is included in Section VII. The amount of any grants awarded by NTIA will vary, depending on the approved project. For FY 2002, NTIA awarded $3.15 million in funds to 52 radio projects and $1 million in funds to 4 nonbroadcast projects. The radio awards ranged from $15,073 to $220,568 and the nonbroadcast awards ranged from $75,000 to $404,047.

Any applications submitted in response to this Notice which are for television broadcast projects will be returned to the applicant without review.

All radio and nonbroadcast applications will be reviewed according to the Evaluation Process discussed in Section XI. Radio and nonbroadcast applications will compete with applications for television replacement or signal extension projects which were submitted by the November 19, 2002 Closing Date previously established by NTIA for television broadcast applications. Radio and nonbroadcast projects will be awarded in the fourth quarter of FY 2003 (July–September 2003).

II. Application Forms

All applicants must use the official application form for the FY 2003 grant cycle. This form expires on October 31, 2003, and no previous versions of the form may be used. Each page of the application form has the expiration date of 10/31/2003 printed on the bottom line. To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on the application form. The current application form is available on the Internet and will be provided to applicants as part of the application package upon request.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB control no. 0660–0003.

III. Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390–393, 397–399(b).

IV. Catalog of Federal Domestic Assistance (CFDA)

CFDA No. 11.550, Public Telecommunications Facilities Program.

V. Regulations

The applicable Rules for the PTFP were published on November 8, 1996 (61 FR 57966). In accordance with provisions provided in 15 CFR part 2301, section 2301.26, certain requirements of the PTFP are modified in this Notice for FY 2003. Copies of the 1996 Rules are posted on the NTIA Internet site and NTIA will make printed copies available to applicants upon request. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

Applicants sending applications must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. Applicants should be aware that all material sent via the United States Postal Service (including ''overnight'' or ''Express Mail'') are subject to delivery delays due to increased mail security procedures at the Department of Commerce. NTIA will not accept applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department

of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current Grant Round and will be returned to the applicant. *See* 15 CFR 2301.8(c); but *see* also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

All persons and organizations on the PTFP's mailing list will be sent a notification of the FY 2003 Grant Round. Copies of the application forms, Final Rules, Closing Date notification and application guidelines will be available on the NTIA Internet site: *www.ntia.doc.gov/ptfp.* Those not on the mailing list or who desire a printed copy of these materials may obtain copies by contacting the PTFP at the telephone and fax numbers, at the Internet site, or at the mailing address listed above. Prospective applicants should read the Final Rules carefully before submitting applications. Radio and nonbroadcast applicants whose applications were deferred in FY 2002 will be mailed information regarding the reactivation of their applications. Applicants whose radio projects were deferred from FY 2002 should carefully review Section VI., Radio Broadcasting, regarding policies which apply to the reactivation of their applications.

Indirect costs for construction applications are not supported by this program. The total dollar amount of the indirect costs proposed in a planning application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

VI. Radio Broadcasting

NTIA will take great care to ensure that its funding of radio applications follows the directive of 47 U.S.C. 393(c) that ''a substantial amount'' of each year's PTFP funds should be awarded to public radio. For the FY 2003 grant round, the eligibility and priority of radio projects, eligibility of radio equipment, and the presumption of 50% funding for radio equipment replacement applications remain as they were in the FY 2002 grant round.

In response to recent changes in technology and in the Federal regulatory environment, NTIA is providing guidance on three issues of interest to potential radio applicants. Applicants for the following types of applications should read the appropriate sections on radio signal expansion, conversion to digital transmission, or Internet streaming.

(A) Radio Signal Expansion

NTIA's highest priority is activation of public broadcasting facilities to provide a public broadcasting signal to unserved audiences. NTIA is prepared to fund new radio station projects as warranted by reviewers' evaluations and PTFP's financial resources. Activation of new radio stations has been delayed in recent years as the Federal Communications Commission (FCC) placed a ''freeze'' on new applications as it considers a large number of mutually exclusive applications for construction permits.

NTIA anticipates receiving many applications for station activation projects when the FCC begins to accept new applications. In anticipation of increased interest in these types of applications, we are hereby providing the following guidance to potential applicants.

Priority 1A. NTIA's first priority for radio projects remains activations to provide the first public radio signal to an area. These projects have been divided into two subgroups, Priority 1A and Priority 1B. As in the past, Priority 1A status will be given to first public radio signal projects that will originate a local public radio service to a geographic area. A Priority 1A application must include local facilities which are fully staffed for station management and program production.

NTIA has long recognized that new fully-staffed Priority 1A projects are usually submitted by organizations that are beginning to build community support. Priority 1A projects usually also incur significant project costs which are ineligible for Federal support, such as studio building acquisition/renovation and start-up staff costs. Because these projects are NTIA's highest priority, PTFP will continue to fund Priority 1A applications with a presumption of a 75% Federal share, the maximum amount permitted by law.

Priority 1B. Priority 1B status will continue to be given to first public radio signal projects which are repeaters or translators of other public radio facilities, or that will serve significant additional listeners with a first public radio signal through increases in tower height and/or power upgrades.

In recent years, applications for expansion of service have shifted from fully-staffed stations to requests for Priority 1B repeaters and translators. Given the limited availability of Federal funds and the increasing number of applications for new repeater/translator stations, PTFP will now evaluate Priority 1B applications to determine whether or not 75% Federal funding is merited. In general, NTIA will continue its present presumption of 75% Federal funding for Priority 1B applications which construct the applicant's first broadcast facility in a community.

An application requesting a translator upgrade to a repeater station or a project to construct a second station in a community where the applicant already has a facility will be funded by NTIA at a 50% Federal share. These applicants should be able to draw on the financial resources of the community served by the applicant's existing program service and also would incur reduced ineligible start-up costs since the broadcaster would be building upon existing infrastructure. Applications for these types of Priority 1B projects may seek a higher Federal percentage by submitting justification for the increased amount which will be reviewed by PTFP and the peer reviewers.

Power increase projects. Sometimes a project to replace a station's transmitter or antenna results in an increase in coverage to a new, but relatively small, unserved audience. PTFP usually treats these applications with incidental coverage increases as Priority 2 applications if the equipment replacement meets the Priority 2 criteria. If an applicant is requesting a Priority 1B consideration of such an application, the applicant should provide documentation of a significant increase in the population that will receive a first public radio signal. PTFP will evaluate the Priority of such requests on a case-by-case basis.

Second station in a market. Sometimes a project to construct a second station (or other additional stations) in a community results in an increase in coverage to a new, but relatively small, unserved audience. If an applicant is requesting a Priority 1B consideration of such an application, the applicant should provide documentation of a significant increase in the population that will receive a first public radio signal. PTFP will evaluate the Priority of such requests on a case-by-case basis.

Priority 4A. An application to provide an additional public radio signal to an area already served by public radio will continue to be placed in Priority 4A. The project must demonstrate that it

addresses underserved needs in a way that significantly differentiates its services from what is already available in the proposed service area (*see* § 2301.4(b)(ii)(b) of the PTFP Final Rules). In order to extend its resources to assist in signal expansion, NTIA will usually fund Priority 4A additional signal projects at no more than a 50% Federal share. This is due both to the lower priority and reduced ineligible costs of Priority 4A repeater/translator projects which build upon existing infrastructure. Applicants for Priority 4A expansion projects, including those for new fully-staffed facilities, may seek a higher Federal percentage by submitting justification for the increased amount which will be reviewed by PTFP and the peer reviewers.

All new service applications. An applicant proposing to construct a Priority 1A, 1B or Priority 4A facility should provide documentation, including maps or tables, of the number and geographical location of persons who would receive a first public radio signal as a result of the proposed project or who would receive a duplicated public radio signal as a result of the proposed project (*see* § 2301.4(b)(1)(v) of the PTFP Final Rules).

NTIA will permit those applicants whose FY 2002 applications for new service projects were negotiated by PTFP, but were deferred from funding because of the lack of FCC authorizations, to submit FY 2003 applications requesting the same Federal percentage as their FY 2002 applications.

(B) Radio Station Conversion to Digital Transmission

NTIA encourages the use of digital technologies for public radio facilities. For several years, NTIA has funded projects for digital STLs and audio production equipment which will assist public radio stations as they prepare for conversion to digital technologies. These digital projects are funded as equipment replacement, improvement, or augmentation projects with the presumption of a 50% Federal share unless a showing of extraordinary need for a higher percentage has been made pursuant to § 2301.6(b)(ii) of the PTFP Rules. NTIA will continue to support digital non-transmission equipment for radio as it has been doing for more than a decade.

Digital conversion projects. On October 10, 2002, the FCC approved digital transmission for radio stations, although it has not yet published regulations for such stations. Unlike the digital conversion of television stations, the FCC has not established a deadline for the conversion of radio stations. In addition, there is the question of when receivers will be generally available for purchase by the public. These factors raise the issue of whether projects whose primary purpose is to begin digital radio broadcasts present compelling urgency for funding in the FY 2003 grant round.

NTIA continues to examine with interest the development of digital radio, but shares many of the concerns which were recently expressed by the Digital Radio & Television Consultation Panels established by the Corporation for Public Broadcasting (CPB). In their joint recommendations, the Panels recommended that CPB set aside $3.5 million for conversion of public radio stations in 13 seed markets identified by Ibiquity, the developer of the digital radio standard. (The seed markets are Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Las Vegas, Los Angeles, Miami, New York, San Francisco, Seattle, and Washington, DC.) Public radio stations serving these thirteen communities collectively provide service to more than 30% of public radio's total national audience.

On August 30, 2002, even before the FCC's October action, the CPB board of directors adopted the Panels recommendations.

The CPB Panels indicated that digital conversion of the stations in the seed markets would provide public radio with an opportunity to assess the risks and benefits of further digital deployment. Conversion of the stations, the joint panel report states, would provide ''knowledge that would help stations develop a realistic timetable and plan for digital conversion in the rest of the country.''

NTIA believes that the digital conversion of public radio stations in these markets is a reasonable way to begin the orderly transition to digital radio broadcasting. We urge stations in these thirteen markets to consider the funding opportunities presented by the Corporation for Public Broadcasting.

Applications for digital transmission equipment for public radio facilities to convert to digital broadcasting are eligible for PTFP funding although, for the reasons discussed above, we do not believe these applications will demonstrate compelling urgency during the FY 2003 grant round. As with applications for television digital conversion projects, PTFP will place radio applications requesting funds to convert to digital broadcasting in the Broadcast Other category. The presumption of funding for radio projects in the Broadcast Other category is a 50% Federal share.

Digital replacement transmitters. Regarding FY 2003 applications for replacement equipment, NTIA anticipates that it will fund digital-compatible transmitters as analog transmitter replacements, if requested by applicants and justified as urgent replacement of radio transmission equipment. Transmitter replacement applications will be placed in Priority 2 or Priority 4A, as appropriate, depending on whether the applicant provides the only public radio signal to an area (*see* §§ 2301.4(b)(2) and (4)). Reflecting many of the concerns regarding risks and benefits expressed by CPB's Digital Radio and Television Consultation Panel, NTIA believes that FY 2003 is the beginning of a transition period for public radio. PTFP does not anticipate directly funding digital transmitters with HD Radio (IBOC) exciters during the FY 2003 grant cycle. Grant recipients will, however, be able to add IBOC exciters to PTFP-funded digital-compatible transmitters. PTFP grant recipients can use the funds authorized for an analog or digital-compatible radio transmitter towards the purchase of a transmitter with an IBOC exciter. For FY 2003 awards, the maximum amount that PTFP will accept in the final cost of a project which includes an IBOC transmitter/exciter will be limited to the amount initially approved for the analog or digital-compatible transmitter. Any cost for the IBOC transmitter/exciter above the amount initially approved for the analog or digital-compatible transmitter will be the responsibility of the grantee. NTIA reminds potential applicants that licensing fees, including licensing fees related to the use of HD Radio technology, are not eligible for PTFP funds.

(C) Internet Streaming

Given the limited availability of funds, NTIA has emphasized support of basic equipment required for a public broadcast station to serve its local audience (*see* the Final Rules, § 2301.4, passim). NTIA continues to receive more activation and replacement applications than it can fund in any cycle. NTIA has received one or two applications for equipment to provide Internet streaming in each of the past several grant rounds. The applications have not been favorably evaluated by the outside peer reviewers or the national advisory panels.

