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Contents

Federal Register

Vol. 68, No. 54

Thursday, March 20, 2003

Agricultural Marketing Service
RULES
Milk marketing orders:
Northeast et al.
Correction, 13617–13618
Raisins produced from grapes grown in—
California, 13615–13617
PROPOSED RULES
Cherries (tart) grown in—
Michigan et al.
Correction, 13636

Agriculture Department
See Agricultural Marketing Service
See Foreign Agricultural Service
See Forest Service
See Natural Resources Conservation Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
RULES
Safe Explosives Act; implementation, 13767–13793

Antitrust Division
NOTICES
National cooperative research notifications:
Aerospace Vehicle Systems Institute Cooperative, 13730

Army Department
See Engineers Corps

Bonneville Power Administration
NOTICES
Environmental statements; availability, etc.:
Wallula-McNary Transmission Line Project and Wallula Power Project, WA, 13696

Census Bureau
NOTICES
Meetings:
Professional Associations Census Advisory Committee, 13668–13669

Centers for Disease Control and Prevention
NOTICES
Meetings:
ICD-9-CM Coordination and Maintenance Committee, 13712
National Institute for Occupational Safety and Health—
Respiratory devices used to protect workers in hazardous environments, 13712–13714

Centers for Medicare & Medicaid Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 13714–13717

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Louisiana, 13668
Mississippi, 13668

Coast Guard
RULES
Anchorage regulations:
Louisiana, 13629–13630
Regattas and marine parades:
Safety at Sea Seminar, Severn River, MD, 13628–13629
PROPOSED RULES
Drawbridge operations:
New Jersey, 13641–13643
Ports and waterways safety:
Chesapeake Bay, MD and tributaries; safety and security zones, 13649–13652
Cove Point Liquified Natural Gas Terminal, Chesapeake Bay, MD; safety and security zones, 13647–13649
Lond Island Sound Marine Inspection and Captain of Port Zone, CT; regulated navigation area and safety and security zones, 13643–13647

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Copyright Office, Library of Congress
PROPOSED RULES
Copyright office and procedures:
Access control technologies; circumvention of copyright protection systems; prohibition exemption; public hearing, 13652–13653

Customs Service
RULES
Vessels in foreign and domestic trades:
Large yachts imported for sale; duty deferral, 13623–13626
PROPOSED RULES
Customs bonds:
Importation and entry bond conditions regarding other agency documentation requirements; withdrawn, 13638
Merchandise, special classes, and financial and accounting procedures:
Patent Survey Program; discontinuation, 13636–13638

Defense Department
See Engineers Corps

Education Department
PROPOSED RULES
Elementary and secondary education:
Disadvantaged children; academic achievement improvement, 13795–13801
NOTICES
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program, 13689–13696

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 13730–13731

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Meetings:
Coastal Engineering Research Board, 13688–13689

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Mississippi, 13630–13633
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 13633–13634
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
California, 13653–13657
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit designations, etc.—
Minergy Detroit LLC; glass aggregate facility construction, Wayne County, MI, 13701–13702
Meetings:
Good Neighbor Environmental Board, 13702–13703
Pesticide, food, and feed additive petitions:
Bayer CropScience, 13703–13708

Federal Aviation Administration
RULES
Airworthiness directives:
General Electric Aircraft Engines, 13618–13619
Standard instrument approach procedures, 13619–13623

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 13708

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 13708–13709

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Bowie Power Station, LLC, et al., 13698–13699
Environmental statements; availability, etc.:
El Paso Corp., 13699–13701
Meetings:
Natural gas price information; technical conference, 13701
Applications, hearings, determinations, etc.:
Columbia Gulf Transmission Co., 13696
Dominion Transmission, Inc., et al., 13697
KO Transmission Co., 13697
Northern Natural Gas Co., 13697–13698
Questar Pipeline Co., 13698

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 13709
Formations, acquisitions, and mergers, 13709

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 13709–13710

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 13757–13758

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Ventura marsh milk-vetch, 13663–13664
Recovery plans—
Loggerhead sea turtle, 13662–13663
NOTICES
Endangered and threatened species:
Incidental take permits—
Bastrop County, TX; Houston toad, 13718–13719
Recovery plans—
Red-cockaded woodpecker, 13719–13720
Environmental statements; notice of intent:
Oregon; western snowy plover; Pacific Coast population, 13720–13721
South Bay Salt Ponds Initial Stewardship Project, CA, 13721–13724

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Pyrantel pamoate paste, 13626–13627
PROPOSED RULES
Medical devices:
General and plastic surgery devices—
Silicone sheeting; classification, 13639–13641

Foreign Agricultural Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Agricultural Policy Advisory Committee for Trade and Agricultural Technical Advisory Committees for Trade, 13665–13666

Forest Service
NOTICES
Environmental statements; notice of intent:
Umpqua National Forest, OR, 13666–13667
Meetings:
Land Between the Lakes Advisory Board, 13667–13668

General Services Administration
NOTICES
Federal travel:
eTravel initiative, 13710–13711

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

NOTICES
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Health information privacy complaints; submission addresses, 13711–13712

Homeland Security Department
See Coast Guard

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgment of existence determinations, etc.:
Western Cherokee, Arkansas/Louisiana Territories, et al., 13724–13725

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
PROPOSED RULES
Surface coal mining hearings and appeals; special rules, 13657–13661

International Trade Administration
NOTICES
Antidumping:
Glycine from—
China, 13669–13672
Granular polytetrafluoroethylene resin from—
Italy, 13672–13674
Polyvinyl alcohol from—
China, 13674–13681
Korea, 13681–13686
Stainless steel sheet and strip in coils from—
Mexico, 13686–13688

International Trade Commission
NOTICES
Meetings; Sunshine Act, 13727

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Antitrust Division
NOTICES
Executive Office for Immigration Review:
Class action settlements—
Barahona-Bomez v. Ashcroft, 13727–13729
Pollution control; consent judgments:
Lion Oil Co., 13729
Re-Solve, Inc., 13729

Labor Department
See Employment Standards Administration
See Labor Statistics Bureau
See Occupational Safety and Health Administration

Labor Statistics Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 13731–13732

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Northwest Colorado, 13721
Public land orders:
Colorado, 13725–13726
Oregon, 13726
Survey plat filings:
Oregon and Washington, 13726–13727

Library of Congress
See Copyright Office, Library of Congress

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Sargeant Marine, Inc., 13755–13757

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Interagency acquisitions; use authority, 13634

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 13635
PROPOSED RULES
Endangered and threatened species:
Recovery plans—
Loggerhead sea turtle, 13662–13663
NOTICES
Reports and guidance documents; availability, etc.:
National Coral Reef Action Strategy; comment request, 13688

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Pennsylvania, 13668

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Saxton Nuclear Experimental Corp. et al., 13733–13735

Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 13732–13733

Ocean Policy Commission
NOTICES
Meetings, 13735

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 13743–13745
Cincinnati Stock Exchange, Inc., 13745
National Association of Securities Dealers, Inc., 13745–13750
Applications, hearings, determinations, etc.:
Public utility holding company filings, 13735–13736
Timothy Plan et al., 13736–13743

State Department
RULES
Visas; immigrant documentation:
Hong Kong residents; extended visa validity benefits, 13627–13628
Immediate relatives, definition; widows and children of victims of September 11, 2001 terrorist attacks, 13628
New or replacement visas issuance, 13627
Visas; nonimmigrant documentation:
Members of observer missions to United Nations; visa fees waived, 13627
NOTICES
Grants and cooperative agreements; availability, etc.:
English Language Fellow Program 2004-2005, 13750–13753
South Pacific Scholarship Program, 13753–13755

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Substance Abuse Treatment Center—
Substance abuse treatment and HIV/AIDS services, 13717–13718

Thrift Supervision Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 13758–13765

Transportation Department
See Federal Aviation Administration
See Maritime Administration

Treasury Department
See Customs Service
See Fiscal Service
See Thrift Supervision Office

United States Institute of Peace
NOTICES
Meetings; Sunshine Act, 13765

Separate Parts In This Issue

Part II
Justice Department, Alcohol, Tobacco, Firearms, and Explosives Bureau, 13767–13793

Part III
Education Department, 13795–13801

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.

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CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
989 13615
1000 13617
1001 13617
1005 13617
1006 13617
1007 13617
1030 13617
1032 13617
1033 13617
1124 13617
1126 13617
1131 13617
1135 13617
Proposed Rules:
930 13636

14 CFR
39 13618
97 (2 documents) 13619, 13621

19 CFR
4 13623
113 13623
178 13623
Proposed Rules:
12 13636
24 13636
113 13638

21 CFR
520 13626
Proposed Rules:
878 13639

22 CFR
41 13627
42 (3 documents) 13627, 13628

27 CFR
555 13768

33 CFR
100 13628
110 13629
Proposed Rules:
117 13641
165 (3 documents) 13643, 13647, 13649

34 CFR
Proposed Rules:
200 13796

37 CFR
Proposed Rules:
201 13652

40 CFR
52 13630
300 13633
Proposed Rules:
52 13653
81 13653

43 CFR
Proposed Rules:
4 13657

48 CFR
1817 13634

50 CFR
679 13635
Proposed Rules:
17 (2 documents) 13662, 13663
223 13662

Rules and Regulations

Federal Register

Vol. 68, No. 54

Thursday, March 20, 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.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–2 FIR]

Raisins Produced From Grapes Grown in California; Temporary Suspension of a Provision, and Extension of Certain Deadlines Under the Raisin Diversion Program

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 regarding the raisin diversion program (RDP) as specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). The interim final rule temporarily suspended a November 30 deadline for announcing a 2003 RDP, and extended certain deadlines within the 2002–03 crop year concerning the RDP specified in the order's regulations. Changes beginning with a 2003 RDP were recommended by the RAC. This action was needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed for necessary review and evaluation of proposed provisions for such a program. The December 15 deadline for redemption of diversion certificates for the 2002 RDP was also extended, given the lack of sales of those certificates.

EFFECTIVE DATE: April 21, 2003.

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

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

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

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. 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 temporarily suspend an order provision concerning the November 30 deadline by which the RAC must announce a RDP, and extends related deadlines specified under the order's regulations concerning the 2003 diversion program. Changes beginning with a 2003 RDP were recommended by the RAC. This action was needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed for necessary review and evaluation of proposed provisions for such a program. This rule also continues in effect the action that extended the December 15 redemption deadline for diversion certificates for the 2002 Natural (sun-dried) Seedless (NS) RDP, given the lack of sales of those certificates. At a meeting on November 26, 2002, the RAC extended that deadline until February 3, 2003.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the

RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of a RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

Prior to implementation of the interim final rule (67 FR 71072; November 29, 2002), these sections required the RAC to meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC, and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Extension of Deadlines for 2003 Diversion Program

The California raisin and grape industries continue to be plagued by burdensome supplies and severe economic conditions. Industry members have been reviewing various options to help address some of these concerns. The RAC has also been reviewing options to help the industry address these issues through the marketing order.

At its October 15, 2002, meeting, the RAC recommended modifications to the RDP that were intended to significantly reduce the industry's oversupply and improve producer returns. Some revisions were proposed by the RAC's Executive Committee at follow-up meetings on October 24 and November 4, 2002. The RAC hoped to have its recommended changes in effect for the 2003 diversion program, if recommended by the RAC and approved by USDA. Thus, temporarily suspending the November 30 deadline in the order for the RAC to announce a 2003 RDP, and extending other deadlines in the regulations were needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed for necessary review and evaluation of provisions for such a program.

The RAC met on December 12, 2002, to review the Executive Committee's changes and proposed program. The RAC ultimately recommended specific changes to the order's regulations that could apply to any future RDP. These changes were published in an interim final rule on January 28, 2003 (68 FR 4079).

Specifically, the words ''On or before November 30 of'' in § 989.56(a) were suspended until July 31, 2003, which is the end of the 2002–03 crop year. The November 30 date was also specified in § 989.156(a) of the order's regulations. The interim final rule added a proviso to § 989.156(a) that allowed the RAC to extend this date for the 2003 diversion program to a later date during the 2002–03 crop year. Similar provisos were added that allowed the RAC to extend the following dates in § 989.156 for the 2003 diversion program: the December 20 date specified in paragraph (b) whereby producers must submit applications to the RAC to participate in a RDP; the January 12 date specified in paragraph (c) whereby producers must submit corrected applications to the RAC; and the January 15 date specified in paragraph (a) whereby the RAC can allocate additional tonnage to a RDP. Section 989.56(a) and § 989.156 were modified accordingly.

Ultimately, the RAC recommended a 2003 RDP on January 29, 2003, and USDA approved the program on February 7, 2003. Producer applications were due to the RAC office on March 3, 2003, and corrected applications were due March 17, 2003. Additional tonnage may be allotted to the RDP through May 1, 2003.

Extension of Redemption Deadline for 2002 Diversion Program

Prior to implementation of the interim final rule, § 989.156(k) of the order's regulations specified that handlers must redeem diversion certificates by December 15 of the crop year for which they were issued. The value of the free tonnage represented on NS raisin diversion certificates has historically been based on a free tonnage field price negotiated by the Raisin Bargaining Association (RBA) and industry handlers. As of December 15, 2002, a 2002 RBA field price had not yet been established, and most certificates had not been sold by producers. Therefore, § 989.156(k) was modified to specify that, for the 2002 NS RDP, the December 15 redemption deadline may be extended by the RAC to a later date within the 2002–03 crop year. As previously stated, at a meeting on November 26, 2002, the RAC extended that deadline until February 3, 2003.

Final Regulatory Flexibility Analysis

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

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

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

This rule continues in effect an interim final rule that temporarily suspended a provision specified in § 989.56(a) of the order regarding the November 30 deadline by which the RAC must announce a 2003 RDP, and extended related deadlines in § 989.156 applicable to the 2003 diversion program. This rule also continues in effect the interim final rule's extension of the December 15 redemption deadline for 2002 RDP certificates. Under a RDP, producers receive certificates from the RAC for curtailing

their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. Authority for these changes to the regulations is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, the suspension of the November 30 meeting date and related extensions applicable to the 2003 diversion program were needed to provide flexibility in implementing the existing as well as any new provisions of a 2003 RDP. This action also allowed necessary review and evaluation of proposed provisions for such a program. Changes beginning with a 2003 RDP were recommended by the RAC. Ultimately, the RAC recommended a 2003 RDP on January 29, 2003, and USDA approved the program on February 7, 2003. Producer applications were due to the RAC office on March 3, 2003, and corrected applications were due March 17, 2003. Additional tonnage may be allotted to the RDP through May 1, 2003.

Extending the December 15 deadline for the redemption of 2002 NS RDP certificates was necessary, given the lack of sales of such certificates. The deadline was extended until February 3, 2003. Producers had more time to sell their certificates to handlers, and handlers had more time to redeem the certificates with the RAC. Equity holders in the 2001 NS reserve pool benefited from the extension. A 2002 field price for NS raisins was established in early January 2003, and more transactions regarding the RDP certificates were completed. Producers earned income when they sold the certificates to handlers. Handlers redeemed the certificates for reserve raisins. Finally, equity holders in the 2002 NS reserve pool earned some return for the raisins allotted to the RDP.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (*i.e.,* the RDP application) has been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. 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. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. USDA initiated this action to facilitate administration of the order and help the raisin industry through this difficult time.

An interim final rule concerning this action was published in the **Federal Register** on November 29, 2002 (67 FR 71072). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the RBA, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on January 28, 2003. No comments were received.

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

After consideration of all relevant material presented, and other available information, it is hereby found that the order provision temporarily suspended does not tend to effectuate the declared policy of the Act. It is further found that the continued extension of the deadlines specified in this rule tends to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending CFR part 989 which was published at 67 FR 71072 on November 29, 2002, is adopted as a final rule without change.

Dated: March 14, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–6667 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas: Order Amending the Orders; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A69.
1005	Appalachian	AO–388–A11.
1006	Florida	AO–356–A34.
1007	Southeast	AO–366–A40.
1030	Upper Midwest	AO–361–A34.
1032	Central	AO–313–A43.
1033	Mideast	AO–166–A67.
1124	Pacific Northwest	AO–368–A27.
1126	Southwest	AO–231–A65.
1131	Arizona-Las Vegas	AO–271–A35.
1135	Western	AO–380–A17.

SUMMARY: The Agricultural Marketing Service is correcting the final rule that appeared in the **Federal Register** of February 12, 2003, which amended all Federal milk marketing orders based on evidence received at a hearing held May 8–12, 2000, in Alexandria, Virginia. The document was published with an inadvertent error in Part 1030 regarding the computation of the statistical uniform price for milk. This docket corrects the error.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Associate Deputy

Administrator, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2968, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–6274, e-mail: *clifford.carman@usda.gov*.

SUPPLEMENTARY INFORMATION: In the final rule beginning on page 7063 of the **Federal Register** for Wednesday, February 12, 2003 (68 FR 7063), in the third column on page 7066, in § 1030.62, paragraph (h) is corrected by removing the word ''butterfat'' after the word ''producer''.