NTIA has determined that streaming on the Internet goes beyond the provision of a basic local public broadcasting service. Until Internet streaming becomes a basic part of a station's service to its own community,

therefore, NTIA will place any applications it receives for streaming equipment in Priority 5B (*see* § 2301.4(b)(5)(ii) of the PTFP Final Rules). Priority 5B relates to equipment required for the production of ''programming for regional and national use.''

VII. Distance Learning and Nonbroadcast Projects

Since 1979, NTIA has funded nonbroadcast distance learning projects through the Special Applications category as established in § 2301.4(a) of the PTFP Rules. NTIA encourages applications for innovative or unique distance learning projects which address demonstrated and substantial community needs. For fiscal year 2002, NTIA awarded $1 million in funds to four grants for distance learning projects. The awards ranged from $75,000 to $404,047.

The growth of digital technologies provides new opportunities for distance learning projects using both broadcast and nonbroadcast facilities. NTIA encourages applicants to consider the use of digital technologies in proposing unique or innovative distance learning projects for funding in FY 2003. Examples of innovative digital applications might include projects (1) Which use broadband technologies for distance learning, (2) which distribute educational or informational programming via Direct Broadcast Satellite technologies, or (3) which provide multi-media content using the digital television transmission infrastructure and delivered through a method that is not a typical broadcast channel. All distance learning applications must address substantial and demonstrated needs of the communities being served. NTIA is particularly interested in distance learning projects which benefit traditionally underserved audiences, such as projects serving minorities, people living in rural communities, or those living in disadvantaged areas where distance learning services will provide significant educational opportunities.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) mentioned in the Application Forms and Regulations section discussed a number of issues of particular relevance to applicants proposing nonbroadcast educational and instructional projects and potential improvement of *nonbroadcast* facilities. These policies remain in effect and will be available to all PTFP applicants as part of the Guidelines for preparing FY 2003 PTFP applications.

VIII. Television Broadcasting and Digital Conversion

NTIA is not accepting applications for television broadcasting and digital conversion projects at this time. The Closing Date for these applications was November 19, 2002.

IX. Eligible and Ineligible Costs

Eligible equipment for the FY 2003 Grant Round includes the apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

A complete listing of equipment eligible for funding during the FY 2003 Grant Round is posted on the NTIA Internet site and printed copies are available from PTFP.

Other Costs

(1) *Construction Applications:* NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain ''pre-operational expenses'' are eligible for funding. (*See* 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) *Planning Applications.* (a) *Eligible:* Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. 392 (c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) *Audit Costs.* Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $300,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will, therefore, fund audit costs only in exceptional circumstances.

X. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a listing of all applications received by the Agency. The listing will be placed on the NTIA Internet site and NTIA also will make this information available by mail upon request. The address of the NTIA Internet site is: *www.ntia.doc.gov/ptfp*. Listing an application merely acknowledges receipt of an application to compete for funding with other applications. This listing does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

XI. Evaluation Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

XII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order

of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval of the recommended slate. The PTFP Director recommends the funding order for applications in three categories: ''Recommended for Funding,'' ''Recommended for Funding if Funds Are Available,'' and ''Not Recommended for Funding.'' *See* 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Communications and Information, the NTIA Administrator.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of FCC licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

XIII. Disposition of Unsuccessful Applications

PTFP will retain unsuccessful applications through the Closing Date of the FY 2004 grant cycle. Applicants may reactivate their unsuccessful applications pursuant to § 2301.9 of the PTFP Rules. Unsuccessful applications not reactivated by the Closing Date of the next grant cycle will be destroyed.

XIV. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods for grants in the five broadcast Priorities and nonbroadcast Special Applications category commonly range from one to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

XV. NTIA Policies on Procedural Matters

Based upon NTIA's experience during the PTFP 2002 Grant Round, NTIA has determined that it is in the best interest of NTIA and applicants to continue recent policies regarding three procedural matters. The following policies are applicable only to the FY 2003 PTFP Grant Round and resulting awards.

Applications Resulting from Catastrophic Damage or Emergency Situations

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision. While the intent of this Notice is to address FY 2003 radio applications, applicants for radio or television projects may submit applications resulting from catastrophic damage or emergency situations.

For FY 2003 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. NTIA limits this request to equipment essential to a station's continued operation such as transmitters, towers, antennas, STLs or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

When submitting an emergency application, the applicant should describe the circumstances that prompt the request and should provide appropriate supporting documentation. NTIA requires that applicants claiming significant failure of equipment will document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

NTIA will grant an award only if it determines that (1) the emergency satisfies this policy, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

Applications filed and accepted for emergency applications must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

NTIA will evaluate the application according to the evaluation criteria set forth in § 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at § 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application fulfills the requirements for an emergency award and satisfies the program's stated purposes set forth at § 2301.1(a) and (c).

Service of Applications

FY 2003 PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of projects submitted for funding which require FCC authorizations.

FY 2003 PTFP applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. Many distance learning applications propose projects which are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will notify the state telecommunications agencies in the states in which they are located.

FCC Authorizations

For the FY 2003 PTFP Grant Round, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded

for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

For FY 2003 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

For FY 2003 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the other organization's name. NTIA believes that such circumstances will be rare and, in its experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

As noted above, for FY 2003 PTFP applications, NTIA does not require that the FCC applications be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) Construction of broadcast station, (including a digital broadcasting facility) or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

For those applicants whose projects require authorization by the FCC, information about FCC filing procedures can be found on the Internet at: *www.fcc.gov.*

XVI. Intergovernmental Review

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before the Closing Date. Applicants are encouraged to contact the appropriate SPOC well before their PTFP closing date. A listing of the state SPOC offices may be found with the PTFP application materials at the NTIA Internet site. A list of the SPOC offices is available from NTIA (*see* the Address section above).

XVII. Other Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

XVIII. Executive Order 12866

It has been determined that this notice is a ''not significant'' rule under Executive Order 12866.

XIX. Executive Order 13132

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

XX. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 U.S.C. 553(a), Regulatory Flexibility Analysis is not required and has not been prepared for this notice. 5 U.S.C. 601 *et seq.*

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 03–5136 Filed 3–4–03; 8:45 am]

BILLING CODE 3510–60–P

Federal Register

Wednesday,
March 5, 2003

Part IV

The President

Executive Order 13286—Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security

Executive Order 13287—Preserve America

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

Presidential Documents

Title 3—

The President

Executive Order 13286 of February 28, 2003

Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Homeland Security Act of 2002 (Public Law 107–296) and section 301 of title 3, United States Code, and in order to reflect the transfer of certain functions to, and other responsibilities vested in, the Secretary of Homeland Security, the transfer of certain agencies and agency components to the Department of Homeland Security, and the delegation of appropriate responsibilities to the Secretary of Homeland Security, it is hereby ordered as follows:

Section 1. Executive Order 13276 of November 15, 2002 (''Delegation of Responsibilities Concerning Undocumented Aliens Interdicted or Intercepted in the Caribbean Region''), is amended by:

(a) striking ''The Attorney General'' wherever it appears in section 1 and inserting ''The Secretary of Homeland Security'' in lieu thereof; and

(b) striking ''the Attorney General'' wherever it appears in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 2. Executive Order 13274 of September 18, 2002 (''Environmental Stewardship and Transportation Infrastructure Project Reviews''), is amended by inserting ''Secretary of Homeland Security,'' after ''Secretary of Defense,'' in section 3(b).

Sec. 3. Executive Order 13271 of July 9, 2002 (''Establishment of the Corporate Fraud Task Force''), is amended by:

(a) inserting ''(b) the Secretary of Homeland Security;'' after ''(a) the Secretary of the Treasury;'' in section 4; and

(b) relettering the subsequent subsections in section 4 appropriately.

Sec. 4. Executive Order 13260 of March 19, 2002 (''Establishing the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security''), is amended by:

(a) striking ''the Assistant to the President for Homeland Security (Assistant)'' in section 1(c) and inserting ''the Secretary of Homeland Security (Secretary)'' in lieu thereof;

(b) striking ''the Assistant'' wherever it appears in sections 2 and 3 and inserting ''the Secretary'' in lieu thereof;

(c) striking ''the Office of Administration'' in section 3(d) and inserting ''the Department of Homeland Security'' in lieu thereof;

(d) striking ''the Administrator of General Services'' in section 4(a) and inserting ''the Secretary of Homeland Security'' in lieu thereof; and

(e) inserting ''of General Services'' after ''Administrator'' in section 4(a).

Executive Order 13260 of March 19, 2002, is hereby revoked effective as of March 31, 2003.

Sec. 5. Executive Order 13257 of February 13, 2002 (''President's Interagency Task Force to Monitor and Combat Trafficking in Persons''), is amended by:

(a) inserting ''(v) the Secretary of Homeland Security;'' after ''(iv) the Secretary of Health and Human Services;'' in section 1(b); and

(b) renumbering the subsequent subsections in section 1(b) appropriately.

Sec. 6. Executive Order 13254 of January 29, 2002 (''Establishing the USA Freedom Corps''), is amended by striking ''Director of the Federal Emergency Management Agency;'' in section 3(b)(viii) and inserting ''Secretary of Homeland Security;'' in lieu thereof.

Sec. 7. Executive Order 13231 of October 16, 2001 (''Critical Infrastructure Protection in the Information Age''), as amended, is further amended to read in its entirety as follows:

''Critical Infrastructure Protection in the Information Age

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure protection of information systems for critical infrastructure, including emergency preparedness communications and the physical assets that support such systems, in the information age, it is hereby ordered as follows:

Section 1. *Policy.* The information technology revolution has changed the way business is transacted, government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures. It is the policy of the United States to protect against disruption of the operation of information systems for critical infrastructure and thereby help to protect the people, economy, essential human and government services, and national security of the United States, and to ensure that any disruptions that occur are infrequent, of minimal duration, and manageable, and cause the least damage possible. The implementation of this policy shall include a voluntary public-private partnership, involving corporate and nongovernmental organizations.

Sec. 2. *Continuing Authorities.* This order does not alter the existing authorities or roles of United States Government departments and agencies. Authorities set forth in 44 U.S.C. chapter 35, and other applicable law, provide senior officials with responsibility for the security of Federal Government information systems.

(a) Executive Branch Information Systems Security. The Director of the Office of Management and Budget (OMB) has the responsibility to develop and oversee the implementation of government-wide policies, principles, standards, and guidelines for the security of information systems that support the executive branch departments and agencies, except those noted in section 2(b) of this order. The Director of OMB shall advise the President and the appropriate department or agency head when there is a critical deficiency in the security practices within the purview of this section in an executive branch department or agency.

(b) National Security Information Systems. The Secretary of Defense and the Director of Central Intelligence (DCI) shall have responsibility to oversee, develop, and ensure implementation of policies, principles, standards, and guidelines for the security of information systems that support the operations under their respective control. In consultation with the Assistant to the President for National Security Affairs and the affected departments and agencies, the Secretary of Defense and the DCI shall develop policies, principles, standards, and guidelines for the security of national security information systems that support the operations of other executive branch departments and agencies with national security information.

(i) Policies, principles, standards, and guidelines developed under this subsection may require more stringent protection than those developed in accordance with section 2(a) of this order.

(ii) The Assistant to the President for National Security Affairs shall advise the President and the appropriate department or agency when there is a critical deficiency in the security practices of a department or agency within the purview of this section.

(iii) National Security Systems. The National Security Telecommunications and Information Systems Security Committee, as established by

and consistent with NSD–42 and chaired by the Department of Defense, shall be designated as the ''Committee on National Security Systems.''

(c) Additional Responsibilities. The heads of executive branch departments and agencies are responsible and accountable for providing and maintaining adequate levels of security for information systems, including emergency preparedness communications systems, for programs under their control. Heads of such departments and agencies shall ensure the development and, within available appropriations, funding of programs that adequately address these mission systems, especially those critical systems that support the national security and other essential government programs. Additionally, security should enable, and not unnecessarily impede, department and agency business operations.

Sec. 3. *The National Infrastructure Advisory Council.* The National Infrastructure Advisory Council (NIAC), established on October 16, 2001, shall provide the President through the Secretary of Homeland Security with advice on the security of information systems for critical infrastructure supporting other sectors of the economy: banking and finance, transportation, energy, manufacturing, and emergency government services.

(a) Membership. The NIAC shall be composed of not more than 30 members appointed by the President. The members of the NIAC shall be selected from the private sector, academia, and State and local government. Members of the NIAC shall have expertise relevant to the functions of the NIAC and generally shall be selected from industry Chief Executive Officers (and equivalently ranked leaders of other organizations) with responsibilities for security of information infrastructure supporting the critical sectors of the economy, including banking and finance, transportation, energy, communications, and emergency government services. Members shall not be full-time officials or employees of the executive branch of the Federal Government. The President shall designate a Chair and Vice Chair from among the members of the NIAC.

(b) Functions of the NIAC. The NIAC will meet periodically to:

(i) enhance the partnership of the public and private sectors in protecting information systems for critical infrastructures and provide reports on this issue to the Secretary of Homeland Security, as appropriate;

(ii) propose and develop ways to encourage private industry to perform periodic risk assessments of critical information and telecommunications systems;

(iii) monitor the development of private sector Information Sharing and Analysis Centers (ISACs) and provide recommendations to the President through the Secretary of Homeland Security on how these organizations can best foster improved cooperation among the ISACs, the Department of Homeland Security, and other Federal Government entities;

(iv) report to the President through the Secretary of Homeland Security, who shall ensure appropriate coordination with the Assistant to the President for Homeland Security, the Assistant to the President for Economic Policy, and the Assistant to the President for National Security Affairs under the terms of this order; and

(v) advise lead agencies with critical infrastructure responsibilities, sector coordinators, the Department of Homeland Security, and the ISACs.

(c) Administration of the NIAC.

(i) The NIAC may hold hearings, conduct inquiries, and establish subcommittees, as appropriate.

(ii) Upon request of the Chair, and to the extent permitted by law, the heads of the executive departments and agencies shall provide the NIAC with information and advice relating to its functions.

(iii) Senior Federal Government officials may participate in the meetings of the NIAC, as appropriate.

(iv) Members shall serve without compensation for their work on the NIAC. However, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Federal Government service (5 U.S.C. 5701–5707).

(v) To the extent permitted by law and subject to the availability of appropriations, the Department of Homeland Security shall provide the NIAC with administrative services, staff, and other support services, and such funds as may be necessary for the performance of the NIAC's functions.

(d) General Provisions.

(i) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (Act), may apply to the NIAC, the functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Department of Homeland Security in accordance with the guidelines and procedures established by the Administrator of General Services.

(ii) The NIAC shall terminate on October 15, 2003, unless extended by the President.

(iii) Executive Order 13130 of July 14, 1999, was revoked on October 16, 2001.

(iv) Nothing in this order shall supersede any requirement made by or under law.

Sec. 4. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its depart ments, agencies, or other entities, its officers or employees, or any other person.''

Sec. 8. Executive Order 13228 of October 8, 2001 (''Establishing the Office of Homeland Security and the Homeland Security Council''), as amended, is further amended by:

(a) amending section 3(g) to read ''(g) *Incident Management.* Consistent with applicable law, including the statutory functions of the Secretary of Homeland Security, the Assistant to the President for Homeland Security shall be the official primarily responsible for advising and assisting the President in the coordination of domestic incident management activities of all departments and agencies in the event of a terrorist threat, and during and in the aftermath of terrorist attacks, major disasters, or other emergencies, within the United States. Generally, the Assistant to the President for Homeland Security shall serve as the principal point of contact for and to the President with respect to the coordination of such activities. The Assistant to the President for Homeland Security shall coordinate with the Assistant to the President for National Security Affairs, as appropriate.''; and

(b) inserting '', including the Department of Homeland Security'' after ''Government departments and agencies'' in section 7.

Sec. 9. Executive Order 13223 of September 14, 2001 (''Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation''), as amended, is further amended by:

(a) striking ''the Secretary of Transportation'' in the title and wherever it appears in sections 1, 5, 6, and 7, and inserting ''the Secretary of Homeland Security'' in lieu thereof; and

(b) striking ''the Department of Transportation'' in section 7 and inserting ''the Department of Homeland Security'' in lieu thereof.

Sec. 10. Executive Order 13212 of May 18, 2001 (''Actions to Expedite Energy-Related Projects''), is amended by inserting ''Homeland Security,'' after ''Veterans Affairs,'' in section 3.

Sec. 11. Executive Order 13165 of August 9, 2000 (''Creation of the White House Task Force on Drug Use in Sports and Authorization for the Director of the Office of National Drug Control Policy to Serve as the United States

Government's Representative on the Board of the World Anti-Doping Agency''), is amended by inserting ''the Department of Homeland Security,'' after ''the Department of Transportation,'' in section 2.

Sec. 12. Executive Order 13154 of May 3, 2000 (''Establishing the Kosovo Campaign Medal''), is amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 13. Executive Order 13133 of August 5, 1999 (''Working Group on Unlawful Conduct on the Internet''), is amended by:

(a) inserting ''(6) The Secretary of Homeland Security.'' after ''(5) The Secretary of Education.'' in section 3(a); and

(b) renumbering the subsequent subsections in section 3(a) appropriately.

Sec. 14. Executive Order 13120 of April 27, 1999 (''Ordering the Selected Reserve and Certain Individual Ready Reserve Members of the Armed Forces to Active Duty''), is amended by striking ''the Secretary of Transportation'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 15. Executive Order 13112 of February 3, 1999 (''Invasive Species''), is amended by inserting ''the Secretary of Homeland Security,'' after ''Secretary of Transportation,'' in section 3(a).

Sec. 16. Executive Order 13100 of August 25, 1998 (''President's Council on Food Safety''), is amended by inserting ''and Homeland Security,'' after ''Health and Human Services,'' in section 1(a).

Sec. 17. Executive Order 13076 of February 24, 1998 (''Ordering the Selected Reserve of the Armed Forces to Active Duty''), is amended by striking ''the Secretary of Transportation'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 18. Executive Order 13011 of July 16, 1996 (''Federal Information Technology''), as amended, is further amended by:

(a) striking ''17. Federal Emergency Management Agency;'' in section 3(b); and

(b) renumbering the subsequent subsections in section 3(b) appropriately.

Sec. 19. Executive Order 12989 of February 13, 1996 (''Economy and Efficiency in Government Procurement through Compliance with Certain Immigration and Naturalization Act Provisions''), is amended by:

(a) striking ''Naturalization'' in the title and inserting ''Nationality'' in lieu thereof;

(b) striking '', the Attorney General'' in section 3;

(c) inserting ''the Secretary of Homeland Security'' before ''may'' in section 3(a);

(d) inserting ''the Secretary of Homeland Security'' before ''shall'' in section 3(b);

(e) inserting ''the Attorney General'' before ''shall'' in section 3(c);

(f) inserting ''Secretary of Homeland Security or the'' before ''Attorney General'' wherever it appears in section 4;

(g) striking ''The Attorney General's'' in section 4(b) and inserting ''Such'' in lieu thereof;

(h) striking ''the Attorney General'' wherever it appears in the first two sentences of section 5(a) and inserting ''the Secretary of Homeland Security and Attorney General'' in lieu thereof;

(i) striking ''the responsibilities of the Attorney General'' in section 5(a) and inserting ''their respective responsibilities'' in lieu thereof;

(j) inserting ''Secretary of Homeland Security or the'' before ''Attorney General'' wherever in appears in the third sentence of section 5(a);

(k) inserting ''Secretary of Homeland Security and the'' before ''Attorney General'' in section 6;

(l) striking ''the Attorney General's'' in section 6 and inserting ''their respective'' in lieu thereof; and

(m) inserting ''Secretary of Homeland Security, the'' before ''Attorney General'' in section 7.

Sec. 20. Executive Order 12985 of January 11, 1996 (''Establishing the Armed Forces Service Medal''), is amended by striking ''the Secretary of Transportation'' in section 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 21. Executive Order 12982 of December 8, 1995 (''Ordering the Selected Reserve of the Armed Forces to Active Duty''), is amended by striking ''the Secretary of Transportation'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 22. Executive Order 12978 of October 21, 1995 (''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers''), is amended by inserting '', the Secretary of Homeland Security,'' after ''the Attorney General'' wherever it appears in sections 1 and 4.

Sec. 23. Executive Order 12977 of October 19, 1995 (''Interagency Security Committee''), is amended by:

(a) striking ''the Administrator of General Services (''Administrator'')'' in section 1(a) and inserting ''the Secretary of Homeland Security (''Secretary'')'' in lieu thereof;

(b) striking ''and'' after ''(16) Central Intelligence Agency;'' in section 1(b);

(c) inserting ''and (18) General Services Administration;'' after ''(17) Office of Management and Budget;'' in section 1(b);

(d) striking section 1(c)(2) and redesignating sections 1(c)(3) and 1(c)(4) as sections 1(c)(2) and 1(c)(3), respectively;

(e) striking ''Administrator'' wherever it appears in sections 2, 5(a)(3)(E), 6(a), and 6(c), and inserting ''Secretary'' in lieu thereof; and

(f) striking '', acting by and through the Assistant Commissioner,'' in section 6(c).

Sec. 24. Executive Order 12919 of June 3, 1994 (''National Defense Industrial Resources Preparedness''), is amended by:

(a) striking ''The Director, Federal Emergency Management Agency (''Director, FEMA'')'' in section 104(b) and inserting ''The Secretary of Homeland Security (''the Secretary'')'' in lieu thereof;

(b) striking ''The Director, FEMA,'' in sections 201(c) and 601(f) and inserting ''The Secretary'' in lieu thereof;

(c) striking ''the Director, FEMA,'' wherever it appears in sections 201(e), 202(c), 305, 501, 701(e), and 802(e), and inserting ''the Secretary'' in lieu thereof; and

(d) inserting ''the Department of Homeland Security,'' after ''Attorney General,'' in section 801.

Sec. 25. Executive Order 12906 of April 11, 1994 (''Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure''), is amended by:

(a) striking ''and'' in section 7(b)(ii);

(b) striking the period at the end of section 7(b)(iii) and inserting ''; and'' in lieu thereof; and

(c) inserting a new section 7(b)(iv) to read ''(iv) the national security-related activities of the Department of Homeland Security as determined by the Secretary of Homeland Security.''.

Sec. 26. Executive Order 12870 of September 30, 1993 (''Trade Promotion Coordinating Committee''), is amended by:

(a) inserting ''(j) Department of Homeland Security;'' after ''(i) Department of the Interior;'' in section 1; and

(b) relettering the subsequent subsections in section 1 appropriately.

Sec. 27. Executive Order 12835 of January 25, 1993 (''Establishment of the National Economic Council''), is amended by:

(a) inserting ''(k) Secretary of Homeland Security;'' after ''(j) Secretary of Energy;'' in section 2; and

(b) relettering the subsequent subsections in section 2 appropriately.

Sec. 28. Executive Order 12830 of January 9, 1993 (''Establishing the Military Outstanding Volunteer Service Medal''), is amended by striking ''the Secretary of Transportation'' wherever it appears and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 29. Executive Order 12824 of December 7, 1992 (''Establishing the Transportation Distinguished Service Medal''), is amended by:

(a) striking ''Transportation'' in the title and inserting ''Homeland Security'' in lieu thereof; and

(b) striking ''Transportation'' wherever it appears and inserting ''Homeland Security'' in lieu thereof.

Sec. 30. Executive Order 12807 of May 24, 1992 (''Interdiction of Illegal Aliens''), is amended by striking ''the Attorney General'' in section 2(c)(3) and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 31. Executive Order 12793 of March 20, 1992 (''Continuing the Presidential Service Certificate and Presidential Service Badge''), is amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 32. Executive Order 12789 of February 10, 1992 (''Delegation of Reporting Functions Under the Immigration Reform and Control Act of 1986''), is amended by striking ''The Attorney General'' in section 1 and inserting ''The Secretary of Homeland Security'' in lieu thereof.