Dated: March 14, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–6665 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–48–AD; Amendment 39–13090; AD 2003–06–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain General Electric Aircraft Engines (GEAE) CT7 series turboprop engines. This amendment requires initial and repetitive inspections of the propeller gearbox (PGB) oil filter impending bypass button (IBB) for extension (popping), requires follow-on inspections, maintenance, and replacement actions if the PGB oil filter IBB is popped, and if necessary, replacement of the PGB with a serviceable PGB. In addition, this amendment requires replacement of certain left-hand and right-hand idler gears at time of overhaul of PGBs, and the replacement of certain SN PGBs before accumulating 2,000 flight hours. This amendment is prompted by an on-going investigation that concluded that low-time PGB removals are due to accelerated wear of the PGB idler gears, rather than improperly hardened PGB input pinions. The actions specified by this AD are intended to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

DATES: Effective April 24, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7146; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain GEAE CT7 series turboprop engines was published in the **Federal Register** on June 13, 2002 (67 FR 40623). That action proposed to require initial and repetitive inspections of the PGB oil filter IBB for extension (popping), follow-on inspections, maintenance, and replacement actions if the PGB oil filter IBB is popped, and if necessary, replacement of the PGB with a serviceable PGB. In addition, that action proposed to require replacement of certain left-hand and right-hand idler gears at time of overhaul of PGBs, and the replacement of certain SN PGBs before accumulating 2,000 flight hours in accordance with GEAE CT7 Turboprop Service Bulletin CT7–TP S/B 72–0453, dated July 27, 2001 and GEAE CT7 Turboprop Service Bulletin CT7–TP S/B 72–0452, dated July 27, 2001.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 150 engines of the affected design installed on airplanes of U.S. registry that would be affected by this AD. The FAA estimates that each IBB inspection would take approximately 0.25 work hours per engine, and the average labor rate is $60 per work hour. Inspection and replacement of idler gears would take approximately four work hours per engine at time of PGB overhaul. Replacement cost for idler gears per PGB is estimated to be $140,670. Replacement of a PGB would take approximately 48 hours. Therefore, the total cost of the AD to U.S. operators would be approximately $21,138,750.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–06–03 *General Electric Aircraft Engines:* Amendment 39–13090. Docket No. 99–NE–48–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Aircraft Engines (GEAE) CT7 series turboprop engines, with propeller gearboxes (PGBs) identified by serial number (SN) in Table 1 of GEAE CT7 Turboprop Service Bulletin CT7–TP S/B 72–0452, dated July 27, 2001. These engines are installed on but not limited to SAAB 340 series airplanes.

Note 1: This AD applies to each engine 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 engines 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 (f) 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: Compliance with this AD is required as indicated, unless already done.

To prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs, do the following:

(a) Inspect the PGB oil filter impending bypass button (IBB) for extension in accordance with the following schedule:

(1) Initially inspect within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Thereafter, inspect each operational day.

(b) If the PGB oil filter IBB is extended, replace the oil filter and perform follow-on inspections in accordance with 3.A of the Accomplishment Instructions of GEAE CT7 Turboprop Service Bulletin CT7–TP S/B 72–0453, dated July 27, 2001.

(c) At the next return of the PGB to a CT7 turboprop overhaul facility after the effective date of this AD, replace left-hand and right-hand idler gears in accordance with the Accomplishment Instructions of GEAE CT7 Turboprop Service Bulletin CT7–TP S/B 72–0452, dated July 27, 2001.

(d) If the PGB is mated to a Hamilton Standard propeller and the left-hand and right-hand idler gears have not been replaced in accordance with the Accomplishment Instructions of GEAE CT7 Turboprop Service Bulletin CT7–TP S/B 72–0452, dated July 27, 2001, replace the PGB before accumulating an additional 2,000 engine flight hours after the effective date of this AD.

Terminating Action

(e) Replacement of left-hand and right-hand idler gears in accordance with paragraph (c) of this AD, or replacement of the PGB in accordance with paragraph (d) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a) of this AD.

Alternative Methods of Compliance

(f) 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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued only for an airplane that has not more than one engine with a PGB oil filter IBB extended, to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(h) The inspections must be done in accordance with the following General Electric Aircraft Engines service bulletins (SBs):

Document No.	Pages	Revision	Date
SB CT7–TP S/B 72–0452 Total Pages: 12	All	Original	July 27, 2001
SB CT7–TP S/B 72–0453 Total Pages: 5	All	Original	July 27, 2001

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on April 24, 2003.

Issued in Burlington, Massachusetts, on March 12, 2003.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–6505 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30360; Amdt. No. 3050]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 20, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 20, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200); FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers and aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, lists location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and pubic procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on March 13, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC Number	Subject
02/27/03	NH	KEENE	DILLANT–HOPKINS	3/1676	VOR RWY 2, AMDT 12B

FDC Date	State	City	Airport	FDC Number	Subject
02/27/03	MN	MINNEAPOLIS	MINNEAPOLIS–ST PAUL (WOLD CHAMBERLAIN).	3/1679	ILS PRM RWY 12R (SIMULTANEOUS CLOSE PARALLEL) AMDT 2D
02/27/03	MN	MINNEAPOLIS	MINNEAPOLIS–ST PAUL (WOLD CHAMBERLAIN).	3/1683	ILS RWY 12R, (CAT I, II, III) AMDT 7
03/03/03	TN	KNOXVILLE	MCGHEE–TYSON	3/1777	RNAV (GPS) RWY 23R, ORIG
03/04/03	OR	BAKER	BAKER CITY MUNI	3/1804	VOR/DME OR GPS RWY 12, AMDT 10
03/04/03	OR	BAKER	BAKER CITY MUNI	3/1805	VOR/DME OR GPS RWY 13, AMDT 10A
03/05/03	VI	CHARLOTTE AMALIE	CYRIL E. KING	3/1828	RNAV (GPS) Z RWY 10, AMDT 1
03/05/03	AK	BETHEL	BETHEL	3/1843	LOC/DME BC RWY 36, AMDT 5A
03/05/03	AK	BETHEL	BETHEL	3/1845	VOR/DME RWY 36, ORIG–A
03/05/03	AK	BETHEL	BETHEL	3/1846	RNAV (GPS) RWY 36, ORIG
03/06/03	MT	GREAT FALLS	GREAT FALLS INTL	3/1876	ILS RWY 3, AMDT 2A
03/06/03	TN	TULLAHOMA	TULLAHOMA RGNL ARPT/WM NORTHERN FIELD.	3/1880	SDF RWY 18, AMDT 3A
03/06/03	MA	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	3/1884	ILS RWY 15R, AMDT 1
03/06/03	MA	BOSTON	GENERAL EDWARD LAWRENCE LOGAN INTL.	3/1885	RNA (GPS) RWY 15R, ORIG
03/10/03	NY	UTICA	ONEIDA COUNTY	3/1945	ILS RWY 15, AMDT 3B
03/11/03	WA	SEATLLE	SEATTLE–TACOMA INTL	3/1968	ILS RWY 16L, AMDT 1C
03/11/03	WA	SEATTLE	SEATTLE–TACOMA INTL	3/1969	ILS RWY 16R (CAT I, II, III, AMDT 12B
03/11/03	WA	SEATTLE	SEATTLE–TACOMA INTL	3/1970	ILS RWY 34R, ORIG–B
03/11/03	WA	SEATTLE	SEATTLE–TACOMA INTL	3/1971	ILS RWY 34L, ORIG–A
03/11/03	CA	SACRAMENTO	SACRAMENTO INTL	3/1990	ILS RWY 34L, AMDT 6

[FR Doc. 03–6621 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30359; Amdt. No. 3049]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 20, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 20, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: PO Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a

special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on March 13, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 17, 2003

Long Beach, CA, Daugherty Field, VOR OR TACAN RWY 30, Amdt 8 Meadville, PA, Port Meadville, LOC RWY 25, Amdt 5

. . . Effective May 15, 2003

Kenai, AK, Kenai Muni, ILS RWY 19R, Amdt 1
Kenai, AK, Kenai Muni, RNAV (GPS) RWY 1L, Orig
Kenai, AK, Kenai Muni, RNAV (GPS) RWY 19R, Orig
Kenai, AK, Kenai Muni, (GPS) RWY 1L, Orig, (CANCELLED)
Kenai, AK, Kenai Muni, (GPS) RWY 19R, Orig (CANCELLED)
Point Hope, AK, Point Hope, NDB RWY 1, Amdt 2
Point Hope, AK, Point Hope, NDB RWY 19, Amdt 2
Point Hope, AK, Point Hope, RNAV (GPS) RWY 1, Orig
Point Hope, AK, Point Hope, RNAV (GPS) RWY 19, Orig
Borrego Springs, CA, Borrego Valley, RNAV (GPS) RWY 25, Orig
Borrego Springs, CA, Borrego Valley, (GPS) RWY 25, Orig (CANCELLED)
Akron, CO, Colorado Springs Regional, RNAV (GPS) RWY 11, Orig
Akron, CO, Colorado Springs Regional, RNAV (GPS) RWY 29, Orig
Akron, CO, Colorado Springs Regional, (GPS) RWY 11, Orig (CANCELLED)
Akron, CO, Colorado Springs Regional, (GPS) RWY 29, Orig (CANCELLED)
Atlanta, GA, Fulton County Arpt-Brown Field, ILS RWY 8, Amdt 16
Statesboro, GA, Statesboro-Bulloch County, RNAV (GPS) RWY 32, Amdt 1
Thomaston, GA, A, Thomaston-Upson County, ILS RWY 30, Amdt 1
Pratt, KS, Pratt Industrial, RNAV (GPS) RWY 17, Orig
Pratt, KS, Pratt Industrial, RNAV (GPS) RWY 35, Orig
Pratt, KS, Pratt Industrial, NDB RWY 17, Amdt 5
Lake Charles, LA, Lake Charles Regional, VOR–A, Amdt 14
Lake Charles, LA, Lake Charles Regional, VOR/DME–B, Amdt 8
Lake Charles, LA, Lake Charles Regional, LOC BC RWY 33, Amdt 19
Lake Charles, LA, Lake Charles Regional, NDB RWY 15, Amdt 19
Lake Charles, LA, Lake Charles Regional, ILS RWY 15, Amdt 20
Lake Charles, LA, Lake Charles Regional, RADAR–1, Amdt 5
Lake Charles, LA, Lake Charles Regional, RNAV (GPS) RWY 5, Orig
Lake Charles, LA, Lake Charles Regional, VOR/DME RNAV RWY 5, Amdt 3B (CANCELLED)
Lake Charles, LA, Lake Charles Regional, (GPS) RWY 5, Orig (CANCELLED)
Lake Charles, LA, Lake Charles Regional, RNAV (GPS) RWY 15, Orig
Lake Charles, LA, Lake Charles Regional, RNAV (GPS) RWY 23, Orig
Lake Charles, LA, Lake Charles Regional, VOR/DME RNAV RWY 23, Amdt 3B (CANCELLED)
Lake Charles, LA, Lake Charles Regional, (GPS) RWY 23, Orig (CANCELLED)
Lake Charles, LA, Lake Charles Regional, RNAV (GPS) RWY 33, Orig
Southbridge, MA, Southbridge Muni, VOR/DME–B, Amdt 8
Elko, NV, Elko Regional, VOR–A, Amdt 5
Elko, NV, Elko Regional, VOR/DME–B, Amdt 4
Elko, NV, Elko Regional, RNAV (GPS) RWY 23, Orig
Andover, NJ, Aeroflex-Andover, RNAV (GPS) RWY 3, Orig
Andover, NJ, Aeroflex-Andover, (GPS) RWY 3, Orig (CANCELLED)
Somerville, NJ, Somerset, VOR/DME RNAV OR (GPS) RWY 12, Amdt 2 (CANCELLED)
Wadsworth, OH, Wadsworth Muni, RNAV (GPS) RWY 2, Orig
Wadsworth, OH, Wadsworth Muni, RNAV (GPS) RWY 20, Orig
Wadsworth, OH, Wadsworth Muni, NDB or (GPS) RWY 2, Amdt 5A (CANCELLED)
Claremore, OK, Claremore Regional, VOR/DME–A, Amdt 1

Claremore, OK, Claremore Regional, VOR/DME–B, Amdt 2
Claremore, OK, Claremore Regional, RNAV (GPS) RWY 35, Orig
Claremore, OK, Claremore Regional, (GPS) RWY 35, Orig (CANCELLED)
Fairview, OK, Fairview Muni, RNAV (GPS) RWY 17, Orig
Fairview, OK, Fairview Muni, (GPS) RWY 17, (CANCELLED)
Frederick, OK, Frederick Muni, NDB RWY 35L, Amdt 1A (CANCELLED)
Holdenville, OK, Holdenville Muni, RNAV (GPS) RWY 17, Orig
Holdenville, OK, Holdenville Muni, RNAV (GPS) RWY 35, Orig
Holdenville, OK, Holdenville Muni, (GPS) RWY 17, Amdt 1, (CANCELLED)
Holdenville, OK, Holdenville Muni, (GPS) RWY 35, Amdt 1, (CANCELLED)
Oklahoma City, OK, Will Rogers World, RNAV (GPS) RWY 31, Orig
Lock Haven, PA, William T. Piper Memorial, RNAV (GPS)–A, Orig
Selinsgrove, PA, Penn Valley, RNAV (GPS)–B, Orig
Babelthuap Island, PS, Babelthuap/Koror, RNAV (GPS) RWY 9, Orig
Babelthuap Island, PS, Babelthuap/Koror, RNAV (GPS) RWY 27, Orig
Pierre, SD, Pierre Regional, ILS RWY 31, Amdt 11
Pierre, SD, Pierre Regional, VOR/DME OR TACAN RWY 7, Amdt 5
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 13, Orig
Denton, TX, Denton Muni, ILS RWY 17, Amdt 7
Houston, TX, May, VOR/DME–C, Orig
Houston, TX, May, VOR/DME–A, Amdt 1 (CANCELLED)
Houston, TX, Weiser Air Park, NDB–F, Orig
Houston, TX, Weiser Air Park, NDB–D, Orig (CANCELLED)
Houston, TX, Weiser Air Park, RNAV (GPS)–G, Orig
Houston, TX, Weiser Air Park, RNAV (GPS)–E, Orig (CANCELLED)
Oak Harbor, WA, Wes Lupien, RADAR 2, Orig, (CANCELLED)
Park Falls, WI, Park Falls Muni, NDB RWY 36, Amdt 1
Park Falls, WI, Park Falls Muni, RNAV (GPS) RWY 18, Orig
Park Falls, WI, Park Falls Muni, RNAV (GPS) RWY 36, Orig

The FAA published the following procedures in Docket No. 30357; Amdt No. 3047 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 45, Page 10964; dated Friday, March 7, 2003) under section 97.33 effective May 15, 2003 which are hereby rescinded:

Somerville, NJ, Somerset, GPS Rwy 12, Amdt 2, Cancelled

The FAA published the following procedures in Docket No. 30357; Amdt No. 3047 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 45, Page 10964; dated Friday, March 7, 2003) under section 97.33 effective March 20, 2003 which are hereby corrected as follows:

Burlington, VT, Burlington Intl, GPS RWY 33, Orig–B CANCELLED

[FR Doc. 03–6620 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 113 and 178

[T.D. 03–14]

RIN 1515–AC58

Deferral of Duty on Large Yachts Imported for Sale

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed amendment to the Customs Regulations to set forth procedures for the deferral of entry filing and duty collection on certain yachts imported for sale at boat shows in the United States. The regulatory amendments reflect a change in the law effected by section 2406 of the Miscellaneous Trade and Technical Corrections Act of 1999.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT:

Legal matters: Glen Vereb, Office of Regulations and Rulings (202–572–8730).

Operational matters: Peter Flores, Office of Field Operations (202–927–0333).

SUPPLEMENTARY INFORMATION:

Background

Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act, Public Law 106–36, 113 Stat. 127) amended the Tariff Act of 1930 by the addition of a new section 484b (19 U.S.C. 1484b). Section 484b provides that an otherwise dutiable ''large yacht'' (defined in the section as ''a vessel that exceeds 79 feet in length, is used primarily for recreation or pleasure, and has been previously sold by a manufacturer or dealer to a retail consumer'') may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the United States. The statute provides generally for the deferral of payment of duty until the yacht is sold but specifies that the duty-deferral period may not exceed 6 months.

In order to qualify for deferral of duty payment at the time of importation of a large yacht, the statute provides that the importer of record must: (1) Certify to Customs that the yacht is imported pursuant to section 484b for sale at a boat show in the United States; and (2) post a bond, having a duration of 6 months after the date of importation, in an amount equal to twice the amount of duty on the yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The statute further provides that if the yacht is sold within the 6-month period after importation, or if the yacht is neither sold nor exported within the 6-month period after importation, entry must be completed and duty must be deposited with Customs (with the duty calculated at the applicable HTSUS rate based on the value of the yacht at the time of importation) and the required bond will be returned to the importer. The statute further provides that no extensions of the 6-month bond period will be allowed, that any large yacht exported in compliance with the 6-month bond period may not be reentered for purposes of sale at a boat show in the United States (in order to receive duty-deferral benefits) for a period of 3 months after that exportation, and that the Secretary of the Treasury is authorized to make rules and regulations as may be necessary to carry out the provisions of the statute. Finally, under section 2406(b) of the Act, the amendment made by section 2406(a) of the Act applies with respect to any large yacht imported into the United States after July 10, 1999.