Sec. 33. Executive Order 12788 of January 15, 1992 (''Defense Economic Adjustment Program''), is amended by:

(a) inserting ''(15) Secretary of Homeland Security;'' after ''(14) Secretary of Veterans Affairs;'' in section 4(a); and

(b) renumbering the subsequent subsections in section 4(a) appropriately.

Sec. 34. Executive Order 12777 of October 18, 1991 (''Implementation of Section 311 of the Federal Water Pollution Control Act of October 18, 1972, as Amended, and the Oil Pollution Act of 1990''), is amended by:

(a) inserting ''and the Secretary of the Department in which the Coast Guard is operating'' after ''the Secretary of Transportation'' in sections 2(b)(2) and 2(d)(2);

(b) striking ''the Secretary of Transportation'' in section 2(e)(2) and wherever it appears in sections 5 and 8 and inserting ''the Secretary of the Department in which the Coast Guard is operating'' in lieu thereof; and

(c) inserting ''the Secretary of the Department in which the Coast Guard is operating,'' after ''Agriculture,'' in section 10(c).

Sec. 35. Executive Order 12743 of January 18, 1991 (''Ordering the Ready Reserve of the Armed Forces to Active Duty''), is amended by:

(a) striking ''the Department of Transportation'' in section 1 and inserting ''the Department of Homeland Security'' in lieu thereof; and

(b) striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 36. Executive Order 12742 of January 8, 1991 (''National Security Industrial Responsiveness''), is amended by:

(a) inserting ''Homeland Security,'' after ''Transportation,'' in section 104(a); and

(b) striking ''the Director of the Federal Emergency Management Agency'' in section 104(d) and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 37. Executive Order 12733 of November 13, 1990 (''Authorizing the Extension of the Period of Active Duty of Personnel of the Selected Reserve of the Armed Forces''), is amended by striking ''the Secretary of Transportation'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 38. Executive Order 12728 of August 22, 1990 (''Delegating the President's Authority to Suspend any Provision of Law Relating to the Promotion, Retirement, or Separation of Members of the Armed Forces''), is amended by striking ''the Secretary of Transportation'' in sections 1 and 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 39. Executive Order 12727 of August 27, 1990 (''Ordering the Selected Reserve of the Armed Forces to Active Duty''), is amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 40. Executive Order 12699 (''Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction''), is amended by:

(a) striking ''Federal Emergency Management Agency (FEMA)'' in section 3(d) and inserting ''Department of Homeland Security'' in lieu thereof;

(b) striking ''The Director of the Federal Emergency Management Agency'' in section 4(a) and inserting ''The Secretary of Homeland Security'' in lieu thereof; and

(c) striking ''The Federal Emergency Management Agency'' and ''The FEMA'' in section 5 and inserting ''The Department of Homeland Security'' in lieu thereof (in both places).

Sec. 41. Executive Order 12657 of November 18, 1988 (''Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants''), is amended by:

(a) striking ''Federal Emergency Management Agency'' in the title and inserting ''Department of Homeland Security'' in lieu thereof;

(b) striking ''Federal Emergency Management Agency (''FEMA'')'' in section 1(b) and inserting ''Department of Homeland Security (''DHS'')'' in lieu thereof;

(c) striking ''FEMA'' wherever it appears in sections 1(b), 2(b), 2(c), 3, 4, 5, and 6, and inserting ''DHS'' in lieu thereof; and

(d) striking ''the Director of FEMA'' in section 2(a) and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 42. Executive Order 12656 of November 18, 1988 (''Assignment of Emergency Preparedness Responsibilities''), as amended, is further amended by:

(a) striking ''The Director of the Federal Emergency Management Agency'' wherever it appears in sections 104(c) and 1702 and inserting ''The Secretary of Homeland Security'' in lieu thereof;

(b) striking ''the Director of the Federal Emergency Management Agency'' wherever it appears in sections 104(c), 201(15), 301(9), 401(10), 501(4), 501(7), 502(7), 601(3), 701(5), 801(9), 1302(4), 1401(4), 1701, and 1801(b), and inserting ''the Secretary of Homeland Security'' in lieu thereof;

(c) striking ''consistent with current National Security Council guidelines and policies'' in section 201(15) and inserting ''consistent with current Presidential guidelines and policies'' in lieu thereof;

(d) striking ''Secretary'' in section 501(9) and inserting ''Secretaries'' in lieu thereof;

(e) inserting ''and Homeland Security'' after ''Labor'' in section 501(9);

(f) striking ''and'' after ''State'' in section 701(6) and inserting a comma in lieu thereof;

(g) inserting '', and Homeland Security'' after ''Defense'' in section 701(6);

(h) striking ''the Director of the Federal Emergency Management Agency,'' in section 701(6); and

(i) striking ''Federal Emergency Management Agency'' in the title of Part 17 and inserting ''Department of Homeland Security'' in lieu thereof.

Without prejudice to subsections (a) through (i) of this section, all responsibilities assigned to specific Federal officials pursuant to Executive Order 12656 that are substantially the same as any responsibility assigned to, or function transferred to, the Secretary of Homeland Security pursuant to the Homeland Security Act of 2002 (regardless of whether such responsibility or function is expressly required to be carried out through another official of the Department of Homeland Security or not pursuant to such Act), or intended or required to be carried out by an agency or an agency component transferred to the Department of Homeland Security pursuant to such Act, are hereby reassigned to the Secretary of Homeland Security.

Sec. 43. Executive Order 12580 of January 23, 1987 (''Superfund Implementation''), as amended, is further amended by:

(a) inserting ''Department of Homeland Security,'' after Department of Energy,'' in section 1(a)(2); and

(b) striking ''Federal Emergency Management Agency'' in section 1(a)(2).

Sec. 44. Executive Order 12555 of November 15, 1985 (''Protection of Cultural Property''), as amended, is further amended by:

(a) striking ''the Secretary of the Treasury'' in sections 1, 2, and 3, and inserting ''the Secretary of Homeland Security'' in lieu thereof; and

(b) striking ''The Department of the Treasury'' in the heading of section 3 and inserting ''The Department of Homeland Security'' in lieu thereof.

Sec. 45. Executive Order 12501 of January 28, 1985 (''Arctic Research''), is amended by:

(a) inserting ''(i) Department of Homeland Security;'' after ''(h) Department of Health and Human Services;'' in section 8; and

(b) relettering the subsequent subsections in section 8 appropriately.

Sec. 46. Executive Order 12472 of April 3, 1984 (''Assignment of National Security and Emergency Preparedness Telecommunications Functions''), is amended by:

(a) inserting ''the Homeland Security Council,'' after ''National Security Council,'' in sections 1(b), 1(e)(4), 1(f)(3), and 2(c)(4);

(b) striking ''The Secretary of Defense'' in section 1(e) and inserting ''The Secretary of Homeland Security'' in lieu thereof;

(c) striking ''Federal Emergency Management Agency'' in sections 1(e)(3) and 3(j) and inserting ''Department of Homeland Security'' in lieu thereof;

(d) inserting '', in consultation with the Homeland Security Council,'' after ''National Security Council'' in section 2(b)(1);

(e) inserting '', the Homeland Security Council,'' after ''National Security Council'' in sections 2(d) and 2(e);

(f) striking ''the Director of the Federal Emergency Management Agency'' in section 2(d)(1) and inserting ''the Secretary of Homeland Security'' in lieu thereof;

(g) striking ''Federal Emergency Management Agency. The Director of the Federal Emergency Management Agency shall:'' in section 3(b) and inserting ''Department of Homeland Security. The Secretary of Homeland Security shall:'' in lieu thereof; and

(h) adding at the end of section 3(d) the following new paragraph: ''(3) Nothing in this order shall be construed to impair or otherwise affect the

authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.''.

Sec. 47. Executive Order 12382 of September 13, 1982 (''President's National Security Telecommunications Advisory Committee''), as amended, is further amended by:

(a) inserting ''through the Secretary of Homeland Security,'' after ''the President,'' in sections 2(a) and 2(b);

(b) striking ''and to the Secretary of Defense'' in section 2(e) and inserting '', through the Secretary of Homeland Security,'' in lieu thereof; and

(c) striking ''the Secretary of Defense'' in sections 3(c) and 4(a) and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 48. Executive Order 12341 of January 21, 1982 (''Cuban and Haitian Entrants''), is amended by:

(a) striking ''The Attorney General'' in section 2 and inserting ''The Secretary of Homeland Security'' in lieu thereof; and

(b) striking ''the Attorney General'' in section 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 49. Executive Order 12208 of April 15, 1980 (''Consultations on the Admission of Refugees''), as amended, is further amended by:

(a) striking ''the following functions: (a) To'' in section 1–101 and inserting ''to'' in lieu thereof;

(b) striking ''the Attorney General'' in section 1–101(a) and inserting ''the Secretary of Homeland Security'' in lieu thereof;

(c) striking sections 1–101(b) and 1–102; and

(d) redesignating sections 1–103 and 1–104 as sections 1–102 and 1–103, respectively.

Sec. 50. Executive Order 12188 of January 2, 1980 (''International Trade Functions''), as amended, is further amended by:

(a) inserting ''(12) The Secretary of Homeland Security'' after ''(11) The Secretary of Energy'' in section 1–102(b); and

(b) renumbering the subsequent subsections in section 1–102(b) appropriately.

Sec. 51. Executive Order 12160 of September 26, 1979 (''Providing for Enhancement and Coordination of Federal Consumer Programs''), as amended, is further amended by:

(a) inserting ''(m) Department of Homeland Security.'' after ''(l) Department of the Treasury.'' in section 1–102;

(b) striking ''(s) Federal Emergency Management Agency.'' in section 1–102; and

(c) relettering the subsequent subsections in section 1–102 appropriately.

Sec. 52. Executive Order 12148 of July 20, 1979 (''Federal Emergency Management''), as amended, is further amended by:

(a) striking ''the Federal Emergency Management Agency'' whenever it appears and inserting ''the Department of Homeland Security'' in lieu thereof; and

(b) striking ''the Director of the Federal Emergency Management Agency'' wherever it appears and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 53. Executive Order 12146 of July 18, 1979 (''Management of Federal Legal Resources''), as amended, is further amended by:

(a) striking ''15'' in section 1–101 and inserting ''16'' in lieu thereof;

(b) inserting ''(n) The Department of Homeland Security.'' after ''(m) The Department of the Treasury.'' in section 1–102; and

(c) relettering the subsequent subsections in section 1–102 appropriately.

Sec. 54. Executive Order 12002 of July 7, 1977 (''Administration of Export Controls''), as amended, is further amended by inserting '', the Secretary of Homeland Security,'' after ''The Secretary of Energy'' in section 3.

Sec. 55. Executive Order 11965 of January 19, 1977 (''Establishing the Humanitarian Service Medal''), is amended by striking ''the Secretary of Transportation'' wherever it appears in sections 1, 2, and 4, and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 56. Executive Order 11926 of July 19, 1976 (''The Vice Presidential Service Badge''), is amended by striking ''the Secretary of Transportation'' in section 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 57. Executive Order 11858 of May 7, 1975 (''Foreign Investment in the United States''), as amended, is further amended by:

(a) inserting ''(8) The Secretary of Homeland Security.'' after ''(7) The Attorney General.'' in section 1(a); and

(b) redesignating subsection (8) as subsection (9) in section 1(a).

Sec. 58. Executive Order 11800 of August 17, 1974 (''Delegating Certain Authority Vested in the President by the Aviation Career Incentive Act of 1974''), as amended, is further amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 59. Executive Order 11645 of February 8, 1972 (''Authority of the Secretary of Transportation to Prescribe Certain Regulations Relating to Coast Guard Housing''), is amended by striking ''the Secretary of Transportation'' in the title and in sections 1 and 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 60. Executive Order 11623 of October 12, 1971 (''Delegating to the Director of Selective Service Authority to Issue Rules and Regulations under the Military Selective Service Act''), as amended, is further amended by:

(a) striking ''the Secretary of Transportation'' in section 2(a) and inserting ''the Secretary of Homeland Security'' in lieu thereof; and

(b) striking ''the Department of Transportation'' in section 2(a) and inserting ''the Department of Homeland Security'' in lieu thereof.