In order to reflect the terms of new section 484b, Customs on June 15, 2000, published a notice of proposed rulemaking in the **Federal Register** (65 FR 37501) to amend the Customs Regulations by the addition of a new § 4.94a (19 CFR 4.94a). In addition, Customs proposed in that document to amend Part 113 of the Customs Regulations (19 CFR Part 113), which sets forth provisions regarding Customs bonds, by the addition of a new § 113.75 and a new Appendix provision setting forth the text of the bond required to be posted by the importer of record under new section 484b.

The June 15, 2000, notice of proposed rulemaking invited the submission of public comments on the proposed amendments, and the public comment period closed on August 14, 2000. Two commenters responded to that solicitation of comments. A discussion of their comments follows.

Discussion of Comments

The two commenters made the same three points which centered on

paragraphs (a)(4) and (a)(5) of proposed § 4.94a which set forth two of the conditions that give rise to the bond obligation. Paragraph (a)(4) provides that all subsequent transactions with Customs involving the vessel in question, including any transaction referred to in paragraphs (b) through (d) of § 4.94a, must be carried out in the same port of entry in which the certification was filed and the bond was posted under § 4.94a (paragraphs (b) through (d) concern, respectively, exportation of the yacht within the 6-month bond period, sale of the yacht within the 6-month bond period, and expiration of the bond period). Paragraph (a)(5) provides that the vessel in question will not be eligible for issuance of a cruising license under § 4.94.

Comment: With regard to paragraph (a)(4), the commenters made the point that in matters involving the sale of large yachts of the type under consideration, there might often be protracted negotiations which could continue for weeks or even months after the conclusion of the actual boat show at which an offer of sale was made. They stated that the final regulations should make provision for that type of eventuality by specifically providing that negotiations are permitted to continue with respect to any person who viewed a yacht at a boat show, up to the expiration of the 6-month bond period.

Customs Response: Customs does not read either the statute or the language of the proposed regulations as precluding the continuation or conclusion of negotiations following a boat show so long as they do not continue beyond the expiration date of the bond. The statute merely provides that at the time of importation the importer of record must certify to Customs that the vessel is imported for sale at a yacht show and must post a bond of 6 months duration. Customs interprets the law to provide that so long as the importation is in pursuance of showing and offering a qualifying vessel for sale at a boat show, a 6-month period is provided during which a sale must be completed. Customs in this final rule document has added language to § 4.94a(c) and (d) to expressly refer to completion of the sale. A sale is completed when title passes to the new owner. The alternatives to this are that either the vessel must be exported or, once the bond expires, the entry process must be completed.

On a related matter not raised in the comments, Customs notes that whereas the prescribed bond period is 6 months and may not be extended, the obligations imposed on the importer under the statute and the regulatory text include actions (that is, advising Customs within 30 days if the yacht is exported or completing the entry within 15 days if the yacht is sold or is neither sold nor exported within that 6-month period) that may be completed after expiration of the bond period. In order to ensure that there is an appropriate enforcement mechanism under the bond covering all obligations under the statute, including those that may lawfully be met after the bond period has expired, the terms of the bond set forth in Appendix C to Part 113 have been modified to include a reference to a claim for liquidated damages for a failure to advise Customs of an exportation or to complete the entry unless either of those actions is taken within the prescribed time limits.

Comment: Also with regard to paragraph (a)(4), the commenters stated that limited advertising should be allowed when a yacht is imported under the subject program, and they suggested that notice may be required that the vessel is ''not available for boarding'' during the 6-month period of bond coverage except at a boat show.

Customs Response: The commenters appear to be arguing, at least in part, against the first point they raised with respect to the continuation of negotiations. Among the mentioned activities which might ensue during after-show negotiations are sea trials during which boarding surely would be required.

Again, Customs does not find either in the new law or in the proposed regulations any limiting language which would preclude advertising a yacht imported for the stated limited purposes. Protection of the revenue is assured by virtue of the statutory bond requirement. If Customs determines that the certification of the importer of record is not honored in that the vessel was not in fact imported for sale at a boat show (such as, upon investigation, there being no evidence that the boat was shown and made available to potential buyers at a boat show), in addition to possible penalty action, a demand could be made against the bond. Customs finds no need for additional regulatory language in this regard.

Comment: Finally, the commenters referred to the language of paragraph (a)(5) and pointed out that boat shows take place in more than one location and within the jurisdiction of different Customs ports in South Florida. They noted that a typical boat show does not last longer than two weeks and that the law does not restrict the number of shows at which a vessel may be offered for sale during the 6-month bond period. They further noted that the proposed regulation, while making clear that the vessels in question may not obtain cruising licenses, is silent with respect to whether those vessels may be granted permits to proceed between ports in the United States. The commenters urged Customs to add language to the regulations stating that the vessels under consideration may obtain a ''permit to proceed''.

Customs Response: The language relating to cruising licenses was included in the proposed regulation because the terms of a cruising license specifically prohibit a licensed vessel from being brought into the United States for sale or charter to a resident of the United States, or from being so offered during the pendency of the license. A cruising license is a mere accommodation available to certain vessels which exempts them from the necessity to enter and clear at U.S. ports. Possession of a license is not necessary in order for a pleasure vessel to travel between ports of the United States. It was not the intention of Customs to suggest that a restriction would be imposed upon vessel movement. It would merely be necessary that vessels covered by § 4.94a would have to comply with the normal requirements regarding vessel entry and clearance when traversing U.S. ports. In order to clarify this issue, Customs in this final rule document has added the words and must comply with the laws respecting vessel entry and clearance when moving between ports of entry during the 6-month bond period prescribed under this section at the end of paragraph (a)(5) of § 4.94a.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, Customs believes that the proposed regulatory amendments should be adopted as a final rule with the changes discussed above, together with one editorial change, as set forth below. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments directly reflect a statutory

provision that accords procedural and financial benefits to members of the general public who import large yachts for purposes of sale. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0223. 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 control number assigned by OMB.

The collection of information in this document is in § 4.94a. This information is required and will be used to effect the deferral of duty collection on certain pleasure vessels, in order to ensure enforcement of the Customs and related laws and the protection of the revenue. The likely respondents are owners of large pleasure vessels.

The estimated average annual burden associated with this collection of information is 1 hour per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Entry, Imports, Reporting and recordkeeping requirements, Vessels, Yachts.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds, Vessels.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, parts 4, 113 and 178, Customs Regulations (19 CFR Parts 4, 113 and 178), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 continues to read, and a specific authority citation for § 4.94a is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.94a also issued under 19 U.S.C. 1484b;

* * * * *

2. A new § 4.94a is added to read as follows:

§ 4.94a Large yachts imported for sale.

(a) *General.* An otherwise dutiable vessel used primarily for recreation or pleasure and exceeding 79 feet in length that has been previously sold by a manufacturer or dealer to a retail consumer and that is imported with the intention to offer for sale at a boat show in the United States may qualify at the time of importation for a deferral of entry completion and deposit of duty. The following requirements and conditions will apply in connection with a deferral of entry completion and duty deposit under this section:

(1) The importer of record must certify to Customs in writing that the vessel is being imported pursuant to 19 U.S.C. 1484b for sale at a boat show in the United States;

(2) The certification referred to in paragraph (a)(1) of this section must be accompanied by the posting of a single entry bond containing the terms and conditions set forth in appendix C of part 113 of this chapter. The bond will have a duration of 6 months after the date of importation of the vessel, and no extensions of the bond period will be allowed;

(3) The filing of the certification and the posting of the bond in accordance with this section will permit Customs to determine whether the vessel may be released;

(4) All subsequent transactions with Customs involving the vessel in question, including any transaction referred to in paragraphs (b) through (d) of this section, must be carried out in the same port of entry in which the certification was filed and the bond was posted under this section; and

(5) The vessel in question will not be eligible for issuance of a cruising license under § 4.94 and must comply with the laws respecting vessel entry and clearance when moving between ports of entry during the 6-month bond period prescribed under this section.

(b) *Exportation within 6-month period.* If a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is not sold but is exported within the 6-month bond period specified in paragraph (a)(2) of this section, the importer of record must inform Customs in writing of that fact within 30 calendar days after the date of exportation. The bond posted with Customs will be returned to the importer of record and no entry completion and duty payment will be required. The exported vessel will be precluded from reentry under the terms of paragraph (a) of this section for a period of 3 months after the date of exportation.

(c) *Sale within 6-month period.* If the sale of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is completed within the 6-month bond period specified in paragraph (a)(2) of this section, the importer of record within 15 calendar days after completion of the sale must complete the entry by filing an Entry Summary (Customs Form 7501) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record.

(d) *Expiration of bond period.* If the 6-month bond period specified in paragraph (a)(2) of this section expires without either the completed sale or the exportation of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section, the importer of record within 15 calendar days after expiration of that 6-month period must complete the entry by filing an Entry Summary (Customs Form 7501) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record, and a new bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, may be required by the appropriate port director.

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read, and a specific authority citation for § 113.75 and Appendix C is added to read, as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

Section 113.75 and Appendix C also issued under 19 U.S.C. 1484b.

2. Part 113 is amended by adding a new § 113.75 to read as follows:

§ 113.75 Bond conditions for deferral of duty on large yachts imported for sale at United States boat shows.

A bond for the deferral of entry completion and duty deposit pursuant to 19 U.S.C. 1484b for a dutiable large yacht imported for sale at a United States boat show must conform to the terms of appendix C to this part. The bond must be filed in accordance with the provisions set forth in § 4.94a of this chapter.

3. Part 113 is amended by adding at the end a new appendix C to read as follows:

Appendix C to Part 113—Bond for Deferral of Duty on Large Yachts Imported for Sale at United States Boat Shows

Bond for Deferral of Duty on Large Yachts Imported for Sale at United States Boat Shows

_____, as principal, and _____, as surety, are held and firmly bound to the UNITED STATES OF AMERICA in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these conditions.

Pursuant to the provisions of 19 U.S.C. 1484b, the principal has imported at the port of _____ a dutiable large yacht (exceeding 79 feet in length, used primarily for recreation or pleasure, and previously sold by a manufacturer or dealer to a consumer) identified as _____ for sale at a boat show in the United States with deferral of entry completion and duty deposit and has executed this obligation as a condition precedent to that deferral.

A failure to inform Customs in writing of an exportation, or to complete the required entry, within the 6-month bond period will give rise to a claim for liquidated damages unless the principal informs Customs of the exportation or completes the entry within the time limits prescribed in 19 CFR 4.94a. If the principal fails to comply with any condition of this obligation, which includes compliance with any requirement or condition set forth in 19 U.S.C. 1484b or 19 CFR 4.94a, the principal and surety jointly and severally agree to pay to Customs an amount of liquidated damages equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States. For purposes of this paragraph, the term duty includes any duties, taxes, fees and charges imposed by law.

The principal will exonerate and hold harmless the United States and its officers from or on account of any risk, loss, or expense of any kind or description connected with or arising from the failure to store and deliver the large yacht as required, as well as from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the principal.

WITNESS our hands and seals this _____ day of _____ (month), _____ (Year).

_____
(Name) (Address)

_____
_____ [SEAL]
(Principal)

_____
_____ [SEAL]
(Name) (Address)

_____ [SEAL]
(Surety)

Certificate as to Corporate Principal

I, _____, certify that I am the* _____ of the corporation named as principal in the attached bond; that _____, who signed the bond on behalf of the principal, was then _____ of that corporation; that I know his signature, and his signature to the bond is genuine; and that the bond was duly signed, sealed, and attested for and in behalf of the corporation by authority to its governing body.

_____
(CORPORATE SEAL)
(To be used when no power of attorney has been filed with the port director of customs.)

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. In § 178.2, the table is amended by adding a new listing for § 4.94a in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
	* * * * *	
§ 4.94	Deferral of duty on large yachts imported for sale.	1515–0223
	* * * * *	

Robert C. Bonner,
Commissioner of Customs.

Approved: February 25, 2003.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6759 Filed 3–19–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Pyrantel Pamoate Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the oral use of pyrantel pamoate paste for the removal and control of certain internal parasites in horses and ponies.

DATES: This rule is effective March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed ANADA 200–342 that provides for the use of Pyrantel Pamoate Paste for the removal and control of certain internal parasites in horses and ponies. Phoenix Scientific's Pyrantel Pamoate Paste is approved as a generic copy of Pfizer's STRONGID (pyrantel pamoate) Paste approved under NADA 129–831. The ANADA is approved as of January 22, 2003, and the regulations are amended in 21 CFR 520.2044 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9

a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.2044 is amended by revising paragraphs (a) and (b) to read as follows:

§ 520.2044 Pyrantel pamoate paste.

(a) *Specifications.* (1) Each milliliter (mL) contains 180 milligrams (mg) pyrantel base (as pyrantel pamoate).

(2) Each mL contains 226 mg pyrantel base (as pyrantel pamoate).

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter.

(1) No. 000069 for use of product described in paragraph (a)(1) of this section.

(2) No. 059130 for use of product described in paragraph (a)(2) of this section.

* * * * *

Dated: February 25, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–6688 Filed 3–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4315]

RIN 1400–AA97

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Waiver of the Nonimmigrant Visa Fees for Members of Observer Missions to the United Nations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule makes final the Department's interim rule published on August 29, 2000. The interim rule extended the waiver of the visa application and issuance fees to B–1 visa applicants coming to the United States as participants in their U.N. observer missions.

EFFECTIVE DATE: This rule is effective March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20522–0106, (202) 663–1206 or e-mail at *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION: On August 29, 2000, the Department published an interim rule [65 FR 52306] that extended the waiver of the visa application and issuance fees to persons who are members of observer missions to the United Nations who apply as B–1 applicants to enter as participants in their U.N. observer missions. Previously, the regulation granted the waiver only to aliens coming in various diplomatic classifications, including those related to international organizations. However, aliens coming to the United Nations in an observer capacity on B–1 visas were not granted the waiver.

Final Rule

The interim rule amended the Departments' regulations at 22 CFR 41.107(c)(1). Since the Department does not feel it necessary to amend the regulations as published in the interim rule, the interim rule is adopted as a final rule without change.

Dated: February 5, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–6719 Filed 3–19–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

RIN 1400–AB39

[Public Notice 4314]

Documentation of Immigrants Under the Immigration and Nationality Act, as Amended—Issuance of New or Replacement Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule makes final the Department's interim rule pertaining to the issuance of replacement immigrant visas.

EFFECTIVE DATE: This rule takes effect March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20522–0106, (202) 663–1206 or e-mail at *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION: On January 11, 2002, the Department published an interim rule [67 FR 1415] that deleted an incorrect citation that is no longer in effect. The rule also made editorial changes to include descriptions of the classes of aliens affected, rather than making statutory citations.

Final Rule

The Department's interim rule amended § 42.74(b). Although the Department solicited comments, no comments were received. Therefore, since no changes have been made to the interim rule, the Department feels it is unnecessary to publish the regulation again in full herein. The interim rule is adopted as final without changes.

Dated: February 25, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–6718 Filed 3–19–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4313]

Documentation of Immigrants—Elimination of Extended Visa Validity Benefits Under Section 154 of the Immigration Act of 1990

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule eliminates the extended visa validity benefit for certain aliens who qualified under section 154 of the Immigration Act of 1990, (IMMACT 90). Section 154 of IMMACT 90 permitted certain aliens resident in Hong Kong to extend the validity of their immigrant visa up to January 1, 2002. Since this extension can no longer be granted, the Department is removing this provision from the regulations.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visas Services, Department of State, Washington, DC 20520–0106, by fax to 202–663–3898 or by e-mail to *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION:

Aliens Entitled to Extended Visa Validity Under Section 154 of IMMACT 90

On January 30, 1991, the Department published a proposed rule (56 FR 3427) which amended 22 CFR 42.72 by adding a new paragraph (e) which entitled certain residents of Hong Kong who qualified for issuance of an immigrant visa under section 124 of IMMACT 90 to request extended visa validity until January 1, 2002. The Department finalized this rule (56 FR 32322) and it took effect on July 16, 1991. Since this benefit no longer exists, the Department is amending the regulation by removing paragraph (e).

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and Visas.

In view of the reasons set forth above, 22 CFR part 42 is amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

§ 42.72 [Amended]

2. Remove paragraph (e) of § 42.72.

Dated: January 30, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–6717 Filed 3–19–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

RIN 1400–AB38

[Public Notice 4312]

Documentation of Immigrants Under the Immigration and Nationality Act, as Amended—Immediate Relatives

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On January 11, 2002 the Department published an interim rule that expanded the definition of immediate relative to include the widows and children whose spouses/parents were victims of the September 11, 2001 terrorist attacks. This rule makes final the interim rule.

EFFECTIVE DATE: This rule takes effect March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20522–0106, (202) 663–1206 or e-mail at *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION: Section 423 of Public Law 107–56 (the ''USA Patriot Act'') provided for immediate relative status for spouses of U.S. citizens widowed as a direct result of the terrorist acts of September 11, 2001, regardless of the length of the marriage, and provided that the spouse was not legally separated at the time of the citizens death and files a petition within two years of the death, having not remarried in the interim. Children of a U.S. citizen killed in one of the terrorist acts of September 11, 2001 may also file a petition for status as an immediate relative, provided the petition is filed within two years of the death of the parent, and regardless of the age of the child or marital status.