Sec. 61. Executive Order 11448 of January 16, 1969 (''Establishing the Meritorious Service Medal''), as amended, is further amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 62. Executive Order 11446 of January 16, 1969 (''Authorizing the Acceptance of Service Medals and Ribbons from Multilateral Organizations Other Than the United Nations''), is amended by striking ''the Secretary of Transportation'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 63. Executive Order 11438 of December 3, 1968 (''Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces''), as amended, is further amended by:

(a) striking ''the Secretary of Transportation'' in sections 1 and 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof; and

(b) striking ''the Department of Transportation'' wherever it appears in sections 2 and 4 and inserting ''the Department of Homeland Security'' in lieu thereof.

Sec. 64. Executive Order 11366 of August 4, 1967 (''Assigning Authority to Order Certain Persons in the Ready Reserve to Active Duty''), is amended by striking ''The Secretary of Transportation'' in sections 2 and 3(b) and inserting ''The Secretary of Homeland Security'' in lieu thereof.

Sec. 65. Executive Order 11239 of July 31, 1965 (''Enforcement of the Convention for Safety of Life at Sea, 1960''), as amended, is further amended,

without prejudice to section 1–106 of Executive Order 12234 of September 3, 1980 (''Enforcement of the Convention for the Safety of Life at Sea''), by:

(a) striking ''the Secretary of Transportation'' in sections 1, 3, and 4, and inserting ''the Secretary of Homeland Security'' in lieu thereof; and

(b) striking ''The Secretary of Transportation'' in sections 2 and 3 and inserting ''The Secretary of Homeland Security'' in lieu thereof.

Sec. 66. Executive Order 11231 of July 8, 1965 (''Establishing the Vietnam Service Medal''), as amended, is further amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 67. Executive Order 11190 of December 29, 1964 (''Providing for the Screening of the Ready Reserve of the Armed Forces''), as amended, is further amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 68. Executive Order 11139 of January 7, 1964 (''Authorizing Acceptance of the United Nations Medal and Service Ribbon''), is amended by striking ''the Secretary of the Treasury'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 69. Executive Order 11079 of January 25, 1963 (''Providing for the Prescribing of Regulations under which Members of the Armed Forces and Others May Accept Fellowships, Scholarships or Grants''), as amended, is further amended by striking ''the Secretary of Transportation'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 70. Executive Order 11046 of August 24, 1962 (''Authorizing Award of the Bronze Star Medal''), as amended, is further amended by striking ''the Secretary of Transportation'' in section 1 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 71. Executive Order 11016 of April 25, 1962 (''Authorizing Award of the Purple Heart''), as amended, is further amended by striking ''the Secretary of Transportation'' in sections 1 and 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 72. Executive Order 10977 of December 4, 1961 (''Establishing the Armed Forces Expeditionary Medal''), as amended, is further amended by striking ''the Secretary of Transportation'' in section 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 73. Executive Order 10789 of November 14, 1958 (''Authorizing Agencies of the Government To Exercise Certain Contracting Authority in Connection With National-Defense Functions and Prescribing Regulations Governing the Exercise of Such Authority''), as amended, is further amended by:

(a) striking ''The Federal Emergency Management Agency'' in paragraph 21 and inserting ''Department of Homeland Security'' in lieu thereof; and

(b) inserting at the end thereof the following new Part:

''Part III—Coordination with Other Authorities

25. After March 1, 2003, no executive department or agency shall exercise authority granted under paragraph 1A of this order with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in section 865 of the Homeland Security Act of 2002, unless—

(a) in the case of the Department of Defense, the Secretary of Defense has, after consideration of the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002, determined that the exercise of authority under this order is necessary for the timely and effective conduct of United States military or intelligence activities; and

(b) in the case of any other executive department or agency that has authority under this order, (i) the Secretary of Homeland Security has advised whether the use of the authority provided under subtitle G of title VIII

of the Homeland Security Act of 2002 would be appropriate, and (ii) the Director of the Office and Management and Budget has approved the exercise of authority under this order.''.

Sec. 74. Executive Order 10694 of January 10, 1957 (''Authorizing the Secretaries of the Army, Navy, and Air Force to Issue Citations in the Name of the President of the United States to Military and Naval Units for Outstanding Performance in Action''), is amended by adding at the end thereof the following new section: ''5. The Secretary of the Department in which the Coast Guard is operating may exercise the same authority with respect to the Coast Guard under this order as the Secretary of the Navy may exercise with respect to the Navy and the Marine Corps under this order.''.

Sec. 75. Executive Order 10637 of September 16, 1955 (''Delegating to the Secretary of the Treasury Certain Functions of the President Relating to the United States Coast Guard''), is amended by:

(a) striking ''The Secretary of the Treasury'' in sections 1 and 2 and inserting ''The Secretary of Homeland Security'' in lieu thereof;

(b) striking ''the Secretary of the Treasury'' in the title and in subsections 1(j), 1(k), and 5, and inserting ''the Secretary of Homeland Security'' in lieu thereof; and

(c) striking subsection 1(r) and redesignating subsection 1(s) as subsection 1(r).

Sec. 76. Executive Order 10631 of August 17, 1955 (''Code of Conduct for Members of the Armed Forces of the United States''), as amended, is further amended by: striking ''the Secretary of Transportation'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 77. Executive Order 10554 of August 18, 1954 (''Delegating the Authority of the President to Prescribe Regulations Authorizing Occasions Upon Which the Uniform May Be Worn by Persons Who Have Served Honorably in the Armed Forces in Time of War''), is amended by striking ''the Secretary of the Treasury'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 78. Executive Order 10499 of November 4, 1953 (''Delegating Functions Conferred Upon the President by Section 8 of the Uniformed Services Contingency Option Act of 1953''), as amended, is further amended by striking ''the Treasury'' in sections 1 and 2 and inserting ''Homeland Security'' in lieu thereof.

Sec. 79. Executive Order 10448 of April 22, 1953 (''Authorizing the National Defense Medal''), as amended, is further amended by striking ''the Secretary of Transportation'' in sections 1 and 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 80. Executive Order 10271 of July 7, 1951 (''Delegating the Authority of the President to Order Members and Units of Reserve Components of the Armed Forces into Active Federal service''), is amended by striking ''the Secretary of the Treasury'' and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 81. Executive Order 10179 of November 8, 1950 (''Establishing the Korean Service Medal''), as amended, is further amended by striking ''the Secretary of the Treasury'' in sections 1 and 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 82. Executive Order 10163 of September 25, 1950 (''The Armed Forces Reserve Medal''), as amended, is further amended by striking ''the Secretary of the Treasury'' in sections 2 and 7 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 83. Executive Order 10113 of February 24, 1950 (''Delegating the Authority of the President to Prescribe Clothing Allowances, and Cash Allowances in lieu thereof, for Enlisted Men in the Armed Forces''), as amended, is further amended by striking ''the Secretary of the Treasury'' in sections 1 and 2 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 84. Executive Order 4601 of March 1, 1927 (''Distinguished Flying Cross''), as amended, is further amended by:

(a) striking ''The Secretary of War, the Secretary of the Navy,'' in sections 2 and 12 and inserting ''The Secretary of Defense'' in lieu thereof; and

(b) striking ''the Secretary of the Treasury'' in sections 2 and 12 and inserting ''the Secretary of Homeland Security'' in lieu thereof.

Sec. 85. *Designation as a Defense Agency of the United States.*

I hereby designate the Department of Homeland Security as a defense agency of the United States for the purposes of chapter 17 of title 35 of the United States Code.

Sec. 86. *Exception from the Provisions of the Government Employees Training Act.*

Those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis are, pursuant to section 4102(b)(1) of title 5, United States Code, and in the public interest, excepted from the following provisions of the Government Employees Training Act as codified in title 5: sections 4103(a)(1), 4108, 4115, 4117, and 4118, and that part of 4109(a) that provides ''under the regulations prescribed under section 4118(a)(8) of this title and''.

Sec. 87. *Functions of Certain Officials in the Coast Guard.*

The Commandant and the Assistant Commandant for Intelligence of the Coast Guard each shall be considered a ''Senior Official of the Intelligence Community'' for purposes of Executive Order 12333 of December 4, 1981, and all other relevant authorities.

Sec. 88. *Order of Succession.*

Subject to the provisions of subsection (b) of this section, the officers named in subsection (a) of this section, in the order listed, shall act as, and perform the functions and duties of, the office of Secretary of Homeland Security (''Secretary'') during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

(a) Order of Succession.

(i) Deputy Secretary of Homeland Security;

(ii) Under Secretary for Border and Transportation Security;

(iii) Under Secretary for Emergency Preparedness and Response;

(iv) Under Secretary for Information Analysis and Infrastructure Protection;

(v) Under Secretary for Management;

(vi) Under Secretary for Science and Technology;

(vii) General Counsel; and

(viii) Assistant Secretaries in the Department in the order of their date of appointment as such.

(b) Exceptions.

(i) No individual who is serving in an office listed in subsection (a) in an acting capacity shall act as Secretary pursuant to this section.

(ii) Notwithstanding the provisions of this section, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this order in designating an acting Secretary.

Sec. 89. *Savings Provision.*

Except as otherwise specifically provided above or in Executive Order 13284 of January 23, 2003 (''Amendment of Executive Orders, and Other Actions, in Connection With the Establishment of the Department of Homeland Security''), references in any prior Executive Order relating to an agency or

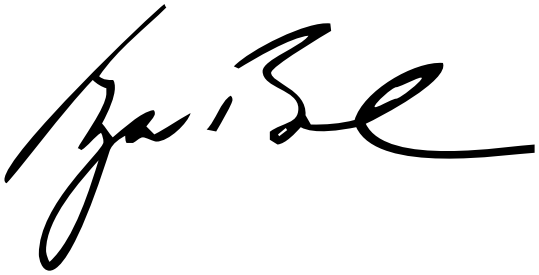
an agency component that is transferred to the Department of Homeland Security (''the Department''), or relating to a function that is transferred to the Secretary of Homeland Security, shall be deemed to refer, as appropriate, to the Department or its officers, employees, agents, organizational units, or functions.

Sec. 90. Nothing in this order shall be construed to impair or otherwise affect the authority of the Secretary of Defense with respect to the Department of Defense, including the chain of command for the armed forces of the United States under section 162(b) of title 10, United States Code, and the authority of the Secretary of Defense with respect to the Department of Defense under section 113(b) of that title.

Sec. 91. Nothing in this order shall be construed to limit or restrict the authorities of the Central Intelligence Agency and the Director of Central Intelligence pursuant to the National Security Act of 1947 and the CIA Act of 1949.

Sec. 92. This order shall become effective on March 1, 2003.

Sec. 93. This order does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 28, 2003.

[FR Doc. 03–5343
Filed 3–4–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Title 3—

The President

Executive Order 13287 of March 3, 2003

Preserve America

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) (NHPA) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), it is hereby ordered:

Section 1. *Statement of Policy.* It is the policy of the Federal Government to provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the Federal Government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties. The Federal Government shall recognize and manage the historic properties in its ownership as assets that can support department and agency missions while contributing to the vitality and economic well-being of the Nation's communities and fostering a broader appreciation for the development of the United States and its underlying values. Where consistent with executive branch department and agency missions, governing law, applicable preservation standards, and where appropriate, executive branch departments and agencies (''agency'' or ''agencies'') shall advance this policy through the protection and continued use of the historic properties owned by the Federal Government, and by pursuing partnerships with State and local governments, Indian tribes, and the private sector to promote the preservation of the unique cultural heritage of communities and of the Nation and to realize the economic benefit that these properties can provide. Agencies shall maximize efforts to integrate the policies, procedures, and practices of the NHPA and this order into their program activities in order to efficiently and effectively advance historic preservation objectives in the pursuit of their missions.

Sec. 2. *Building Preservation Partnerships.* When carrying out its mission activities, each agency, where consistent with its mission and governing authorities, and where appropriate, shall seek partnerships with State and local governments, Indian tribes, and the private sector to promote local economic development and vitality through the use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties. Each agency shall examine its policies, procedures, and capabilities to ensure that its actions encourage, support, and foster public-private initiatives and investment in the use, reuse, and rehabilitation of historic properties, to the extent such support is not inconsistent with other provisions of law, the Secretary of the Interior's Standards for Archeology and Historic Preservation, and essential national department and agency mission requirements.

Sec. 3. *Improving Federal Agency Planning and Accountability.* (a) Accurate information on the state of Federally owned historic properties is essential to achieving the goals of this order and to promoting community economic development through local partnerships. Each agency with real property management responsibilities shall prepare an assessment of the current status of its inventory of historic properties required by section 110(a)(2) of the NHPA (16 U.S.C. 470h–2(a)(2)), the general condition and management needs of such properties, and the steps underway or planned to meet those management needs. The assessment shall also include an evaluation of the suitability of the agency's types of historic properties to contribute to community economic development initiatives, including heritage tourism, taking into

account agency mission needs, public access considerations, and the long-term preservation of the historic properties. No later than September 30, 2004, each covered agency shall complete a report of the assessment and make it available to the Chairman of the Advisory Council on Historic Preservation (Council) and the Secretary of the Interior (Secretary).

(b) No later than September 30, 2004, each agency with real property management responsibilities shall review its regulations, management policies, and operating procedures for compliance with sections 110 and 111 of the NHPA (16 U.S.C. 470h–2 & 470–3) and make the results of its review available to the Council and the Secretary. If the agency determines that its regulations, management policies, and operating procedures are not in compliance with those authorities, the agency shall make amendments or revisions to bring them into compliance.

(c) Each agency with real property management responsibilities shall, by September 30, 2005, and every third year thereafter, prepare a report on its progress in identifying, protecting, and using historic properties in its ownership and make the report available to the Council and the Secretary. The Council shall incorporate this data into a report on the state of the Federal Government's historic properties and their contribution to local economic development and submit this report to the President by February 15, 2006, and every third year thereafter.

(d) Agencies may use existing information gathering and reporting systems to fulfill the assessment and reporting requirements of subsections 3(a)–(c) of this order. To assist agencies, the Council, in consultation with the Secretary, shall, by September 30, 2003, prepare advisory guidelines for agencies to use at their discretion.

(e) No later than June 30, 2003, the head of each agency shall designate a senior policy level official to have policy oversight responsibility for the agency's historic preservation program and notify the Council and the Secretary of the designation. This senior official shall be an assistant secretary, deputy assistant secretary, or the equivalent, as appropriate to the agency organization. This official, or a subordinate employee reporting directly to the official, shall serve as the agency's Federal Preservation Officer in accordance with section 110(c) of the NHPA. The senior official shall ensure that the Federal Preservation Officer is qualified consistent with guidelines established by the Secretary for that position and has access to adequate expertise and support to carry out the duties of the position.

Sec. 4. *Improving Federal Stewardship of Historic Properties.* (a) Each agency shall ensure that the management of historic properties in its ownership is conducted in a manner that promotes the long-term preservation and use of those properties as Federal assets and, where consistent with agency missions, governing law, and the nature of the properties, contributes to the local community and its economy.

(b) Where consistent with agency missions and the Secretary of the Interior's Standards for Archeology and Historic Preservation, and where appropriate, agencies shall cooperate with communities to increase opportunities for public benefit from, and access to, Federally owned historic properties.

(c) The Council is directed to use its existing authority to encourage and accept donations of money, equipment, and other resources from public and private parties to assist other agencies in the preservation of historic properties in Federal ownership to fulfill the goals of the NHPA and this order.

(d) The National Park Service, working with the Council and in consultation with other agencies, shall make available existing materials and information for education, training, and awareness of historic property stewardship to ensure that all Federal personnel have access to information and can develop the skills necessary to continue the productive use of Federally owned historic properties while meeting their stewardship responsibilities.

(e) The Council, in consultation with the National Park Service and other agencies, shall encourage and recognize exceptional achievement by such agencies in meeting the goals of the NHPA and this order. By March 31, 2004, the Council shall submit to the President and the heads of agencies recommendations to further stimulate initiative, creativity, and efficiency in the Federal stewardship of historic properties.

Sec. 5. *Promoting Preservation Through Heritage Tourism.*

(a) To the extent permitted by law and within existing resources, the Secretary of Commerce, working with the Council and other agencies, shall assist States, Indian tribes, and local communities in promoting the use of historic properties for heritage tourism and related economic development in a manner that contributes to the long-term preservation and productive use of those properties. Such assistance shall include efforts to strengthen and improve heritage tourism activities throughout the country as they relate to Federally owned historic properties and significant natural assets on Federal lands.

(b) Where consistent with agency missions and governing law, and where appropriate, agencies shall use historic properties in their ownership in conjunction with State, tribal, and local tourism programs to foster viable economic partnerships, including, but not limited to, cooperation and coordination with tourism officials and others with interests in the properties.

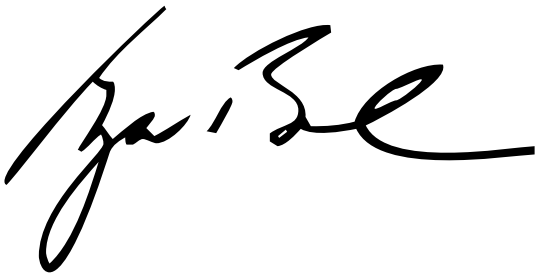
Sec. 6. *National and Homeland Security Considerations.*

Nothing in this order shall be construed to require any agency to take any action or disclose any information that would conflict with or compromise national and homeland security goals, policies, programs, or activities.

Sec. 7. *Definitions.* For the purposes of this order, the term ''historic property'' means any prehistoric or historic district, site, building, structure, and object included on or eligible for inclusion on the National Register of Historic Places in accordance with section 301(5) of the NHPA (16 U.S.C. 470w(5)). The term ''heritage tourism'' means the business and practice of attracting and accommodating visitors to a place or area based especially on the unique or special aspects of that locale's history, landscape (including trail systems), and culture. The terms ''Federally owned'' and ''in Federal ownership,'' and similar terms, as used in this order, do not include properties acquired by agencies as a result of foreclosure or similar actions and that are held for a period of less than 5 years.

Sec. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments,

agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
March 3, 2003.

[FR Doc. 03–05344
Filed 3–4–03; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday,
March 5, 2003

Part V

The President

Proclamation 7648—American Red Cross Month, 2003

Proclamation 7649—Irish-American Heritage Month, 2003

Proclamation 7650—National Colorectal Cancer Awareness Month, 2003

Proclamation 7651—Women's History Month, 2003

Proclamation 7652—Save Your Vision Week, 2003

Federal Register
Vol. 68, No. 43
Wednesday, March 5, 2003

Presidential Documents

Title 3—

The President

Proclamation 7648 of February 28, 2003

American Red Cross Month, 2003

By the President of the United States of America

A Proclamation

Throughout our history, Americans have been committed to helping the suffering, the disadvantaged, and those in need of help. The American Red Cross represents the compassion of our Nation in action. During American Red Cross Month, we honor this remarkable organization and recognize its proud heritage of service.

For more than 121 years, the Red Cross has upheld its mission to provide relief to victims of disasters and to help people prevent, prepare for, and respond to emergencies. Last year, the Red Cross helped victims of more than 70,000 disasters, ranging from dwelling fires to widespread catastrophes such as hurricanes, floods, tornadoes, and wildfires. Around the world, the Red Cross contributed to international efforts that aided other countries devastated by natural disasters, assisted people in getting access to safe drinking water, and battled malnutrition and life-threatening diseases. More than half a million U.S. military families received direct assistance from the Red Cross, helping them stay connected with their loved ones, despite difficult circumstances.

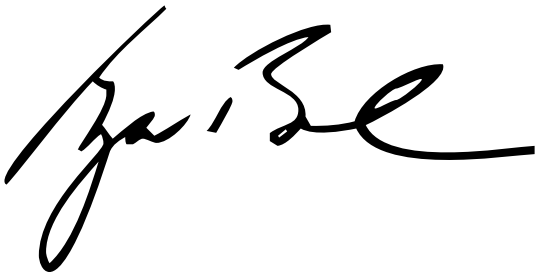
The American Red Cross also strengthens our communities by encouraging citizens to be involved and to help their neighbors in need. Last year, more than 1.2 million everyday heroes volunteered at their local Red Cross chapters, and almost 12 million more took the time to learn lifesaving skills such as first aid, CPR, and defibrillator use. And more than 4 million citizens answered the call for blood donors, giving 7.2 million blood donations through the American Red Cross.

During these times of great consequence, the mission of the Red Cross is more critical than ever. As our Nation confronts new challenges, the American Red Cross and its partners are working with the Federal Government and the emergency planning community to help keep America safe. Through its ''Together We Prepare'' campaign, the Red Cross is a vital partner with the Department of Homeland Security in empowering individuals and families to protect themselves and be prepared for the unexpected.

Countless people across our country turn to the American Red Cross every day for blood and blood products, disaster assistance, and vital community services. We are grateful for this essential and inspiring organization, and we celebrate its legacy of help, hope, and healing for those in need.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as American Red Cross Month. As we celebrate this month, I call upon all citizens to become partners in preparedness with their local Red Cross chapters and to become active participants in advancing the noble mission of the American Red Cross.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5368
Filed 3–4–03; 9:11 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7649 of February 28, 2003

Irish-American Heritage Month, 2003

By the President of the United States of America

A Proclamation

From the earliest days of our Republic, America has inspired the hopes and dreams of countless individuals from around the world who have come to share in our gifts of freedom, justice, and opportunity. During Irish-American Heritage Month, we celebrate the contributions of these talented and industrious citizens and recognize their rich legacy of ingenuity, creativity, and achievement.

Throughout our history, America has welcomed millions of Irish immigrants to its shores. These proud people arrived seeking a better life for themselves, their families, and future generations. Many courageous individuals came during the terrible years of Ireland's Great Famine in the middle of the 19th century, and their road to prosperity was not easy. Many faced significant obstacles, including discrimination and poverty. Despite these challenges, Irish Americans have risen to success in every sector of our society.

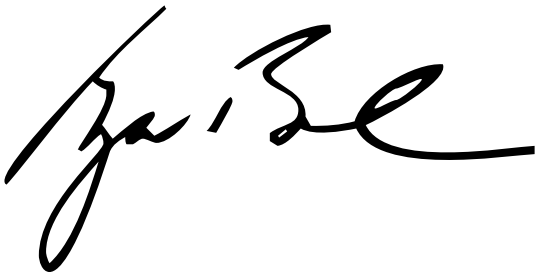
Americans of Irish descent have played a vital role in shaping our history and culture. Nineteen Presidents of the United States have claimed Irish heritage. One-third to one-half of the American troops during the Revolutionary War and 9 of the 56 signers of the Declaration of Independence were Irish Americans. Irish Americans explored our frontiers, built many of our Nation's bridges, canals, and railroads, and their proud record of public service helped to fortify our democracy.

In all areas of American life, Irish Americans have made significant and enduring contributions to our great country. America is a better Nation because of the efforts of Irish Americans like Henry Ford, who spurred innovation; Bing Crosby, who entertained countless people around the world; and activist Mary Kenney O'Sullivan, who worked for critical and compassionate social reform. These individuals are just a few of the many Irish Americans who helped to transform our national identity and whose accomplishments reflect the determination, joy, and hope of the Irish. The faith, perseverance, and spirit of the Irish have helped to strengthen our families, our communities, our ideals, and our national character.

Today, approximately one in four Americans can trace their ancestry in part to Ireland's green shores, and we are proud of and grateful for the many Irish Americans who continue to enrich our country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as Irish-American Heritage Month. I call upon all Americans to observe this month by learning about and commemorating the contributions of Irish Americans to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5369
Filed 3–4–03; 9:11 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7650 of February 28, 2003

National Colorectal Cancer Awareness Month, 2003

By the President of the United States of America

A Proclamation

Colorectal cancer touches the lives of many Americans. This year, it is estimated that more than 148,000 new cases of colorectal cancer will be diagnosed. More than 56,000 people may die from this disease, making it a leading cause of cancer death in our Nation. We have achieved great progress in understanding what causes colorectal cancer, and how it develops and spreads. This fourth national observance once again helps increase awareness. Increased awareness can help us reach my Administration's goal, known as ''Healthy People 2010,'' administered by the Department of Health and Human Services, to reduce the rate of colorectal cancer deaths by 34 percent by the year 2010.