Final Rule

On January 11, 2002, the Department published an interim rule [67 FR 1414] which amended 22 CFR 42.21. The rule solicited comments, however, no comments were received. This rule, therefore, makes final the interim rule with no revisions. Since no changes are being made to the interim rule, the Department does not feel it necessary to publish the regulation in full herein. The interim rule is adopted as final without changes.

Dated: February 28, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–6716 Filed 3–19–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–029]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, Maryland

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations for the 24th Annual Safety at Sea Seminar, a marine event to be held March 29, 2003, on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.518 is effective from 11:30 a.m. to 2 p.m. on March 29, 2003.

FOR FURTHER INFORMATION CONTACT: R.L. Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy Sailing Squadron will sponsor the 24th Annual Safety at Sea Seminar on the waters of the Severn River, near the entrance to College Creek at Annapolis, Maryland. Waterborne activities will include exposure suit and life raft demonstrations, a pyrotechnics live-fire exercise, and a helicopter rescue. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be

in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: February 26, 2003.

John C. Acton,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 03–6643 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD08–02–017]

RIN 1625–AA01 [Formerly RIN 2115–AA98]

Anchorage Regulation; Boothville Anchorage, Venice, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its regulation on Boothville Anchorage, located near mile 12.9, Lower Mississippi River, Venice, Louisiana. This revision is necessary to accommodate the construction of Sea Point, a container transshipment facility. The anchorage is reduced in size approximately 0.8 miles.

DATES: This rule is effective April 21, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD08–02–017] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 12, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulation; Boothville Anchorage, Venice, LA'', in the **Federal Register** (67 FR 68540). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard received a request from Sea Point LLC to reduce the size of the Boothville Anchorage by approximately 0.8 miles in order to accommodate the construction of Sea Point, a container transshipment facility in Venice, Louisiana. Sea Point is designed to allow for the immediate transfer of containers from deep draft vessels to barges destined for ports on the Mississippi River and along the Gulf of Mexico.

Sea Point LLC has advised two local pilot organizations of its intended construction. The Crescent River Pilot's Association and the Associated Federal Pilots and Docking Masters of Louisiana, two organizations whose members pilot vessels through this area and anchor vessels in the anchorage, voiced no objections to the proposed reduction of the size of the anchorage.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have made no changes to the provisions of the proposed rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory and Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This anchorage is primarily used for deep draft vessels waiting for mooring facilities further up river, vessels waiting for fog to dissipate, and for vessels waiting for heavy weather in the Gulf of Mexico to diminish. The revision will not obstruct the regular flow of traffic nor will it adversely affect vessels requiring anchorage, as the anchorage has been more than ample to accommodate all vessels desiring to use it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601—612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this anchorage is primarily used for deep draft vessels waiting for mooring facilities further up river, vessels waiting for fog to dissipate, and vessels waiting for heavy weather in the Gulf of Mexico to diminish. The shortening of this anchorage will not obstruct the regular flow of traffic nor have an adverse impact to anchoring vessels.

If you are a small business entity and are significantly affected by this regulation please contact Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, telephone (504) 589–6271.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking processes.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(f) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is a reduction of the size of an anchorage already in effect.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Amend § 110.195 by revising paragraph (a)(4) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(4) *Boothville Anchorage.* An area 5.5 miles in length along the right descending bank of the river extending from mile 13.0 to mile 18.5 above Head of Passes. The width of the anchorage is 750 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 250 feet from the water's edge into the river as measured from the Low Water Reference Plane (LWRP). The outer boundary of the anchorage is a line parallel to the nearest bank 1,000 feet from the water's edge into the river as measured from the LWRP.

* * * * *

Dated: February 13, 2003.

Roy J. Casto,

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

[FR Doc. 03–6631 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS–200310; FRL–7445–5]

Approval and Promulgation of Air Quality Implementation Plans; Mississippi Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Mississippi that are incorporated by reference (IBR) into the Mississippi State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective March 20, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at the above Region 4 address, by phone at (404) 562–9041, or via e-mail at: *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On July 1, 1997, EPA published a document in the **Federal Register** (62 FR 35441) beginning the new IBR procedure for Mississippi. In this document EPA is doing the second update to the material being IBRed.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause'', authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately

(thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 13, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Z—Mississippi

2. In § 52.1270 paragraphs (b), (c), and (d) are revised to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) of this section with an EPA approval date prior to January 1, 2003, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of January 1, 2003.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) EPA approved Mississippi regulations.

EPA Approved Mississippi Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
APC–S–1	**Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants**			
Section 1	General	01/09/94	02/12/96, 61 FR 5295	
Section 2	Definitions	01/09/94	02/12/96, 61 FR 5295	
Section 3	Specific Criteria for Sources of Particulate Matter.	05/28/99	12/20/02, 67 FR 77926	
Section 4	Specific Criteria for Sources of Sulfur Compounds.	01/09/94	02/12/96, 61 FR 5295	
Section 5	Specific Criteria for Sources of Chemical Emissions.	01/09/94	02/12/96, 61 FR 5295	
Section 6	New Sources	05/28/99	12/20/02, 67 FR 77926	Subsection 2, ''Other Limitations'', and Subsection 3, ''New Source Performance Standards'', are not Federally approved.
Section 7	Exceptions	02/04/72	05/31/72, 37 FR 10875	
Section 9	Stack Height Considerations	05/01/86	09/23/87, 52 FR 35704	
Section 10	Provisions for Upsets, Startups, and Shutdowns.	01/09/94	02/12/96, 61 FR 5295	
Section 11	Severability	01/09/94	02/12/96, 61 FR 5295	
APC–S–2	**Mississippi Commission on Environmental Quality Permit Regulations for the Construction and/or Operation of Air Emissions Equipment**			
Section I	General Requirements	01/09/94	05/02/95, 60 FR 21442	
Section II	General Standards Applicable to All Permits.	01/09/94	05/02/95, 60 FR 21442	
Section III	Standards for Granting a State Permit to Operate An Existing Facility.	01/09/94	05/02/95, 60 FR 21442	
Section IV	Application for Permit to Construct and State Permit to Operate New Facility.	01/09/94	05/02/95, 60 FR 21442	
Section V	Public Participation and Public Availability of Information.	01/09/94	05/02/95, 60 FR 21442	
Section VI	Application Review	01/09/94	05/02/95, 60 FR 21442	
Section VII	Compliance Testing	01/09/94	05/02/95, 60 FR 21442	
Section VIII	Emissions Evaluation Report	01/09/94	05/02/95, 60 FR 21442	
Section IX	Procedures for Renewal of State Permit to Operate.	01/09/94	05/02/95, 60 FR 21442	
Section X	Standards for Renewal of State Permit to Operate.	01/09/94	05/02/95, 60 FR 21442	
Section XI	Reporting and Record Keeping.	01/09/94	05/02/95, 60 FR 21442	
Section XII	Emission Reduction Schedule.	01/09/94	05/02/95, 60 FR 21442	
Section XIII	Exclusions, Variances, and General Permits.	01/09/94	05/02/95, 60 FR 21442.	
Section XIV	Permit Transfer	01/09/94	05/02/95, 60 FR 21442	
Section XV	Severablity	01/09/94	05/02/95, 60 FR 21442	
APC–S–3	**Regulations for Prevention of Air Pollution Emergency Episodes**			
Section 1	General	02/04/72	05/31/72, 37 FR 10875	
Section 2	Definitions	02/04/72	05/31/72, 37 FR 10875	
Section 3	Episode Criteria	06/03/88	11/13/89, 54 FR 47211	
Section 4	Emission Control Action Programs.	02/04/72	05/31/72, 37 FR 10875	
Section 5	Emergency Orders	06/03/88	11/13/89, 54 FR 47211	
APC–S–5	**Regulations for the Prevention of Significant Deterioration of Air Quality**			
All		09/21/96	07/15/97, 62 FR 37724	

(d) EPA approved Mississippi source-specific requirements.

EPA Approved Mississippi Source-Specific Requirements

Name of source	Permit number	State effective date	EPA approval date	Explanation
None				

* * * * *

[FR Doc. 03–6583 Filed 3–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7468–5]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a portion of the former Nansemond Ordnance Depot Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces the deletion of a portion of the former Nansemond Ordnance Depot site (Nansemond) from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the Commonwealth of Virginia have determined that all appropriate responses under CERCLA have been implemented at the portions of the site being deleted from the NPL and that no further response action is appropriate.

EFFECTIVE DATE: March 20, 2003.

ADDRESSES: Comprehensive information on this release is available for viewing at the site information repositories at the following locations:

Tidewater Community College (Frederick Campus) Library, Information Desk, 7000 College Drive, Portsmouth, Virginia 23703. (757) 822–2130. Hours of operation: Monday through Thursday 8 a.m. to 9 p.m., Friday 8 a.m. to 4:30 p.m. and Saturday 9 a.m. to 1 p.m.

U.S. EPA Region III Library, 1650 Arch Street, Philadelphia, PA 19103–2029. (215) 814–5254. Hours of operation: Monday through Friday, 8 a.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Thomson, PE, Remedial Project Manager, U.S. EPA Region III (3HS13), 1650 Arch Street, Philadelphia, PA 19103–2029. (215) 814–3357.

SUPPLEMENTARY INFORMATION:

The portion of the site to be deleted from the NPL is the soil in the Impregnation Kit Area. The Impregnation Kit Area (also known as the ''Impregnite Kit'' or ''XXCC3'' area) is an approximately 300,000 square foot, rectangular area in the southwestern portion of Nansemond, about 1000 feet from the Nansemond River. Only soil in this area is being deleted from the NPL; ground water beneath the Impregnation Kit Area will not be deleted at this time.

A notice of intent to delete this portion of the site was published January 21, 2003 (68 FR 2726). The closing date for comments on the notice of intent to delete was February 20, 2003. EPA received no comments.

EPA identifies releases which appear to present a significant risk to public health, welfare, or the environment, and it maintains the NPL as the list of those releases. Releases on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund. Any release deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: March 7, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to part 300 is amended by revising the entry for VA, Former Nansemond Ordnance Depot, Suffolk to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

St.	Site name	City/county	Notes(a)
*	*	*	*
VA	Former Nansemond Ordnance Depot	Suffolk	P

(a) * * *

P = Sites with partial deletion(s).

[FR Doc. 03–6459 Filed 3–19–03; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1817

RIN 2700–AC33

Interagency Acquisitions—Authority for Use

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) to specify that the Space Act is the authority for all NASA interagency acquisitions except those acquired under the authority of the Inspector General Act of 1978 for the NASA Office of the Inspector General. This final rule further specifies that the requirements of the Economy Act will be applied to these acquisitions as a matter of policy. These changes will ensure greater clarity regarding the source and application of NASA's authority for interagency acquisitions.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Lou Becker, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, telephone: (202) 358–4593, e-mail to: *lbecker@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

FAR Subpart 17.5 as supplemented by NFS 1817.5 addresses interagency acquisitions under the Economy Act (31 U.S.C 1535). NFS 1817.72 addresses interagency acquisitions under the Space Act. NFS guidance is not clear on when the Economy Act or Space Act should be used as the authority for an interagency acquisition. Additionally, NFS guidance does not address interagency acquisition authority under the Inspector General Act of 1978 (5 U.S.C. Appendix III). FAR 17.500(b) states that the Economy Act applies when more specific statutory authority does not apply. The Space Act is a more specific authority and should be used as the authority for all NASA interagency acquisitions except those acquired under the authority of the Inspector General Act. This final rule revises the NFS to specify that the Inspector General Act is the authority for interagency acquisitions for the NASA Office of Inspector General and that the Space Act is the authority for all other NASA interagency acquisitions. However, it is NASA policy to apply the requirements of the Economy Act to its interagency acquisitions. This final rule makes clear that interagency acquisitions shall conform to the requirements of the Economy Act.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it only clarifies the authority used by NASA for interagency acquisitions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose new recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1817

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR 1817 is amended to read as follows:

1. The authority citation for 48 CFR part 1817 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1817—SPECIAL CONTRACTING METHODS

2. Add section 1817.500 to read as follows:

1817.500 Scope of subpart.

(b) *See* 1817.72.

3. Remove sections 1817.503 and 1817.504.

4. Revise section 1817.7201 to read as follows:

1817.7201 Policy.

The Space Act (42 U.S.C. 2473) applies to NASA interagency acquisitions except those for the NASA Office of Inspector General acquired under the authority of the Inspector General Act of 1978 (5 U.S.C. Appendix III). NASA has elected to conform its implementation of the Space Act and the Inspector General Act to the requirements of the Economy Act (*see* FAR 17.5).

5. Add sections 1817.7202 and 1817.7203 to read as follows:

1817.7202 Determinations and findings requirements.

(a) Interagency acquisitions shall be supported by a Determination and Finding (D&F) equivalent to that required for Economy Act transactions (*see* FAR 17.503). This requirement applies to all purchases of goods or services under contracts entered into or administered by agencies other than NASA including the Military Departments. The Space Act shall be cited as authority for all NASA interagency acquisitions except that the Inspector General Act shall be cited as the authority for interagency acquisitions for the NASA Office of Inspector General.

(b) To satisfy the D&F requirement identified in FAR 17.503(a)(2), current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.201 may be used to ascertain whether the acquisition can be accomplished more economically from commercial sources.

(c) The determination described in paragraph (a) of this section is not required for contracts awarded under the Space Act to Government agencies pursuant to a Broad Agency Announcement when a review of the acquisition records would make it obvious that the award is not being used as a method of circumventing regulatory or statutory requirements, particularly FAR part 6, Competition Requirements (*e.g.*, when a significant number and value of awards made under the BAA are made to entities other than Government agencies).

(d) All D&F's for a servicing agency not covered by the FAR shall be approved by the Assistant Administrator for Procurement.

1817.7203 Ordering procedures.

To satisfy the ordering procedures in 17.504(b)(4), all payment provisions shall require the servicing agency or department to submit a final voucher, invoice, or other appropriate payment document within six months after the completion date of the order. A different period may be specified by mutual agreement if six months is not sufficient.

[FR Doc. 03–6704 Filed 3–19–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 021212307–3037–3037–02; I.D. 031303B]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher/processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2003 total allowable catch (TAC) of Pacific cod allocated for catcher/processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 15, 2003, until 2400 hrs, A.l.t., June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2003 Pacific cod TAC allocated to catcher/processor vessels using hook-and-line gear in the BSAI was established as a directed fishing allowance of 46,747 metric tons by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003). See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2003 Pacific cod TAC allocated as a directed fishing allowance to catcher/processor vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the A season apportionment, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 14, 2003.

Richard W. Surdi,

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

[FR Doc. 03–6715 Filed 3–17–03; 1:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 54

Thursday, March 20, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–1C]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Continuance Referendum; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order; correction.

SUMMARY: This document contains two corrections to the referendum order published in the **Federal Register** on March 3, 2003 (68 FR 9944), concerning tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. This action corrects the referendum period and the date by which ballots must be postmarked to be considered valid listed in the **SUPPLEMENTARY INFORMATION** section. The referendum period is from March 17 through 28, 2003, and the date by which ballots must be postmarked to be considered valid is March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, Room 2A38, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, UT 84532; telephone: (435) 259–7988, Fax: (435) 259–4945.

SUPPLEMENTARY INFORMATION:

Background

A referendum order published in the **Federal Register** on March 3, 2003, (68 FR 9944) directed that a continuance referendum be conducted among eligible growers and processors of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin to determine whether they favor continuance of the marketing order regulating the handling of tart cherries grown in the production area. The referendum order was issued under Marketing Order No. 930, as amended (7 CFR Part 930). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Need for Correction

As published, the referendum period and date by which ballots must be postmarked to be considered valid in the **SUPPLEMENTARY INFORMATION** section are incorrect.

Correction of Publication

Accordingly, the **SUPPLEMENTARY INFORMATION** section in the publication of the referendum order (Docket No. FV03–930–1) is corrected as follows:

1. On page 9944, column 2, line 13, the dates ''March 10 through March 21, 2003'' is corrected to read ''March 17 through 28, 2003.''

2. On page 9944, column 3, line 9, the date ''March 21, 2003'' is corrected to read ''March 28, 2003.''

Dated: March 14, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–6666 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 24

RIN 1515–AC93

Patent Surveys

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to eliminate patent surveys. After careful review, Customs questions the worthiness of continuing the patent survey program given lack of demand for the program, stemming in part from the program's apparent lack of effectiveness within the current statutory scheme, and other changed circumstances.

DATES: Written comments must be received on or before May 19, 2003.

ADDRESSES: Written comments may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, Washington, DC, during regular business hours. Arrangements to inspect comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: George McCray, Branch Chief, Intellectual Property Rights Branch (202) 927–2330.

SUPPLEMENTARY INFORMATION:

Background

Under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337; hereafter, section 1337), concerning unfair practices in import trade, it is unlawful to, among other things, import merchandise into the United States that infringes a valid and enforceable United States patent. Under the statute, the International Trade Commission (the Commission), after conducting a proper investigation, is authorized to exclude patent-infringing merchandise from entry into the United States. (19 U.S.C. 1337(a)(1)(B)(i) and 19 U.S.C. 1337(d).) The statute also authorizes the Commission, under certain circumstances, to issue cease and desist orders, impose civil penalties, and order seizure and forfeiture relative to unlawful acts under the statute.

Customs plays a supporting role with respect to patent infringement cases under section 1337. For example, where the Commission has determined that merchandise infringes a patent and has ordered that the patent-infringing merchandise be excluded from entry, Customs will refuse entry of the merchandise covered by the order after notification by the Commission (see 19 CFR 12.39). In addition to enforcing Commission exclusion orders, Customs enforces Commission seizure/forfeiture orders (19 U.S.C. 1337(i)(2)) and certain court orders.

Patent Surveys

In 1956, while under no statutory mandate to do so, Customs promulgated

a regulation designed to assist patent holders in obtaining information they would need to seek action by the Commission under section 1337. In Treasury Decision (T.D.) 54087, published in the **Federal Register** (21 FR 3267) on May 18, 1956, Customs amended § 24.12(a) of the Customs Regulations by adding paragraph (3), under which Customs would issue the names and addresses of importers of articles appearing to infringe a registered patent. The T.D. explained that the purpose of the new provision was to assist the owner of a registered patent in obtaining data upon which to file a complaint under section 1337 charging unfair methods of competition and unfair acts in the importation of merchandise infringing the patent. The provision required an application by the patent owner and set forth appropriate fees.

In T.D. 56137, published in the **Federal Register** (29 FR 4909) on April 8, 1964, Customs amended Part 12 of the regulations to add new section 12.39a to prescribe the procedure and requirements for obtaining the names and addresses of importers of merchandise appearing to infringe a patent (thereby transferring authority for the procedure from § 24.12(a)(3)). The new section referred to the procedure as a patent survey and provided patent survey requestors three survey period options varying in length of time: 2, 4, and 6 months. The fees for patent surveys remained under § 24.12(a)(3).

Changed Circumstances

Over the years, Customs has continued to perform patent surveys under § 12.39a, but changed circumstances call into question the effectiveness of the patent survey process and the ability of Customs to continue to provide the manpower and resources required. Customs, therefore, has had to reconsider the viability of the program.

In 1956, when the above mentioned program was introduced, Customs processed just over a million entries. Because the volume of imports has exploded since 1956, Customs now receives over 23 million entries per year (based on 2001 statistics). At the same time, as a result of subsequent changes in Customs law and practice, the old system in which Customs officers were responsible for completing the processing of each entry has been replaced with what, in practice, is a self-assessment system based on electronic reporting without paper invoices.

Effectiveness of the Patent Survey Program

The patent survey seeks to identify importers who may be importing merchandise that appears to infringe a patent. After initial approval of a survey request (application), Customs determines which tariff provisions may apply to particular patented merchandise, a task complicated by the fact that patented articles are often new or novel commodities. Often, these identified tariff provisions are broad or basket provisions, with the broad provisions covering several similar articles and the basket provisions covering a wide breadth of articles that do not fit under more specific subheadings. Thus, searching for merchandise that appears to infringe the patent often produces overbroad results. These overbroad results lead to identifying importers who in fact do not import merchandise appearing to infringe the patent at issue. These searches are of questionable value to the patent owner and do not produce results that justify the required use of Customs resources.

Further evidence of the limited value of the patent survey program is demonstrated by the fact that Customs processes relatively few patent survey requests (although not a data element routinely tracked, research indicates about 10 requests processed per year). While the survey requests received present the problems discussed in this document (time-consuming process, overbroad results, questionable value of results, competing mission priorities), their few number call into question the value of the program. A greater number of survey requests would suggest a greater need among the importing public and a more legitimate basis for Customs investment of time and effort. The apparent lack of need is another reason to discontinue the program.

Unappealing Options

Customs recognizes that today it faces a situation with unappealing options. Recognizing the ineffectiveness of the program and the lack of demand suggests discontinuing the program. Making the program more effective, in the hope of generating new demand, would require the commitment of scarce resources. Moreover, Customs would have to increase the cost of patent surveys dramatically to cover the expense of a stepped up program. Customs believes that intensifying the program is not possible operationally or economically.

The Statute—19 U.S.C. 1337

Finally, Customs notes that section 1337 does not mandate that Customs perform patent surveys. An examination of the general scheme of section 1337 shows that the statute places primary authority in the Commission, rather than Customs, to enforce its provisions. The Commission is charged with the responsibility to conduct investigations and make determinations regarding violations and sanctions under the statute. Customs is not authorized to take any action regarding apparently patent-infringing merchandise without the Commission first taking action or without receiving a notice, request, or instruction from the Commission, a clearly secondary role.

Thus, the promulgation of Customs patent survey regulation (first in § 24.12(a)(3) and then in § 12.39a), though intended to support section 1337, is not rooted in explicit statutory authority. Rather, the regulatory program was initiated in the exercise of agency discretion under the general authority of 19 U.S.C. 66 and 1624.

Conclusion

Based on all the foregoing that calls into question the continued viability of the Customs patent survey program under § 12.39a, for reasons relating to effectiveness of the program, burden on Customs manpower and systems, the impracticality of intensifying the program, and ambiguous statutory authority, Customs is considering discontinuing the program. Thus, this document proposes removing § 12.39a from the Customs Regulations and making conforming changes to § 24.12(a) by removing paragraph (3).

Comments

Before adopting as final the proposed removal of § 12.39a, consideration will be given to any written comments timely submitted to Customs. Customs requests that commenters opposed to removal of the regulation include in their comments suggestions to maintain the patent survey program that address Customs concerns regarding the program's effectiveness. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4:30 p.m. at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. Arrangements to inspect submitted comments should be made in advance

by calling Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the amendments to the Customs Regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. The regulation would merely discontinue the patent survey procedure. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects

19 CFR Part 12

Entry of merchandise, Customs duties and inspection, Fees assessment, Imports, Patents, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Fees, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, Parts 12 and 24 of the Customs Regulations (19 CFR Parts 12 and 24) are proposed to be amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66; 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

2. It is proposed to amend Part 12 by removing § 12.39a.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 31302;

* * * * *

2. It is proposed to amend § 24.12 by removing paragraph (a)(3).

Robert C. Bonner,

Commissioner of Customs.

Approved: February 28, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6756 Filed 3–19–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

RIN 1515–AC44

Importation and Entry Bond Conditions Regarding Other Agency Documentation Requirements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document informs the public that Customs has decided to withdraw a proposal to amend the Customs Regulations regarding the bond condition on the basic entry and importation bond requiring the principal to furnish Customs with any document or evidence required to be submitted to Customs by law or regulation. The proposal would have expanded this bond condition to require the principal to furnish to other Government agencies any document or evidence required in connection with the importation/entry process required to be submitted to those agencies under the laws or regulations of those agencies.

DATES: As of March 20, 2003, the proposed rule published on August 6, 1999 (64 FR 42872) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202) 572–8750.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, Customs published a document in the **Federal Register** (64 FR 42872) proposing to amend the Customs Regulations pertaining to the basic importation and entry bond condition under which, if merchandise is conditionally released to the principal named in the bond, the principal agrees to furnish Customs with any document or evidence as required by law or regulation. The proposed amendment would have extended this requirement, and consequently the potential liability for payment of liquidated damages for a breach of the bond condition, to documents and evidence required to be submitted to other Government agencies under laws and regulations of those other agencies.

The impetus for the proposal was that another agency asked Customs whether the Customs bond could be used to provide a consequence for the failure to provide a specific document to that agency when that agency required the document upon the importation of certain articles. Rather than issuing a narrow proposed rule governing the presentation of the specific document, Customs proposed to amend the provisions of the basic importation and entry bond to allow for the assessment of liquidated damages if there is a failure to provide any document to other Government agencies in the time period prescribed under the laws and regulations of those other agencies.

Comments on the proposed amendment to the Customs Regulations were solicited.

Customs received six comments on the proposed amendment to the regulation. All of the comments were strongly opposed to the implementation of the proposed amendment. They stated that the proposed amendment was far too broad and that it allowed for liquidated damages for unidentified violations of unknown laws administered by unknown agencies.

Customs has carefully considered the comments received, further reviewed the matter, and agrees with the commenters. Accordingly, Customs is withdrawing the proposal it published on August 6, 1999.

Robert C. Bonner,

Commissioner of Customs.

Approved: February 25, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–6758 Filed 3–19–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 02N–0500]

General and Plastic Surgery Devices; Classification of Silicone Sheeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify silicone sheeting intended to manage hyperproliferative (hypertrophic and keloid) scars on intact skin into class I (general controls) and to exempt the device from premarket notification. The agency is publishing the recommendation of the General and Plastic Surgery Devices Panel (the Panel) regarding the classification of this device. After considering public comments on the proposed classification, FDA will publish a final regulation classifying this device. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of this device. This action is taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Devices User Fee Modernization Act (MDUFMA).

DATES: Submit written or electronic comments by June 18, 2003. See section XI of this document for the proposed effective date of a final rule based on this document.

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: Sam R. Arepelli, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendements devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

A device that was not in commercial distribution before May 28, 1976, generally referred to as postamendments device, is classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807.

A preamendments device that has been classified into class III may be marketed, by means of the premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval).

In the **Federal Register** of June 24, 1988 (53 FR 23856), FDA published a final rule classifying most general and plastic surgery devices. At that time, FDA was not aware that silicone sheeting intended to manage hyperproliferative scars was a preamendments device and inadvertently omitted classifying it. Consistent with the act and the regulations, FDA consulted with the Panel, an FDA advisory committee, regarding the classification of this device.

FDAMA added a new section 510(1) to the act. New section 510(1) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as ''reserved criteria.'' The general exemption for class I devices permits manufacturers to introduce certain generic types of devices into commercial distribution without first submitting a premarket notification to FDA.

II. Device Description

FDA is proposing the following device description based on the Panel's recommendations and the agency's review: Silicone sheeting is intended to manage hyperproliferative (hypertrophic and keloid) scars on intact skin.

III. Recommendation of the Panel

In a public meeting held on July 8, 2002, the Panel voted (six to zero with one abstention) to recommend that silicone sheeting intended to manage hyperproliferative scars on intact skin be classified into class I (Ref. 1). The Panel also believed that the device meets the reserved criteria of new section 510(1) of the act and should require premarket notification. The Panel also recommended prescription use of the device.

IV. Summary of Reasons for the Recommendation

The Panel concluded that the safety and effectiveness of silicone sheeting intended to manage hyperproliferative scars on intact skin could be reasonably assured by general controls. Specifically, the Panel believed that the safety and effectiveness of the device can be reasonably assured by: (1) Registration and listing (section 510 of the act), (2) good manufacturing practices requirements (section 520(f) of the act (21 U.S.C. 360j(f)), (3) premarket notification (section 510(k) of the act), and (4) general requirements concerning reports (21 CFR 820.120) and complaint files (21 CFR 820.198).

V. Risks to Health

The Panel identified no risks to health associated with the use of silicone sheeting intended to mange hyperproliferative scars. They noted that the device is intended for use on intact skin and commented that no allergic reactions are associated with its use.

VI. Summary of the Data Upon Which the Proposed Recommendation is Based

The Panel based its recommendation on the information provided by FDA, the presentations made by manufacturers and FDA at the Panel meeting, the open discussion during the Panel meeting, and the Panel members' personal knowledge of and clinical experience with the device.

VII. FDA's Tentative Findings

FDA tentatively agrees with the recommendation of the Panel that silicone sheeting intended to manage hyperproliferative scars on intact skin should be classified into class I because the agency believes that sufficient information exists to determine that general controls would provide reasonable assurance of safety and effectiveness.

FDA tentatively disagrees with the recommendation of the Panel that silicone sheeting meets the reserved criteria of new section 510(1) of the act and that it should be a prescription device. FDA does not believe that the device is of substantial importance in preventing impairment of human health or that it presents a potential unreasonable risk of illness or injury, and therefore has determined that it should be exempt from premarket notification. FDA also has determined that prescription use of the device is unnecessary.

FDA notes that four wound dressing products that are intended to cover wounds on non-intact skin currently are adequately regulated as class I devices that are exempt from premarket notification procedures and as nonprescription use devices. These devices are the nonresorbable gauze/sponge for external use (21 CFR 878.4014), the hydrophilic wound dressing (21 CFR 878.4018), the occlusive wound dressing (21 CFR 878.4020), and the hydrogel wound and burn dressing (21 CFR 878.4022). Because silicone sheeting is intended for use on intact skin, the agency believes that the same regulatory control that reasonably assures the safety and effectiveness of these four wound dressings intended for use on non-intact skin, i.e., regulation as a nonprescription use class I device exempt from premarket notification, is adequate to reasonably assure the safety and effectiveness of silicone sheeting. Therefore, the agency is proposing that silicone sheeting intended to manage hyperproliferative scars on intact skin be classified into class I and that it be exempt from premarket notification.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As noted previously, FDA may classify devices into one of three regulatory classes according to the degree of control needed to provide reasonable assurance of safety and effectiveness. FDA is proposing that this device be classified into class I, the lowest level of control allowed. In addition, FDA is proposing to exempt it from premarket notification requirements. The agency, therefore, certifies that this proposed rule will not have a significant impact on a substantial number of small entities. In addition, it will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

X. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

XI. Submission of Comments and Proposed Dates

You may submit to the Dockets Management Branch written or electronic comments regarding this proposal. You must submit two copies of any mailed comments, except that individuals may submit one copy. You should identify comments with the docket number found in brackets in the heading of this document. Comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA proposes that any final rule that may issue based on this proposal become effective 90 days after its date of publication in the **Federal Register**.

XII. Reference

The following reference has 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. General and Plastic Surgery Devices Panel, meeting transcript, pp. 1–82, July 8, 2001.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 878 be amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.4025 is added to subpart E to read as follows:

§ 878.4025 Silicone sheeting.

(a) *Identification*. Silicone sheeting is intended to manage hyperproliferative (hypertrophic and keloid) scars on intact skin.

(b) *Classification*. Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 878.9.

Dated: December 24, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–6646 Filed 3–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–02–054]

RIN 1625–AA09 [Formerly 2115–AE47]

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard has revised its proposal to change the operating regulations that govern the Route 70 Bridge across the Manasquan River. The revised proposal would change the regulation with a new provision to limit the required openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays. This proposed change is intended to reduce traffic delays while still providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before May 19, 2003.

ADDRESSES: You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398–6222. Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Waverly Gregory, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD05–02–054), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

On September 12, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Manasquan River, New Jersey'' in the **Federal Register** (67 FR 57773). We received 14 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Route 70 Bridge is a movable bridge (single-leaf bascule) owned and operated by the New Jersey Department of Transportation (NJDOT) connecting the Borough of Point Pleasant and Brick Township in Ocean County with Brielle Borough and Wall Township in Monmouth County. Currently, 33 CFR 117.727 requires the draw of the Route 70 Bridge, mile 3.4 at Riviera Beach, to open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m. In the closed position to vessels, the bridge has a vertical navigation clearance of 15 feet at mean high water.

On behalf of residents and business owners in the area, NJDOT requested changes to the existing regulations for the Route 70 Bridge in an effort to balance the needs of mariners and vehicle drivers transiting in and around this seaside resort area. Route 70 is a principal arterial highway that serves as a major evacuation route in the event of tidal emergencies. Bridge openings at peak traffic hours during the tourist season often cause considerable vehicular traffic congestion while accommodating relatively few vessels. To ease traffic congestion, NJDOT requested that the movement of marine traffic be regulated. The Coast Guard reviewed NJDOT yearly drawbridge logs for 1999, 2000, and 2001. The logs revealed that the bridge opened for vessels 1028, 1026, and 1020 times, respectively. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened 750, 792 and 794 times, respectively. NJDOT contended that with an average of only five openings per day during the prime boating period vessel traffic through the bridge is minimal. Also, NJDOT officials, residents and business owners pointed out that from 4 p.m. to 7 p.m. on Fridays, vehicular traffic congestion is at its peak. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened from 4 p.m. to 7 p.m. on Fridays 36, 35, and 26 times, respectively. The Coast Guard believed based on the minimal number of openings identified by the bridge logs, that the initial proposal limiting the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and implementing closure periods from 4 p.m. to 7 p.m. on Fridays would more fairly balance the competing needs of vehicular and vessel traffic. However, the Coast Guard received 14 comments on the NPRM, most suggesting additional changes to the proposed regulations. After further review of the bridge logs, the Coast Guard has determined that since vessel use year-round is relatively low, an alternative proposal should be considered.

Discussion of Comments and Changes

The Coast Guard received 14 comments on the NPRM. Eleven letters supported the proposed changes to the regulations, two responses opposed the proposed changes and another comment suggested a height restriction placed on vessels that travel under the bridge.

Of the 11 letters supporting the proposed changes to the regulations, five letters went further in asking to extend the suggested closure periods on Fridays from 4 p.m. to 7 p.m. to include Monday through Thursday; two letters supported the proposal without changes; one comment requested

commuter hours from 6:30 a.m. to 8:30 a.m. and 5 p.m. to 7 p.m.; one comment requested closure periods of the bridge on all days between 5 p.m. and 7 p.m.; and another letter considered operating the bridge to open hourly from 8 a.m. to 4 p.m. during the months of March, April, October and November and only open with a 24-hour advance notice during December, January and February. Two comments, one from the U.S. Fish and Wildlife Service and the other from the New Jersey Historic Preservation Office, had no objection to the issuance of the proposed regulations.