Like many cancers, the development of colorectal cancer can take many years. Screening is an important tool to help detect colorectal cancer early by identifying precancerous growths or polyps, when treatment is more likely to be successful.

More than 90 percent of people who are diagnosed with colorectal cancer are over the age of 50. Yet, recent data indicates that less than 40 percent of adults age 50 or older have had one of the available colorectal cancer screening tests within recommended intervals. Researchers estimate that if everyone age 50 or older received regular colorectal cancer screenings, at least one-third of the deaths would be prevented.

Individuals must realize the importance of talking with their healthcare providers about when to begin screening, which tests to have, the benefits and risks of each test, and how often to schedule appointments. To help our citizens detect this disease, the Centers for Medicare and Medicaid Services (CMS) provides Medicare coverage for regular colorectal cancer screening tests to help detect precancerous conditions or colorectal cancer early.

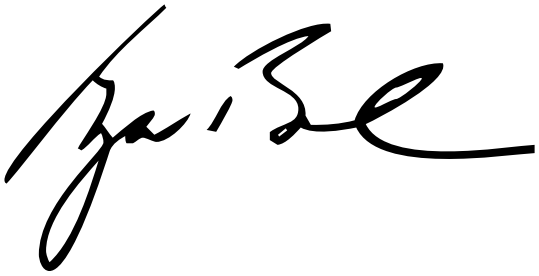
The National Cancer Institute (NCI), a component of the National Institutes of Health, is the Nation's principal research agency in the fight against colorectal cancer. The NCI invested approximately $245 million in 2002, and it will dedicate an estimated $267 million this year to advance our understanding of this disease. The Centers for Disease Control and Prevention (CDC) also plays an important role in our efforts to save lives and reduce the burden of colorectal cancer. Last year, the CDC allocated $12 million to educate the public and health professionals about colorectal cancer screening, and to conduct and support research efforts related to increasing national colorectal cancer screening rates.

The CDC, CMS, and NCI are participating together in the Screen for Life: National Colorectal Cancer Action Campaign to educate Americans aged 50 and older, particularly minority groups, about the benefits of colorectal cancer screening. Another coordinated effort is the Health Disparities Collaboratives, a public-private partnership that involves the Health Resources and Services Administration, CDC, NCI, and the Institute for Healthcare Improvement. These groups are focusing on screening and follow-up care for people who traditionally lack access to quality health care.

During this month, I encourage Americans to join me in the crucial effort to save lives by taking action against colorectal cancer by talking with healthcare providers about screening, telling friends and family members about the importance of early detection, and providing support for those diagnosed with colorectal cancer. By working together to increase awareness and supporting research about this disease, we can make a difference in the lives of our citizens and people around the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as National Colorectal Cancer Awareness Month. I call upon all Americans to reaffirm our Nation's continuing commitment to controlling and curing colorectal cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5370
Filed 3–4–03; 9:11 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7651 of February 28, 2003

Women's History Month, 2003

By the President of the United States of America

A Proclamation

As our Founding Fathers worked to develop the framework of our Nation, Abigail Adams wrote to her husband: ''I long to hear that you have declared an independency—and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favorable to them than your ancestors.'' An early advocate of women's rights, a farm and financial manager, and the mother of an American President, John Quincy Adams, Abigail Adams is one of many American women who helped establish the strength and vitality of our Nation. During Women's History Month, we recognize the generations of American women whose important contributions continue to shape our Nation and enrich our society.

Through vision, hard work, and determination, countless American women have broadened opportunities for themselves and for others at home, in the community, and in the workplace. In 1809, Mary Kies became the first woman to receive a U.S. patent. By developing a method of weaving straw with silk, she helped advance American industry and set an inspiring example for other American women. Her pioneering efforts helped define our country's entrepreneurial spirit and paved the way for future generations of women to take pride in their talents and creativity.

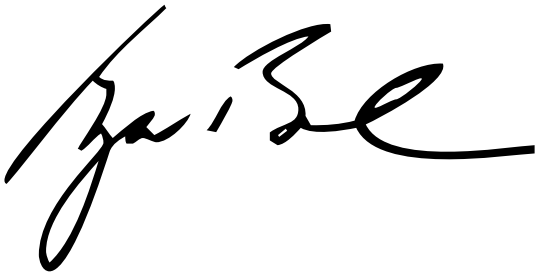
Since Mary Kies' groundbreaking achievement, many American women have become successful entrepreneurs and business professionals. In 1905, Madam C.J. Walker started her own business by creating and selling hair care products for African-American women. After a decade, her company was highly successful and employed more than 3,000 people, and at the time, was the largest African-American owned business in the United States. Today, Madam Walker is remembered for her business accomplishments, efforts to create new opportunities for women, and for her contributions to her community.

Driven by the legacy of these extraordinary figures, American women from all backgrounds continue to break barriers and fulfill their personal and professional potential. At the dawn of the 21st century, women have more choices than ever before. Between 1992 and 2002, the number of female college graduates in the United States has increased from 15.9 million to 23.6 million. Women account for 47 percent of all employed persons and are entering the American workforce in record numbers. In the last 10 years, their ranks have increased by 8.7 million. Furthermore, women-owned small businesses are growing twice as fast as all other U.S. firms, employing 7 million Americans and contributing to the vitality of our economy. To build on these successes, my Administration will continue our work to promote policies that advance the aspirations, hopes, and dreams of every American.

This month, as we celebrate remarkable women in our Nation's past, I encourage all citizens to recognize the countless American women whose efforts continue to enhance the economic, social, and cultural life of our great Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2003 as Women's History Month. I call upon all the people of the United States to observe this month with appropriate ceremonies and activities and to remember throughout the year the many contributions of American women.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5371
Filed 3–4–03; 9:12 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7652 of February 28, 2003

Save Your Vision Week, 2003

By the President of the United States of America

A Proclamation

Each year, the number of Americans who suffer from vision loss increases, yet half of all blindness can be prevented through early detection and treatment. During Save Your Vision Week, we renew our commitment to protecting eyesight by promoting healthy eye care and by encouraging Americans to receive routine vision screenings and dilated eye exams.

Our sense of sight affects how we work, communicate, and learn. All Americans must be aware of the risk of vision loss and take steps to preserve and protect their eyesight, beginning with getting regular eye exams, using the appropriate protective eyewear, and maintaining a healthy lifestyle. These small steps can make a big difference. When Americans take responsibility for improving their health, our whole society benefits.

Healthy vision is especially critical to our children's ability to receive a good education and establish a strong foundation in life. According to the American Optometric Association, 80 percent of learning depends on vision, yet 86 percent of children entering school have not had a thorough eye examination. Due to hereditary and prenatal factors, from a very early age, many children are at high risk for potentially severe eye diseases, including retinopathy of prematurity (ROP), amblyopia, and congenital glaucoma. One in four kids will develop myopia as teenagers. Children need regular eye care from birth to prevent and treat conditions that lead to visual impairment and blindness. Parents play a key role in obtaining eye care for their children and must be knowledgeable about the potential threats to a child's eyesight. For the future of our Nation, it is vital that we care for the visual health and well-being of America's children so they are able to reach their full potential.

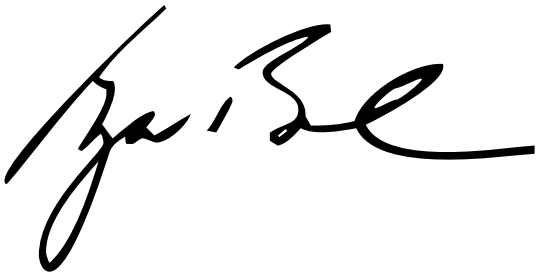
As part of my HealthierUS Initiative and my Administration's ongoing commitment to helping the American people live healthier lives, I encourage all Americans to get preventative health screenings. These screenings may tell you if you are prone to developing certain diseases, can help protect your vision, and could even save your life. I particularly urge parents to ask their children's doctors about vision screenings and eye exams, which can help ensure eye diseases and conditions are detected and treated early, when treatment is most effective. Through education about healthy vision and promotion of good eye care, we help protect the eyesight of countless people across our Nation.

The Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as ''Save Your Vision Week.'' During this week, I encourage all Americans to learn more about ways to prevent eye problems and to help others maintain the precious gift of sight.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 2 through March 8, 2003, as Save Your Vision Week. I urge all Americans to make eye care and eye safety an important part of their lives and to include dilated eye examinations

in their regular health maintenance programs. I invite eye care professionals, teachers, the media, and all public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of measures all Americans can take to protect and sustain our vision.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–5372
Filed 3–4–03; 9:12 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 68, No. 43

Wednesday, March 5, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MARCH

9851–10140 3
10141–10344 4
10345–10650 5

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
Memorandum of February 12, 2003 10141

Proclamations:
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649

Executive Orders:
4601 (Amended by: 13286) 10619
10113 (Amended by: 13286) 10619
10163 (Amended by: 13286) 10619
10179 (Amended by: 13286) 10619
10271 (Amended by: 13286) 10619
10448 (Amended by: 13286) 10619
10499 (Amended by: 13286) 10619
10554 (Amended by: 13286) 10619
10631 (Amended by: 13286) 10619
10637 (Amended by: 13286) 10619
10694 (Amended by: 13286) 10619
10789 (Amended by: 13286) 10619
10977 (Amended by: 13286) 10619
11016 (Amended by: 13286) 10619
11046 (Amended by: 13286) 10619
11079 (Amended by: 13286) 10619
11139 (Amended by: 13286) 10619
11190 (Amended by: 13286) 10619
11231 (Amended by: 13286) 10619
11239 (Amended by: 13286) 10619
11366 (Amended by: 13286) 10619
11438 (Amended by: 13286) 10619
11446 (Amended by: 13286) 10619
11448 (Amended by: 13286) 10619
11623 (Amended by: 13286) 10619
11645 (Amended by: 13286) 10619
11800 (Amended by: 13286) 10619
11858 (Amended by: 13286) 10619
11926 (Amended by: 13286) 10619
11965 (Amended by: 13286) 10619
12002 (Amended by: 13286) 10619
12146 (Amended by: 13286) 10619
12148 (Amended by: 13286) 10619
12160 (Amended by: 13286) 10619
12188 (Amended by: 13286) 10619
12208 (Amended by: 13286) 10619
12341 (Amended by: 13286) 10619
12382 (Amended by: 13286) 10619
12472 (Amended by: 13286) 10619
12501 (Amended by: 13286) 10619
12555 (Amended by: 13286) 10619
12580 (Amended by: 13286) 10619
12656 (Amended by: 13286) 10619
12657 (Amended by: 13286) 10619
12699 (Amended by: 13286) 10619
12727 (Amended by: 13286) 10619
12728 (Amended by: 13286) 10619
12733 (Amended by: 13286) 10619
12742 (Amended by: 13286) 10619
12743 (Amended by: 13286) 10619
12777 (Amended by: 13286) 10619
12788 (Amended by: 13286) 10619
12789 (Amended by: 13286) 10619
12793 (Amended by: 13286) 10619
12807 (Amended by: 13286) 10619
12824 (Amended by: 13286) 10619
12830 (Amended by:

13286) 10619
12835 (Amended by: 13286) 10619
12870 (Amended by: 13286) 10619
12906 (Amended by: 13286) 10619
12919 (Amended by: 13286) 10619
12977 (Amended by: 13286) 10619
12978 (Amended by: 13286) 10619
12982 (Amended by: 13286) 10619
12985 (Amended by: 13286) 10619
12989 (Amended by: 13286) 10619
13011 (Amended by: 13286) 10619
13076 (Amended by: 13286) 10619
13100 (Amended by: 13286) 10619
13112 (Amended by: 13286) 10619
13120 (Amended by: 13286) 10619
13130 (See: 13286).....10619
13133 (Amended by: 13286) 10619
13154 (Amended by: 13286) 10619
13165 (Amended by: 13286) 10619
13212 (Amended by: 13286) 10619
13223 (Amended by: 13286) 10619
13228 (Amended by: 13286) 10619
13231 (Amended by: 13286) 10619
13254 (Amended by: 13286) 10619
13257 (Amended by: 13286) 10619
13260 (Amended by: 13286; Revoked by: 13268, eff. 3/31/03) 10619
13271 (Amended by: 13286) 10619
13274 (Amended by: 13286) 10619
13276 (Amended by: 13286) 10619
13284 (See: 13286).....10619
13286 10619
13287 10619