Two of the remaining three comments opposed the proposed changes to the regulations and one had no opinion to the proposed regulation. One comment from a yacht club stated that their membership objects to any changes to the proposed regulations for the following reasons: safety, the environment and liability losses. Another comment suggested a reduction of the bridge closure period to 5 p.m. to 7 p.m., especially if done five days a week, and emergency openings for boater safety. The Coast Guard responded to this comment in writing and indicated that in the event of marine emergency 33 CFR 117.31(b) provides for unscheduled openings of the bridge. The last comment requested a height restriction placed on vessels with lowerable appurtenances (*i.e.* antennas etc.,) that transit under the bridge. All comments and the Coast Guard's written response to those comments are contained in the docket.

Based on these comments the Coast Guard conducted further review of the proposal. Further review of the bridge logs reveal from 1999 through 2001, the bridge opened year-round from 4 p.m. to 7 p.m., Mondays through Thursdays, 72, 73, and 60 times respectively. In view of these statistics, the Coast Guard is proposing a different change to the regulation by scheduling the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and with closure periods year-round from 4 p.m. to 7 p.m. Mondays to Fridays. These changes would enhance vehicular traffic without significantly affecting vessel traffic. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that the revised proposal will more fairly balance the needs of vehicular and vessel traffic.

Discussion of Proposal

On September 12, 2002, the Coast Guard issued a NPRM proposing to amend 33 CFR 117.727 by inserting a provision to schedule the required openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. on Fridays.

Upon receiving comments to this proposal and further reviewing the bridge logs, the Coast Guard now proposes to amend 33 CFR 117.727 by inserting a new provision to limit the required openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

We reached this conclusion based on the fact that the supplemental proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to further minimize delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this supplemental proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The supplemental proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this supplemental proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have any questions concerning its provisions or options for compliance, please contact Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

Collection of Information

This supplemental proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this supplemental proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This supplemental proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This supplemental proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this supplemental proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This supplemental proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how this to best carry out the Order. We invite your comments on how this supplemental proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this supplemental proposed rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.727 is revised to read as follows:

§ 117.727 Manasquan River.

The draw of the Route 70 Bridge, mile 3.4, at Riviera Beach, shall open on signal on the hour, except that from 4 p.m. to 7 p.m. Monday through Friday and from 11 p.m. to 7 a.m., every day the draw need not be opened.

Dated: February 24, 2003.

Arthur E. Brooks,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 03–6638 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–02–104]

RIN 1625–AA00, AA11

Regulated Navigation Areas, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area (RNA) and two safety and security zones. The rule would regulate the circumstances under which certain vessels may enter, transit or operate within the RNA and would exclude all vessels from operating within the prescribed safety and security zones without first obtaining authorization from the Captain of the Port. This action is necessary to ensure public safety and prevent sabotage or other subversive acts.

DATES: Comments and related material must reach the Coast Guard on or before May 19, 2003.

ADDRESSES: You may mail comments and related material to Waterways Management, Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Coast Guard Group/MSO Long Island Sound maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–104), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to Coast Guard Group/Marine Safety Office Long Island Sound at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts

and flown into the World Trade Center in New York, NY inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks are likely.

Vessels operating within the Long Island Sound Marine Inspection and Captain of the Port (COTP) Zone present potential targets of terrorist attack or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. Following the September 11 attacks, we published a temporary rule (67 FR 517–520, January 4, 2002) that established a temporary RNA and safety and security zones in the Long Island Sound Marine Inspection and COTP Zone. We twice revised the temporary rule (67 FR 40859–40861, June 14, 2002 and 67 FR 69134, November 15, 2002) to extend its effective period to March 15, 2003. These temporary measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts while we assessed the security environment within the area and determined the need for and advisability of permanent security measures.

The Coast Guard now proposes to establish a permanent RNA and safety and security zones within Long Island Sound as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. The proposed permanent RNA incorporates the provisions of the temporary RNA that have been in place since January 4, 2002, and expands the operating requirements for vessels within the RNA. The Coast Guard also proposes to establish two permanent safety and security zones. The zones have been tailored to fit the needs of security, while minimizing the impact on the maritime community.

Discussion of Proposed Rule

Regulated Navigation Area

The rule would establish an RNA comprised of the waters of the Long Island Sound Marine Inspection and COTP zone, as defined in 33 CFR 3.05–35, extending seaward 12 nautical miles from the territorial sea baseline. Under the regulations established in this RNA, certain vessels would be required to obtain authorization from the COTP before crossing within three nautical miles of the territorial sea baseline from any southern or eastern approach, except in innocent passage. This three-mile limit is depicted on National Oceanic and Atmospheric Administration (NOAA) nautical charts, including chart numbers 13205, 12353, and 12326. In order to obtain authorization, a vessel subject to this rule may be required to undergo a port security inspection to the satisfaction of the COTP. Vessels awaiting a port security inspection or COTP authorization to enter waters within three nautical miles from the territorial sea baseline would be required to anchor in the manner directed by the COTP.

All vessels over 1,600 gross tons operating inside the line extending seaward three nautical miles from the territorial sea baseline would be required to receive authorization from the COTP prior to transiting or any intentional vessel movements, including, but not limited to, shifting berths, departing anchorage, or getting underway from a mooring. This requirement enables the COTP to maintain control over the movement of vessels that pose a potential threat to other vessels, waterfront facilities and adjacent population centers. The COTP could authorize a vessel subject to this rule to enter a port or place within the RNA under such circumstances and conditions as deemed appropriate to minimize the threat of injury to the vessel, the port, waterfront facilities or adjacent population centers resulting from sabotage or terrorist acts launched against or from the vessel.

Vessels 300 gross tons or greater may not transit at a speed in excess of 8 knots through the Lower Thames River from New London Harbor channel buoys 7 and 8 (Light List numbers 21875 and 21880 respectively) north through the upper limit of the Naval Submarine Base New London Restricted Area, established in 33 CFR 334.75(a). This speed restriction does not apply to ''public vessels'', which are defined as vessels owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce. Prior to entering waters within a 1200 yard perimeter surrounding any ferry vessel, commercial vessels 300 gross tons or more will be required to obtain the permission of the ferry vessel licensed operator, licensed master, or designated COTP on scene patrol. Ferry means a vessel that: (a) Operates in other than ocean or coastwise service; (b) has provisions only for deck passengers or vehicles, or both; (c) operates on a short run on a frequent schedule between two points over the most direct water route; and (d) offers a public service of a type normally attributed to a bridge or tunnel.

No vessel, irrespective of size, may enter within a 100-yard radius of any commercial vessel transiting, moored, or berthed in any portion of the Marine Inspection and COTP zone, Long Island Sound, without the express prior authorization of the vessel operator, master, or a designated COTP on-scene representative. For purposes of this regulation, a commercial vessel is any vessel in commercial service. A vessel in commercial service means any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel. However, this rule does not abrogate a vessel's duty to comply with applicable navigation rules at all times. In addition, when passing under a bridge, all vessels, irrespective of size, must stay in the navigable channel, and must not approach within a 25-yard radius of any bridge foundation, support, stanchion, pier or abutment, except for the purpose of immediate passage under the bridge. Vessels may not stop or anchor under any bridge, and may transit beneath a bridge only for the purpose of direct, immediate and expeditious passage under the bridge.

Safety and Security Zones

This proposed rule would establish two permanent safety and security zones. The proposed Millstone Nuclear Power Plant safety and security zones include (a) all waters north and north east of a line running from Bay Point, at approximate position 41–18.57 N, 072–10.41 W, to Millstone Point at approximate position 41–18.25 N, 072–09.96 W and (b) all waters west of a line starting at 41–18.700 N, 072–09.650 W, running south to the eastern most point of Fox Island at approximate position 41–18.400 N, 072–09.660 W. All coordinates are North American Datum (NAD) 1983. The second proposed safety and security zones would include all waters within a 100-yard radius of any anchored Coast Guard vessel. For purposes of this section, Coast Guard vessels include any commissioned vessel or small boat in the service of the regular Coast Guard, and do not include Coast Guard Auxiliary vessels. Each of the proposed zones is necessary to protect the facility, structure or vessel around which it is drawn from subversive or terrorist acts.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the COTP. Each person or vessel in a safety or security zone shall obey any direction or order of the COTP. The

COTP may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the COTP.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225, and 1226, and the regulations promulgated thereunder.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: there is ample room for vessels to navigate around each of the safety and security zones; it is contemplated that vessels will be able to operate elsewhere within the RNA once the Captain of the Port has determined that the vessels do not pose a threat to individuals, other vessels or waterfront facilities; to the extent that the proposed rule tracks the provisions of temporary rules that have been in place since January 4, 2002, our experience demonstrates that it not be burdensome on the maritime public; and the local maritime community will be informed of the zones via marine information broadcasts. While recognizing the potential for some minimal impact from the proposed rule, the Coast Guard considers it de minimus in comparison to the compelling national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of Long Island Sound and the Thames River covered by the RNA and/or safety and security zones.

This proposed rule would not have a significant impact on a substantial number of small entities because the safety and security zones are limited in size, leaving ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and mariners will be notified of the proposed zones via local notice to mariners and marine broadcasts. Also, the Captain of the Port will make broad allowances for individuals to enter the zones during periods when the potential threats to the area are deemed to be low. The regulations imposed under the RNA will impact a minimal number of commercial and recreational vessels, as several of the regulations only apply to large commercial vessels. The regulated areas around ferry and commercial vessels will minimally impact vessels to whom these regulations apply while waiting for authorization to enter the regulated area from the licensed operator, licensed master, or the designated COTP on-scene patrol. Moreover, the ferry vessel regulated navigation area only applies to vessels of 300 gross tons or greater; the 100 yard regulated navigation area around commercial vessels leaves ample room for vessels to navigate outside of this area. To the extent that the proposed rule tracks the provisions of temporary rules that have been in place since January 4, 2002, our experience demonstrates that it has not been burdensome on the maritime public.

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

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.153 to read as follows:

§ 165.153 Regulated Navigation Area: Long Island Sound Marine Inspection and Captain of the Port Zone.

(a) *Regulated Navigation Area location.* All waters of the Long Island Sound Marine Inspection and Captain of the Port (COTP) Zone, as delineated in 33 CFR 3.05–35, extending seaward 12 nautical miles from the territorial sea baseline, are established as a regulated navigation area (RNA).

(b) *Applicability.* This section applies to all vessels operating within the RNA excluding public vessels. For purposes of this section, ''public vessels'' are defined as vessels owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(c) *Definitions.* The following definitions apply to this section:

(1) Commercial service means any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(2) Ferry means a vessel that:

(i) Operates in other than ocean or coastwise service;

(ii) Has provisions only for deck passengers or vehicles, or both;

(iii) Operates on a short run on a frequent schedule between two points over the most direct water route; and

(iv) Offers a public service of a type normally attributed to a bridge or tunnel.

(3) Public vessels means vessels owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(d) *Regulations.* (1) Speed restrictions in the vicinity of Naval Submarine Base New London and Lower Thames River. Unless authorized by the Captain of the Port (COTP), vessels of 300 gross tons or more may not proceed at a speed in excess of eight knots in the Thames River from New London Harbor channel buoys 7 and 8 (Light List numbers 21875 and 21880 respectively) north through the upper limit of the Naval Submarine Base New London Restricted Area, as that area is specified in 33 CFR 334.75(a). The U.S. Navy and other Federal, State and municipal agencies may assist the U.S. Coast Guard in the enforcement of this rule.

(2) Enhanced Communications. Vessels of 300 gross tons or more must issue securite calls on marine band or Very High Frequency (VHF) radio channel 16 upon approach to the following locations:

(i) Inbound approach to Cerberus Shoal; and

(ii) Outbound approach to Race Rock Light (USCG Light List No. 19815).

(3) All inbound vessels, except those in innocent passage, operating within the RNA must be inspected to the satisfaction of the U.S. Coast Guard and must obtain authorization from the Captain Of the Port (COTP) before entering waters within three nautical miles from the territorial sea baseline. Vessels awaiting inspection or COTP authorization to enter waters within three nautical miles from the territorial sea baseline will be will be required to anchor in the manner directed by the COTP. This regulation does not apply to vessels operating exclusively within the Long Island Sound Marine Inspection and COTP Zone, vessels on a single voyage which depart from and return to the same port or place within the RNA, primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo, and recreational vessels.

(4) Vessels over 1,600 gross tons operating in the RNA within three

nautical miles from the territorial sea baseline must receive authorization from the COTP prior to transiting or any intentional vessel movements, including, but not limited to, shifting berths, departing anchorage, or getting underway from a mooring.

(5) Ferry Vessels. Vessels of 300 gross tons or more are prohibited from entering all waters within a 1200 yard radius of any ferry vessel transiting in any portion of the Long Island Sound Marine Inspection and COTP Zone without first obtaining the express prior authorization of the ferry vessel licensed operator, licensed master, or the designated COTP on-scene patrol.

(6) Commercial vessels. No vessel may enter within a 100-yard radius of any vessel in commercial service transiting, moored, or berthed in any portion of the Long Island Sound Marine Inspection and COTP zone, without the express prior authorization of the vessel's licensed operator, master, or the designated COTP on-scene representative.

(7) Bridge foundations. Any vessel operating beneath a bridge must make a direct, immediate and expeditious passage beneath the bridge while remaining within the navigable channel. No vessel may stop, moor, anchor or loiter beneath a bridge at any time. No vessel may approach within a 25-yard radius of any bridge foundation, support, stanchion, pier or abutment except as required for the direct, immediate and expeditious transit beneath a bridge.

(8) This rule does not relieve any vessel from compliance with applicable navigation rules.

3. Add § 165.154 to read as follows:

§ 165.154 Safety and Security Zones: Long Island Sound Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones.* The following areas are safety and security zones:

(1) Millstone Nuclear Power Plant Safety and Security Zones:

(i) All waters north and north east of a line running from Bay Point, at approximate position 41–18.57 N, 072–10.41 W, to Millstone Point at approximate position 41–18.25 N, 072–09.96 W.

(ii) All waters west of a line starting at 41–18.700 N, 072–09.650 W, running south to the eastern most point of Fox Island at approximate position 41–18.400 N, 072–09.660 W. All coordinates are North American Datum 1983.

(2) Coast Guard Vessels Safety and Security Zones: All waters within a 100-yard radius of any anchored Coast Guard vessel. For the purposes of this section, Coast Guard vessels includes any commissioned vessel or small boat in the service of the regular Coast Guard and does not include Coast Guard Auxiliary vessels.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Long, Island Sound.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 5, 2003.

Vivien S. Crea,

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

[FR Doc. 03–6642 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–023]

RIN 1625–AA00

Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes revising the established safety zone at the Cove Point Liquefied Natural Gas (LNG) Terminal. This is in response to the re-opening of the terminal by Dominion Power scheduled for May 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area around the Cove Point LNG Terminal.

DATES: Comments and related material must reach the Coast Guard on or before April 21, 2003.

ADDRESSES: You may mail comments and related material to Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791. The Port Safety, Security and Waterways Management Branch of Coast Guard Activities Baltimore maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05–03–023], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, U.S. Coast Guard Activities Baltimore at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

In preparation for the re-opening of the LNG terminal at Cove Point, MD, the Coast Guard is evaluating the current safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated vessels. To better manage the safety and security of the LNG terminal, this

proposed rule incorporates necessary security provisions and changes the size of the zone. This Notice of Proposed Rulemaking (NPRM) proposes to establish a combined safety zone and security zone for the LNG terminal at Cove Point.

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (''Magnuson Act''), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Proposed Rule

Under 33 CFR 165.502, there are three safety zones around the Cove Point LNG Terminal: (1) A ½ mile zone while LNG vessels are maneuvering, (2) 50 yards shoreward and 200 yards offshore from the terminal while an LNG vessel is moored, and (3) 50 yards in all directions around the terminal at all other times. The Coast Guard proposes to consolidate these zones into one and increase the size of the permanent zone to reduce the potential threat that may be posed by vessels or persons that approach the offshore terminal. The proposed safety and security zone is 500 yards in all directions from the terminal. This will create a rectangular area approximately 2500 yards long by 1200 yards wide around the terminal.

The proposed safety and security zone will be in effect continuously. The effect will be to prohibit vessels or persons from entering the safety and security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, State, local, and private agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation is of limited size, and vessels may transit around the zone.

There may be some adverse effects on the local maritime community that has been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502. Commercial vessel operators have been using the area on a regular basis for commercial fishing, passenger tours, and fishing parties. Enforcement of the proposed zone or the current zone would prohibit these commercial vessel operators from using this area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule changes the size of the zone but does not create a new safety and security zone. The proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay near the Cove Point LNG Terminal.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule establishes a security zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Revise § 165.502 to read as follows:

§ 165.502 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 076°23′42″ W, thence to 38°24′44″ N, 076°23′11″ W, thence to 38°23′55″ N, 076°22′27″ W, thence to 38°23′37″ N, 076°22′58″ W, thence to beginning at 38°24′27″ N, 076°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations*

(1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: February 26, 2003.

Roger B. Peoples,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–6636 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–008]

RIN 1625–AA00

Safety and Security Zones; Chesapeake Bay, Maryland and Tributaries

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing moving and fixed safety/security zones on the waters of the Chesapeake Bay and it tributaries for cruise ships and vessels carrying Certain Dangerous Cargo (CDC), Liquefied Natural Gas (LNG), or Liquefied Hazardous Gas (LHG) in the Captain of the Port (COTP) Baltimore zone. These zones are necessary to provide for the safety and security of these vessels in response to potential terrorist acts. This rule is necessary to enhance the public and maritime safety and security by requiring vessel traffic to maintain a safe distance from these vessels while they are transiting, anchored, or moored in the COTP Baltimore zone.

DATES: Comments and related material must reach the Coast Guard on or before April 21, 2003.

ADDRESSES: You may mail comments and related material to Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791. The Port Safety, Security and Waterways Management Branch of Coast Guard Activities Baltimore maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD05–03–008], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, U.S. Coast Guard Activities Baltimore at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

In light of the terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon in Arlington, VA on September 11, 2001, safety and security zones are being established to safeguard certain types of vessels and the public from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels, and others in the maritime community from the hazards associated with the transit and limited maneuverability of these vessels. These safety and security zones prohibit entry into or movement within the specified areas.

This rule proposes to establish safety and security zones around cruise ships and vessels carrying CDC, LNG, or LHG while underway, anchored, or moored in the waters of the Chesapeake Bay and its tributaries. This rule creates safety and security zones within navigable waters of the United States in the COTP Baltimore zone, as defined in 33 CFR 3.25–15. While the COTP anticipates some impact on vessel traffic due to this regulation, these safety and security zones are deemed necessary for the protection of life, property, and the safety and security of navigation within the COTP Baltimore zone.

Discussion of Proposed Rule

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures in U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1226) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (''Magnuson Act''), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in 33 CFR 6.01 and 6.04.

In this particular rulemaking, to address the aforementioned security concerns and take steps to prevent the catastrophic impacts that a terrorist attack against cruise ships and vessels carrying CDC, LNG, or LHG would have on the public interest, the Coast Guard proposes establishing safety and security zones around and under these vessels while transiting, anchored, or moored within the COTP Baltimore zone. These safety and security zones will help the Coast Guard prevent other vessels or persons from engaging in terrorist actions against these vessels. The Coast Guard believes the establishment of safety and security zones is prudent for the following reasons:

(1) *Cruise Ships.* These are vessels of at least 100 gross tons defined as ''passenger vessel'' in 46 U.S.C. 2101 (22) that typically carry 500 or more passengers. The establishment of safety and security zones will increase the protection afforded these vessels.

(2) *Vessels Carrying CDC.* Under 33 CFR 160 these cargoes include division 1.1 and 1.2 explosives, permitted oxidizing material or blasting agents, highway route controlled or fissile radioactive material, poisonous gases, and other toxic or volatile materials. By the nature of these materials, an explosion or release of this type of cargo could have serious impact on the general public.

(3) *LHG and LNG Vessels.* LHG and LNG vessels carry highly toxic and/or flammable gases in large quantities as cargo. By the nature of these materials, a release of this type of cargo could have a serious impact on the general public.

The proposed safety and security zones surrounding each type of vessel will control the movement of persons and other vessels from the surface to the bottom in a 500 yard radius. All vessels and persons will be prohibited from entering the zone without permission from the COTP Baltimore or his or her designated representative. The COTP shall notify the general public by marine information broadcast of the activation of these zones. Federal, State, local, and private agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited size of the zones, the minimal time that vessels will be restricted from the zones, and vessels may transit around the zones. In addition, vessels that may need to enter the zones may request permission on a case by case basis from the COTP Baltimore or his designated representatives.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit in a portion of the Chesapeake Bay and its tributaries near a vessel encompassed by the safety and security zones.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule establishes a safety and security zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.500 to read as follows:

§ 165.500 Safety and Security Zones; Chesapeake Bay, Maryland.

(a) *Definitions.* (1) Certain Dangerous Cargo (CDC) means a material defined in 33 CFR part 160.

(2) Liquefied Hazardous Gas (LHG) means a material defined in 33 CFR part 127.

(3) Liquefied Natural Gas (LNG) means a material defined in 33 CFR part 127.

(4) Cruise ship means a vessel defined as a ''passenger vessel'' in 46 U.S.C. 2101 (22).

(b) *Location.* The following areas are safety and security zones: All waters of the Chesapeake Bay and its tributaries, from surface to bottom, within a 500 yard radius around cruise ships and vessels transporting CDC, LNG, or LHG while transiting, anchored, or moored within the COTP Baltimore zone.

(c) *Regulations.* (1) The COTP will notify the maritime community of periods during which the safety and security zones will be enforced by providing notice in accordance with 33 CFR 165.7.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard COTP, Baltimore, Maryland or his designated representative.

(3) Persons desiring to transit the area of the security zone may contact the COTP at telephone number 410–576–2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: February 26, 2003.

Evan Q. Kahler,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–6633 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–4B]

Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public hearings.

SUMMARY: The Copyright Office of the Library of Congress will be holding public hearings on the possible exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works. In accordance with the Copyright Act, as amended by the Digital Millennium Copyright Act, the Office is conducting its triennial rulemaking proceeding to determine whether there are particular ''classes of works'' as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses if they are prohibited from circumventing such technological measures.

DATES: Public hearings will be held in Washington, DC on Friday, April 11, 2003, Tuesday, April 15, 2003, Wednesday, April 30, 2003 and Friday, May 2, 2003, beginning at 9:30 a.m. Public hearings will also be held in California in May at a time and location to be announced later. Requests to testify must be received by 5 p.m. E.S.T. on April 1, 2003. See **SUPPLEMENTARY INFORMATION** for additional information on other requirements.

ADDRESSES: The Washington, DC round of public hearings will be held as follows: April 11 in the Mumford, Room, LM–649, of the James Madison Building of the Library of Congress, 101 Independence Ave, SE., Washington, DC. April 15 in the West Dining Room, LM–621, of the James Madison Memorial Building of the Library of Congress, 101 Independence Ave, SE., Washington, DC. April 30 and May 2 at the Postal Rate Commission, 1333 H Street, NW., Third Floor, Washington, DC. Additional public hearings will be held in California at a time and location to be subsequently announced. *See* **SUPPLEMENTARY INFORMATION** for additional address information and other requirements.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Senior Attorney, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380; fax (202) 707–8366. Requests to testify must be sent by email to *1201@loc.gov*.. Email inquiries regarding the hearings may be sent to *rkas@loc.gov*.

SUPPLEMENTARY INFORMATION: On October 15, 2002, the Copyright Office published a Notice of Inquiry seeking comments in connection with a rulemaking pursuant to section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. 67 FR 63578 (October 15, 2002). For a more complete statement of the background and purpose of the rulemaking, please see the Notice of Inquiry and the full record of the previous rulemaking proceeding available on the Copyright Office's Web site at: *http://www.copyright. gov/1201/*.

The 51 written comments proposing classes of works to be exempted and the 338 reply comments have been posted on the Office's Web site; *see http://www.copyright.gov/1201/*.

The Office will be conducting public hearings in Washington, DC in April and May and in California in May to hear testimony relating to the rulemaking. Interested parties are invited to submit requests to testify at one of these hearings. The dates for the hearings in Washington, DC are April 11, 15 and 30, and May 2. Depending on the number of requests to testify that we receive, it may not be necessary to conduct hearings on all four of these days. The date or dates for the hearings in California will be announced later.

Requirements for persons desiring to testify:

A request to testify must be submitted to the Copyright Office. All requests to testify must clearly identify:

- The name of the person desiring to testify,
- The organization or organizations represented, if any,
- Contact information (address, telephone, and email),
- The class of work to which your testimony is responsive (if you wish to testify on more than one proposed class of work, please state your order of preference),
- A brief summary of your proposed testimony,
- A description of any audiovisual material or demonstrative evidence, if any, that you intend to present,
- The location of the hearing at which you wish to testify (Washington, DC or California).
- Preferences as to dates on which you wish to testify. *Note:* Because the agenda will be organized based on subject matter, we cannot guarantee that we can accommodate requests to testify on particular dates.

All persons who submit a timely request to testify will receive confirmation by email or telephone by April 4. The Copyright Office will notify all witnesses of the date and expected time of their appearance, and the time allocated for their testimony.

Addresses for requests to testify:

All requests to testify must be sent by email to 1201@loc.gov and must be received by 5 E.S.T. on April 1, 2003. Persons who are unable to send requests by email should contact Rob Kasunic, Senior Attorney, at (202) 707–8380 to make alternative arrangements for submission of their requests to testify.

Form and limits on testimony at public hearings:

There will be time limits on the testimony allowed for persons testifying that will be established after receiving all requests to testify. In the written comment period, the Office received nearly 400 written comments. Given the time constraints, only a fraction of that number could possibly testify at the hearings. A timely request to testify does not guarantee an opportunity to testify at these hearings. The Copyright Office encourages parties with similar interests to select common representatives to testify on behalf of a particular position.

The Copyright Office stresses that factual arguments are at least as important as legal arguments and encourages persons who wish to testify to provide demonstrative evidence to supplement their testimony. While testimony from attorneys who can articulate legal arguments in support of or opposition to a proposed exempted class of works is useful, testimony from witnesses who can explain and demonstrate the facts is also solicited.

An LCD projector and screen will be available in the hearing rooms. An overhead projector may be made available if arrangements are requested in advance. Other electronic or audiovisual equipment necessary for a presentation should be brought by the person testifying. Persons intending to

bring such equipment into the Library of Congress, *e.g.*, laptops, slide projectors, etc., will need to arrive early in order to register the equipment with the Library Police.

The Office intends to organize individual sessions of the hearings around particular or related classes of works proposed for exemption. If a request to testify involves more than one proposed exemption or related exemption, please specify, in order of preference, the proposed exemptions on which you would prefer to testify.

Following receipt of the requests to testify, the Copyright Office will prepare an agenda of the hearings which will be posted on the Copyright Office Web site at: *http://www.copyright.gov/1201/* and sent to all persons who have submitted requests to testify. To facilitate this process, it is essential that all of the required information listed above be included in a request to testify.

Dated: March 17, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03–6741 Filed 3–19–03; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–282–0389; FRL–7470–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; 1-Hour Ozone Standard for San Diego, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate the San Diego County area to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is also proposing to approve a 1-hour ozone maintenance plan and motor vehicle emissions budgets as revisions to the San Diego portion of the California State Implementation Plan (SIP).

DATES: Comments on this proposed action must be received by April 21, 2003.

ADDRESSES: Please address your comments to: John J. Kelly, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the docket for this action at EPA's Region 9 office during normal business hours. You can also inspect copies of the submitted SIP revision at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, CA 95814;

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: John J. Kelly, EPA Region 9, (415) 947–4151, or *kelly.johnj@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

I. Background

A. San Diego Designation, Classification, SIPs, and Attainment

When the Clean Air Act (CAA) was amended in 1990, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including the San Diego area, was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. The San Diego County nonattainment area (''San Diego'') was designated under CAA section 107 as nonattainment, and initially classified under CAA section 181 as severe for the 1-hour ozone NAAQS. See 40 CFR 81.305 and 56 FR 56694 (November 6, 1991). The area was reclassified as serious after we determined that the ozone design value used in the original classification was incorrect. 60 FR 3771 (January 19, 1995).

The San Diego County Air Pollution Control District (SDCAPCD) adopted a serious area plan, demonstrating attainment by the applicable deadline of November 15, 1999. The California Air Resources Board (CARB) timely submitted the plan in 1994, and we approved the plan on January 8, 1997 (62 FR 1150).

Although the San Diego area did not attain the standard by the November 15, 1999 deadline, the area did qualify to have that deadline extended, since the area had complied with all requirements and commitments in the SIP and recorded no more than 1 exceedance of the NAAQS in 1999. For areas meeting these provisions, CAA section 181(a)(5) allows us to grant up to two 1-year extensions. On October 11, 2000 (65 FR 65025), we granted the San Diego area a 1-year attainment date extension to November 15, 2000, and on August 6, 2001 (66 FR 40908), we granted the area a second 1-year extension to November 15, 2001, since the area again had no more than 1 exceedance in the previous year. On October 23, 2002 (67 FR 65043), we issued a finding under CAA section 181(b)(2)(A) that the San Diego area had attained the 1-hour ozone NAAQS by the applicable attainment deadline of November 15, 2001.

On December 11, 2002, SDCAPCD adopted the ''Ozone Redesignation Request and Maintenance Plan for San Diego County'' (''San Diego Maintenance Plan''). On December 20, 2002, CARB submitted the San Diego Maintenance Plan, with a request that we approve the plan as meeting the CAA maintenance plan provisions and redesignate San Diego to attainment for the 1-hour ozone NAAQS (letter from Michael P. Kenny, CARB Executive Officer, to Wayne Nastri, Regional Administrator, EPA Region 9).

On December 20, 2002, CARB also transmitted for approval the State's latest update to the California-specific motor vehicle emissions model, known as EMFAC2002 (letter from Michael P. Kenny, CARB Executive Officer, to Jack Broadbent, Director, Air Division, EPA Region 9).[1] EMFAC2002 is used to prepare the onroad emissions inventories in the plan. In early 2003, we expect to issue our conclusions regarding whether or not the EMFAC2002 emission factor model is acceptable and would thus be required to be used in the future for purposes of SIP development and transportation conformity. CARB provided us with information about the EMFAC2002 revisions as they were being prepared and finalized, and we have preliminarily concluded for purposes of this proposed action that the emission factor element of EMFAC2002 is an improved and acceptable methodology for determining motor vehicle emissions. Assuming that we find in a separate action that the updated emission factor model is acceptable, we propose to approve fully the emissions inventory, maintenance demonstration, motor vehicle emissions budgets, and redesignation request, as discussed below. If we fail to find that the emission factor model is acceptable, we will not finalize these actions.

B. Clean Air Act Provisions for Maintenance Plans

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must provide for

[1] The EMFAC model is the California equivalent to EPA's national motor vehicle emissions model, the most recent version of which is MOBILE6. EMFAC2002 reflects new vehicle test data and quantification techniques to update and enhance the information in the most recent prior versions. For example, EMFAC2002 accounts for heavy-duty vehicle emissions during extended idling and during off-cycle operation.

continued maintenance of the applicable NAAQS for at least 10 years after the area is redesignated to attainment (CAA section 175A(a)). To address the possibility of future NAAQS violations, the maintenance plan must contain contingency provisions that are adequate to assure prompt correction of a violation, and must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area (CAA section 175A(d)).

We have issued maintenance plan and redesignation guidance, primarily in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble,'' 57 FR 13498, April 16, 1992); a September 4, 1992 memo from John Calcagni titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (''Calcagni memo''); a September 17, 1993 memo from Michael H. Shapiro titled ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992''; and a November 30, 1993 memo from D. Kent Berry titled ''Use of Actual Emissions in the Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

The Calcagni memo provides that an ozone maintenance plan should address five elements: an attainment year emissions inventory (*i.e.,* an inventory reflecting actual emissions when the area recorded attainment, and thus a level of emissions sufficient to attain the 1-hour ozone NAAQS), a maintenance demonstration, provisions for continued operation of an appropriate air quality monitoring network, verification of continued attainment, and contingency measures.

C. Clean Air Act Provisions for Redesignation

CAA section 107(d)(3)(E) allows for redesignation providing that: (1) We determine, at the time of redesignation, that the area has attained the NAAQS; (2) we have fully approved the applicable implementation plan for the area under section 110(k); (3) we determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal regulations, and other permanent and enforceable reductions; (4) we fully approve a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all nonattainment area requirements applicable to the area under section 110 and part D. We have provided guidance on redesignation in the General Preamble and in the guidance memos cited above.

II. EPA Review of the San Diego Maintenance Plan and Redesignation Request

A. Maintenance Plan

CARB submitted the San Diego Maintenance Plan on December 20, 2002. On January 14, 2003, we found that this submittal met the completeness criteria in 40 CFR part 51, appendix V, including the requirement for proper public notice and adoption.

1. Attainment Emissions Inventory

The San Diego Maintenance Plan includes 2001 base year emission inventories for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X), which are used to backcast emissions for 1990, 1995, and 2000, and to forecast emissions for 2005, 2010, and 2014, taking into account growth and changes in control factors.

The inventories use current and accurate methodologies, emissions factors, and survey information. The inventories represent actual emissions, with certain exceptions that are documented in the maintenance plan. For example, the projected emissions inventories include emission reduction credits (ERCs) in the SDCAPCD's Source Register and a projected military growth conformity increment (Appendix A). Banked ERCs are 0.7 tpd VOC and 0.3 tpd NO_X in 2005, 2010, and 2014 (pages A–3 and A–5). The military growth conformity increment is 11.4 tpd NO_X in 2005, 2010, and 2014 (page A–5).

The onroad emissions inventories employ the new CARB motor vehicle emissions factor model, EMFAC2002. The motor vehicle inventories use the latest planning activity levels, including travel activity forecasts updated by the San Diego Association of Governments (SANDAG).

As discussed above, we expect to issue our conclusions regarding whether or not the emission factor element of EMFAC2002 is acceptable in early 2003. Assuming that we find that the updated element is acceptable, we propose to approve fully the emissions inventories under CAA sections 172(c) and 175A, because the emissions inventories are complete, consistent with our most recent guidance, and reflect the latest information available at the time of plan preparation. However, if we fail to find that the emission factor element of the model is acceptable, we will not finalize this proposed approval.