7 CFR

319 9851
911 10345
944 10345
984 10347
Proposed Rules:
930 9944
1405 9944
1499 9944

8 CFR

235 10143
1001 10349
1003 10349
1101 10349
1103 10349
1205 10349
1208 10349
1209 10349
1212 10349
1216 10349
1235 10349
1236 10349
1238 10349
1239 10349
1240 10349
1241 10349
1244 10349
1245 10349
1246 10349
1249 10349
1270 10349
1274a 10349
1292 10349
1337 10349

9 CFR

50 10361

10 CFR

40 10362
150 10362
Proposed Rules
40 10411
150 10411
490 10320

14 CFR

Ch. 1 10145
25 .....9854, 10365
39 .....10147, 10149, 10152, 10154, 10156, 10583
47 10316
71 .....10367, 10369
Proposed Rules:
39 .....9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416

15 CFR

740 10586
743 10586
772 10586
774 10586

16 CFR

304 9856

18 CFR

375 9857
388 9857

21 CFR

165 9873
610 10157
Proposed Rules:
111 10418
165 9955

22 CFR

Proposed Rules:
211 9944

24 CFR

92 10160

26 CFR

1 10161
20 10161
25 10161
31 10161
53 10161
54 10161
56 10161
301 10161
602 10161
Proposed Rules:
1 10190

27 CFR

4 10076
5 10076
7 10076

30 CFR

948 10178
Proposed Rules:
950 10193

33 CFR

52 9882
117 9890

36 CFR

Proposed Rules:
219 10421

40 CFR

82 10370
52 9892
180 .....10370, 10377

42 CFR

Proposed Rules:
412 10421

43 CFR

Proposed Rules:
4100 9964

44 CFR

61 9895
64 9897
206 9899

47 CFR

2 10179
90 10179
73 10388
95 9900
Proposed Rules:
54 10430

49 CFR

219 10108
225 10108
240 10108
1540 9902
Proposed Rules:
192 9966

50 CFR

17 10388
622 10180
648 .....9905, 10181
679 .....9902, 9907, 9924, 9942
Proposed Rules:
229 10195
600 9967
648 9968

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 MARCH 5, 2003

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Commerce Control List—

Wassenaar Arrangement List of Dual-Use Items; General software note andrReporting requirements revisions; published 3-5-03

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Folpet; published 3-5-03

Hexythiazox; published 3-5-03

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Pigmy rabbit; published 3-5-03

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors, and disability insurance, and aged, blind, and disabled—

Administrative law judges; video teleconference hearings; published 2-3-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 1-29-03

Boeing; published 1-29-03

Empresa Brasileira de Aeronautica S.A. (EMBRAER); published 1-29-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Shell eggs, voluntary grading:

USDA ''Produced From'' grademark requirements; comments due by 3-10-03; published 1-9-03 [FR 03-00369]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Exotic Newcastle disease; quarantine area designations—

California; comments due by 3-14-03; published 1-13-03 [FR 03-00573]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Oriental fruit fly; comments due by 3-11-03; published 1-10-03 [FR 03-00491]

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Servicing and collections—

Farm loan programs account servicing policies; 30-day past-due period elimination; comments due by 3-10-03; published 1-9-03 [FR 03-00394]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Loan and purchase programs:

Environmental Quality Incentives Program; comments due by 3-12-03; published 2-10-03 [FR 03-02642]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Servicing and collections—

Farm loan programs account servicing policies; 30-day past-due period elimination; comments due by 3-10-03; published 1-9-03 [FR 03-00394]

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Servicing and collections—

Farm loan programs account servicing policies; 30-day past-due period elimination; comments due by 3-10-03; published 1-9-03 [FR 03-00394]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Servicing and collections—

Farm loan programs account servicing policies; 30-day past-due period elimination; comments due by 3-10-03; published 1-9-03 [FR 03-00394]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species; pesticide regulation; comments due by 3-10-03; published 1-24-03 [FR 03-01661]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Halibut and groundfish; seabird incidental take reduction; comments due by 3-10-03; published 2-7-03 [FR 03-02805]

Pollock; comments due by 3-13-03; published 2-11-03 [FR 03-03378]

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 3-13-03; published 2-26-03 [FR 03-04440]

Domestic fisheries; exempted fishing permit applications; comments due by 3-13-03; published 2-26-03 [FR 03-04439]

Domestic fisheries; exempted fishing permit applications; comments due by 3-14-03; published 2-27-03 [FR 03-04566]

Magnuson-Stevens Act provisions—

Domestic fisheries; exempted fishing permit applications; comments due by 3-10-03; published 2-21-03 [FR 03-04138]

Marine mammals:

Findings on petitions, etc.—

Alaska transient killer whales; designation as depleted; comments due by 3-10-03; published 1-24-03 [FR 03-01650]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):

Transmission grid; efficient operation and expansion; pricing policy; comments due by 3-13-03; published 1-27-03 [FR 03-01699]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Industrial/commercial/institutional boilers and process heaters; comments due by 3-14-03; published 1-13-03 [FR 03-00085]

Plywood and composite wood products; comments due by 3-10-03; published 1-9-03 [FR 03-00084]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Clean Air Act; alternate permit program approvals—

Guam; comments due by 3-10-03; published 1-9-03 [FR 03-00119]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Clean Air Act; alternate permit program approvals—

Guam; comments due by 3-10-03; published 1-9-03 [FR 03-00120]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New Hampshire; comments due by 3-12-03; published 2-10-03 [FR 03-02540]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New Hampshire; comments due by 3-12-03; published 2-10-03 [FR 03-02541]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New Hampshire; comments due by 3-12-03; published 2-10-03 [FR 03-02941]

Air quality implementation plans; approval and promulgation; various States:

West Virginia; comments due by 3-12-03; published 2-10-03 [FR 03-02938]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

West Virginia; comments due by 3-12-03; published 2-10-03 [FR 03-02939]

Endangered and threatened species; pesticide regulation; comments due by 3-10-03; published 1-24-03 [FR 03-01661]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Propanoic acid and its calcium and sodium salts; comments due by 3-14-03; published 1-13-03 [FR 03-00615]

Water programs:

Water quality standards—

Kentucky; comments due by 3-14-03; published 11-14-02 [FR 02-28922]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Satellite communications—

Satellite network earth stations and space stations; rules governing licensing and spectrum usage; streamlining and other revisions; comments due by 3-10-03; published 12-24-02 [FR 02-32294]

Radio stations; table of assignments:

Ohio; comments due by 3-10-03; published 2-5-03 [FR 03-02667]

Various States; comments due by 3-10-03; published 2-5-03 [FR 03-02669]

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:

Accountants performing audit services; removal, suspension, and debarment; comments due by 3-10-03; published 1-8-03 [FR 03-00098]

FEDERAL RESERVE SYSTEM

Practice and procedure:

Accountants performing audit services; removal, suspension, and debarment; comments due by 3-10-03; published 1-8-03 [FR 03-00098]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Cardiovascular devices—

Arrhythmia detector and alarm; Class lll to Class ll reclassification; comments due by 3-13-03; published 12-13-02 [FR 02-31440]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgage insurance—

Appraisals; lender accountability; comments due by 3-14-03; published 1-13-03 [FR 03-00539]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species; pesticide regulation; comments due by 3-10-03; published 1-24-03 [FR 03-01661]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Kentucky; comments due by 3-13-03; published 2-11-03 [FR 03-03365]

North Dakota; comments due by 3-13-03; published 2-11-03 [FR 03-03366]

LABOR DEPARTMENT

Mine Safety and Health Administration

Civil penalties; inflation adjustment; assessment criteria and procedures; comments due by 3-12-03; published 2-10-03 [FR 03-03160]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Shipyard employment safety and health standards:

Fire protection; comments due by 3-11-03; published 12-11-02 [FR 02-30405]

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:

Fiduciary responsibility; automatic rollovers; comments due by 3-10-03; published 1-7-03 [FR 03-00281]

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright office and procedures:

Prohibition to circumvention of copyright protection systems for access control technologies; exemption; comments due by 3-10-03; published 2-10-03 [FR 03-03256]

SECURITIES AND EXCHANGE COMMISSION

Securities and investment companies:

Proxy voting policies and records disclosure by registered management investment companies; comments due by 3-14-03; published 2-7-03 [FR 03-02951]

TRANSPORTATION DEPARTMENT

Coast Guard

Great Lakes Pilotage regulations; rates update; comments due by 3-10-03; published 1-23-03 [FR 03-01461]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airmen certification:

Flight simulation device; initial and continuing qualification and use requirements; comments due by 3-14-03; published 11-15-02 [FR 02-29067]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 3-14-03; published 1-13-03 [FR 03-00050]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-10-03; published 2-7-03 [FR 03-02783]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

General Electric Co.; comments due by 3-10-03; published 1-8-03 [FR 03-00330]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

General Electric Co.; comments due by 3-14-03; published 1-13-03 [FR 03-00331]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Hartzell Propeller Inc.; comments due by 3-10-03; published 1-8-03 [FR 03-00226]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pilatus Aircraft, Ltd.; comments due by 3-14-03; published 2-7-03 [FR 03-02994]

Class C and Class D airspace; comments due by 3-13-03; published 1-27-03 [FR 03-01313]

Class E airspace; comments due by 3-14-03; published 1-17-03 [FR 03-01130]

Class E airspace; correction; comments due by 3-14-03; published 1-29-03 [FR C3-01130]

Restricted areas; comments due by 3-10-03; published 1-23-03 [FR 03-01476]

VOR Federal airways and jet routes; comments due by 3-10-03; published 1-23-03 [FR 03-01478]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Transportation Equity Act for 21st Century; implementation:

Federal Lands Highway Program; transportation planning procedures and management systems—

Fish and Wildlife Service and Refuge Roads Program; comments due by 3-10-03; published 1-8-03 [FR 03-00104]

Forest Service and Forest Highway Program; comments due by 3-10-03; published 1-8-03 [FR 03-00103]

Indian Affairs Bureau and Indian Reservation Roads Program; comments due by 3-10-03; published 1-8-03 [FR 03-00105]

National Park Service and Park Roads and Parkways Program; comments due by 3-10-03; published 1-8-03 [FR 03-00102]

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Railroad consolidations, mergers, and acquisitions of control:

Temporary trackage rights exemption; comments due by 3-12-03; published 2-10-03 [FR 03-03251]

TRANSPORTATION DEPARTMENT

Transportation Security Administration

Maritime and land transportation security:

Transportation of explosives from Canada to U.S. via commercial motor vehicle and railroad carrier; comments due by 3-10-03; published 2-6-03 [FR 03-03005]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Russian River Valley, CA; comments due by 3-10-03; published 1-8-03 [FR 03-00286]

TREASURY DEPARTMENT

Comptroller of the Currency

Community and economic development entities, community development projects, and other public welfare investments; comments due by 3-11-03; published 1-10-03 [FR 03-00362]

Practice and procedure:

Accountants performing audit services; removal, suspension, and debarment; comments due by 3-10-03; published 1-8-03 [FR 03-00098]

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organization, ports of entry, etc.:

Portland, ME; port limits extension; comments due by 3-10-03; published 1-9-03 [FR 03-00432]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Accruals and allocations due to age attainment, reductions; and cash balance plans; nondiscrimination cross-testing rules application; comments due by 3-13-03; published 12-11-02 [FR 02-31225]

Hearing location and date change; comments due by 3-13-03; published 1-17-03 [FR 03-01159]

TREASURY DEPARTMENT

Thrift Supervision Office

Practice and procedure:

Accountants performing audit services; removal, suspension, and debarment; comments due by 3-10-03; published 1-8-03 [FR 03-00098]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 141/P.L. 108–8

To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)

Last List February 24, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.