2. Maintenance Demonstration

Original maintenance plans must show how the NAAQS will be maintained for the next 10 years following redesignation to attainment. This is generally performed by assuming that the emissions levels at the time attainment is achieved constitute a limit on the emissions that can be accommodated without violating the NAAQS. In the case of this plan, projected VOC and NO_X emissions for 2005, 2010, and 2014 show continued attainment, since emissions levels of both of the ozone precursors are below 2001 levels. Table 1 below shows baseline and projected summer day emissions levels. The projected emissions levels assume no emissions reductions from New Source Review (NSR) or the Title V operating permit program.

TABLE 1.—SAN DIEGO COUNTY MAINTENANCE DEMONSTRATION SUMMER DAY EMISSIONS

[tons per day]

Year	VOC	NO_X
2001	220.8	240.7
2005	189.7	218.4
2010	177.2	192.1
2014	170.7	167.4

Source: San Diego Maintenance Plan (Table 5–2)

Maintenance is demonstrated since emissions of both ozone precursors decline from the 2001 attainment year inventory: VOC emissions are reduced by 50.1 tpd (approximately 22.7 percent) from 2001 to 2014, and NO_X emissions are reduced by 73.3 tpd by 2014 (approximately 30.5 percent). Increasingly stringent California and Federal motor vehicle emissions standards and fleet turnover account for the bulk of the inventory reductions, and the remaining emissions reductions come from fully adopted, permanent, and enforceable State, local, and Federal regulations. Assuming that we find that the emission factor element of EMFAC2002 is acceptable, we propose to approve the maintenance demonstration under CAA section 175A(a), since the plan shows that emissions will decline below attainment levels due to the projected impact of fully adopted, permanent, and enforceable regulations. If we fail to find that the EMFAC2002 emission factor

element is acceptable, we will not finalize this proposed action.

3. Continued Ambient Monitoring

The maintenance plan needs to contain provisions for continued operation of an air quality monitoring network that meets the provisions of 40 CFR part 58 and will verify continued attainment. The maintenance plan includes a commitment by SDCAPCD to continue to operate its monitoring network in compliance with the criteria of 40 CFR part 58 (page 5–4). This SDCAPCD commitment meets the continued monitoring provision.

4. Verification of Continued Attainment

The maintenance plan needs to show how the responsible agencies will track progress, and the plan should specifically provide for periodic inventory updates. The San Diego Maintenance Plan includes a commitment by SDCAPCD to meet this obligation through annual review of monitoring data from the most recent three consecutive years to verify continued attainment (page 5–5). This commitment meets our provisions for verification of continued attainment.

5. Contingency Provisions

CAA section 175A(d) provides that maintenance plans include contingency provisions ''necessary to assure that the State will promptly correct any violation of the standard * * *. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area.''

The San Diego Maintenance Plan notes that future effective provisions in CARB's standards for light- and medium-duty vehicles (LEV II), heavy-duty vehicles, and off-road engines will provide significant continuing emissions reductions through the maintenance period. If new violations were to occur during the maintenance period, these measures should achieve sufficient reductions to correct the violations quickly. SDCAPCD notes that all measures in the San Diego ozone nonattainment SIP, including the NSR offset requirement, are retained in the San Diego Maintenance Plan, and the District will continue to implement the measures, in compliance with CAA section 175A(d). Finally, SDCAPCD commits to work with CARB to ensure the adoption, submittal, and expeditious implementation of any additional feasible measure(s) needed to ensure maintenance of the 1-hour ozone NAAQS (pages 5–5 and 5–6). We propose to approve these provisions and commitments as meeting the contingency requirements of CAA section 175A(d).

6. Motor Vehicle Emissions Budgets

Maintenance plan submittals must specify the maximum emissions of transportation-related precursors of ozone allowed in the last year of the maintenance period. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5), and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related ozone precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the maintenance demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets are presented in Table 2 below, entitled ''San Diego Maintenance Plan Motor Vehicle Emissions Budgets.''

TABLE 2.—SAN DIEGO MAINTENANCE PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per day]

Year	NO_X	VOC
2010	88	46
2014 and Subsequent Years	66	36

Source: San Diego Maintenance Plan, Table 5–3.

As discussed above in section II.A.1., Attainment Emissions Inventory, the motor vehicle emissions portion of these budgets (*i.e.*, the evaporative and tailpipe emissions) was developed using the EMFAC2002 motor vehicle emissions factors and updated county-specific vehicle data, including the latest San Diego County planning assumptions on vehicle fleet and age distribution and activity levels. The budgets represent motor vehicle emissions levels, rounded up to the next whole number and adding one tpd to account for imprecision in motor vehicle emissions and potential slight emission increases associated with recent state legislation (AB 2637, 2002) affecting the motor vehicle inspection and maintenance program.

Assuming that we find that the emission factor element of EMFAC2002 is acceptable, we propose to approve the motor vehicle emission budgets as consistent with the criteria of 40 CFR 93.118(e)(4) and (5), including consistency with the baseline emissions inventories and the motor vehicle emissions used in the maintenance demonstration. Specifically, we are proposing to approve the budgets in the San Diego Maintenance Plan, which are based on, and consistent with, the maintenance demonstration. In a separate action, we will make a finding as to whether the above motor vehicle emissions budgets are adequate for purposes of conformity of transportation plans with the San Diego Maintenance Plan. We are taking this action separately in order to make the adequacy determination on the motor vehicle emission budgets within approximately 90 days of receipt of the plan, consistent with EPA's May 14, 1999 guidance on implementation of March 2, 1999 conformity court decision.

B. Redesignation Provisions

1. Attainment of the 1-Hour Ozone NAAQS

On October 23, 2002 (67 FR 65043), EPA issued a final determination that San Diego County had attained the 1-hour ozone NAAQS by the CAA deadline of November 15, 2001. This finding was based on our conclusion that the design value for each monitor in the County for the period 1999–2001 was equal to or less than 0.12 ppm, and the average number of expected exceedance days per year was 1.0 or less for each monitor during that period. We also concluded that the ozone monitoring network for the area continued to meet or exceed applicable requirements. See also the discussion in our direct final determination of attainment published on August 23, 2002 (67 FR 54580).[2]

We have now looked at exceedance days and design values for each monitor for the most recent 3-year period, 2000–2002. The data for 1999–2001 and 2000–

[2] This direct final determination was withdrawn on October 23, 2002 (67 FR 65045) because an adverse comment was received.

2002 are presented in Table 3, entitled ''Average Number of Ozone Exceedance Days per Year and Design Values by Monitor in San Diego County, 1999–2001 and 2000–2002.'' As noted, not all data for the 4th quarter of 2002 have yet been quality assured and entered into EPA's Aerometric Information Retrieval System—Air Quality Subsystem (AIRS–AQS) database.

TABLE 3.—AVERAGE NUMBER OF OZONE EXCEEDANCE DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN SAN DIEGO COUNTY, 1999–2001 AND 2000–2002 [1]

Site	1999–2001		2000–2002	
	Average number of exceedance days per year	Site design value (ppm)	Average number of exceedance days per year	Site design value (ppm)
Alpine (PAMS/SLAMS)	0.3	0.118	0.3	0.118
Camp Pendleton (PAMS/SLAMS)	0	0.098	0	0.096
Chula Vista (SLAMS)	0	0.099	0	0.092
Del Mar (SLAMS)	0	0.092	0	0.091
El Cajon (PAMS/SLAMS)	0	0.104	0	0.104
Escondido (SLAMS)	0.3	0.110	0.3	0.110
Oceanside (SLAMS) [2]	0	0.091	.....	.....
Otay Mesa (SLAMS)	0	0.089	0	0.089
San Diego/Overland (PAMS/NAMS)	0.3	0.106	0.3	0.111
San Diego/12th St (SLAMS)	0	0.088	0	0.086

Note 1: EPA's monitoring network regulations are codified at 40 CFR 58. The regulations provide for National Air Monitoring Stations (NAMS), State or Local Air Monitoring Stations (SLAMS), and Photochemical Assessment Monitoring Stations (PAMS). All of the stations in the San Diego County monitoring network are operated by SDCAPCD or CARB. All data produced by these stations are submitted to the AIRS–AQS database.

Note 2: The Oceanside monitor (on Mission Avenue) was closed in March 2002 because it was determined to be less representative of air pollution levels in the Oceanside area than the monitor at Camp Pendleton, which is less than 2 miles away and which typically records higher concentrations. No exceedances have been recorded at the Oceanside monitor since 1993.

As shown in Table 3, the highest design value at any monitor for 1999–2001 and for 2000–2002, and thus the design value for the San Diego area for those periods, is below 0.12 ppm. No monitor in the San Diego area recorded an average of more than 1 exceedance of the 1-hour ozone standard per year during the 1999–2001 and 2000–2002 periods.

Because the area's design value is below the 1-hour ozone standard of 0.12 ppm and the area has averaged less than 1 exceedance per year at each monitor for the 1999–2001 and 2001–2002 periods, we propose to conclude that the San Diego area has met this prerequisite to redesignation because the area has attained and continues to attain the 1-hour ozone standard.

2. Fully Approved Implementation Plan Under CAA Section 110(k)

Following adoption of the CAA of 1970, California has adopted and submitted and we have fully approved at various times provisions addressing the various SIP elements applicable in San Diego County. No San Diego SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 4 of the San Diego Maintenance Plan includes analyses demonstrating that the reductions in ozone concentrations cannot be attributed to reduced activity levels or favorable meteorology, but are rather due to permanent and enforceable measures. The plan shows a steady increase in Gross Regional Product and vehicle miles traveled from 1993 through 2001, reflective of continued activity growth in the area. The plan also lists 3-year average surface and aloft temperatures during April to October for each period from 1993 through 2001, and compares these values with the average temperatures for 1993–2001 (Table 4–3). This analysis shows that temperatures during the period when the County attained the NAAQS were slightly higher than the norm, suggesting that anomalously cool weather did not account for attainment.

4. Fully Approved Maintenance Plan

In section II.A., above, we are proposing to approve fully the San Diego Maintenance Plan as meeting the CAA section 175A provisions for maintenance plans assuming that we find that the EMFAC2002 emission factor element is acceptable.

5. CAA Section 110 and Part D Provisions Satisfied

We approved San Diego's 1994 ozone SIP on January 8, 1997 (62 FR 1150) with respect to CAA section 110 and Part D provisions applicable to a serious nonattainment area. The CAA section 110 and Part D provisions continue to be satisfied.

III. EPA Action

We are proposing to approve the San Diego Maintenance Plan under CAA sections 175A and 110(k)(3). We are proposing to approve the 2010 and 2014 VOC and NO_X motor vehicle emissions budgets in Table 2 above, under CAA sections 176(c) as adequate for maintenance of the 1-hour ozone NAAQS and for transportation conformity purposes. Finally, we are proposing to redesignate San Diego County to attainment for the 1-hour ozone standard under CAA section 107(d)(3)(E). As discussed, we will not finalize any of these actions unless we find that the EMFAC2002 emission factor element is acceptable.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a

significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: March 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–6707 Filed 3–19–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of the Secretary.

ACTION: Petition for rulemaking.

SUMMARY: The Office of Hearings and Appeals is publishing for comment a petition for rulemaking received from the National Mining Association. The petition requests amendment of several existing rules relating to the burden of proof in proceedings under the Surface Mining Control and Reclamation Act of 1977.

DATES: You should submit your comments by May 19, 2003.

ADDRESSES: Send comments to: Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203. Phone: (703) 235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: In January 2003, the National Mining Association (NMA) re-submitted a petition for rulemaking to the Director, Office of Hearings and Appeals, that it had originally submitted in January 1996. NMA summarized its January 1996 petition in an accompanying letter:

The NMA requests amendments and revisions to the allocation of the burden of proof for proceedings under SMCRA [the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*] governed by § 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. § 556(d), in view of the decision of the United States Supreme Court in *Director, Office of Workers' Compensation Programs, Department of Labor* v. *Greenwich Collieries,* 114 S.Ct. 2251 (1994). In that decision, the Supreme Court clarified that under § 7(c) of the APA, the burden of proof placed upon the proponent of a rule or order means not merely the burden of production, but also the burden of persuasion. Accordingly, when the Office of Surface Mining is the proponent of an order, *e.g.*, notice of violation, cessation order, order to show cause, the burden of proof remains with the agency.

At the time the NMA originally filed its petition, it was the plaintiff in a challenge to several Departmental rules, including those allocating the burden of proof in 43 CFR 4.1374 and 4.1384. Although NMA did not include those rules in its petition, the then-Director of OHA replied that ''it would be prudent to await the outcome of that litigation before considering whether to proceed with your suggested rulemaking.''

That litigation was concluded in June 2001 with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *National Mining Association* v. *United States Department of the Interior,* 251 F.3d 1007 (D.C. Cir. 2001). In that decision the Court concluded that OHA ''did not improperly shift the burden of proof'' in §§ 4.1374 and 4.1384. *Id.* at 1013–14.

In its January 2003 re-submission, NMA states:

Unlike that case, the regulations at issue in NMA's petition for rulemaking are governed by different sections of SMCRA that do not expressly allocate the burden of proof to the operator, and in some cases expressly allocate it to whomever is challenging the permit.

NMA's petition argues OHA must amend its regulations to allocate the ultimate burden of persuasion to the Office of Surface Mining in proceedings to review assessment of civil penalties (§ 4.1155); proceedings to review notices of violation or orders of cessation (§ 4.1171); proceedings for suspension or revocation of permits (§ 4.1194; formerly § 4.1193, *see* 67 FR 61506, 61507, 61510, Oct. 1, 2002); proceedings to review individual civil penalty

assessments (§ 4.1307); and proceedings to review permit revisions ordered by OSM (§ 4.1366(b)).

Both the APA and SMCRA provide for petitions for rulemaking. 5 U.S.C. 553(e); 30 U.S.C. 1211(g). The Department has implemented these provisions in 43 CFR part 14 and 30 CFR 700.12. 43 CFR 4.1 provides that OHA is the authorized representative of the Secretary for the purpose of hearing, considering, and determining matters within the jurisdiction of the Department involving hearings, appeals, and other review functions of the Secretary. 30 CFR 700.4(e) provides that the Director of OHA is responsible for the administration of administrative hearings and appeals required or authorized by SMCRA pursuant to the regulations in 43 CFR part 4.

Accordingly, OHA requests comments on the following petition.

Dated: March 6, 2003.

Robert S. More,

Director, Office of Hearings and Appeals.

Before the Office of Hearings and Appeals United States Department of Interior; Petition for Rulemaking Under the Surface Mining Control and Reclamation Act of 1977; Submitted by: The National Mining Association

I. Introduction

Pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA, or ''the Act''), 30 U.S.C. § 1211(g), its implementing regulations, 30 CFR 700.12, and the Administrative Procedure Act, 5 U.S.C. 553(e), the National Mining Association (NMA) petitions the Director of the Office of Hearings and Appeals (OHA) for certain amendments and modifications to 43 CFR 4.1155, 4.1171, 4.1194,[1] 4.1307, and 4.1366(b). Pursuant to 43 CFR 4.1 the Office of Hearings and Appeals is the authorized representative of the Secretary for the consideration and determination of matters within the jurisdiction of the Department involving hearings and appeals and other review functions, including the rules establishing the procedure governing such hearings and appeals. This petition involves the rules governing procedures for the hearing of appeals related to matters arising under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* (1988).

II. Petitioner

The National Mining Association (NMA) is a trade association whose members include producers of most of the nation's coal, metals and industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment and supplies; state mining associations; and engineering and consulting firms and financial institutions that serve the mining industry. The coal-producing members of NMA conduct surface coal mining operations pursuant to permits under SMCRA in almost every coal-producing state throughout the country, and are therefore directly impacted by these proposed amendments and modifications to OSM's regulations.

III. Proposed Amendments and Modifications

Petitioner requests amendments and modifications to the burden of proof requirements for proceedings governed by § 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. 556(d) (1988).

The APA establishes the framework for those proceedings required by statute to be determined on the record after an opportunity for a hearing. 5 U.S.C. 554. This procedural framework indicates that ''[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.'' 5 U.S.C. 556(d). A controlling Supreme Court decision clarifies that the burden of proof means not merely the burden of production, but also the burden of persuasion. *Director, Office of Workers' Compensation Programs, Department of Labor* v. *Greenwich Collieries,* 512 U.S. 267, 276, 279 (1994).

There are various proceedings under SMCRA which the statute requires to be administered on the record after an opportunity for a hearing. In many of these proceedings, the existing OHA rules improperly relieve the proponent, OSM, of the burden of persuasion under the APA, even though such procedure is not ''otherwise provided by [SMCRA].'' Accordingly, in view of the Supreme Court's recent pronouncement in *Greenwich Collieries* on the meaning of the ''burden of proof'' in § 556(d) of the APA, the Department must initiate a rulemaking to revise OHA's regulations as presented below.

A. Amend § 4.1155 to Read as Follows:

§ 4.1155 Burden of Proof in civil penalty proceedings.

In civil penalty proceedings, OSM shall have both the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of the violation and the amount of the civil penalty.

B. Amend § 4.1171 to Read as Follows:

§ 4.1171 Burden of proof in review of section 521 notices or orders.

In review of section 521 notices of violation or orders of cessation or the modification, vacation, or termination thereof, including expedited review under § 4.1180, OSM shall have both the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the validity of the notice, order, or modification, vacation, or termination thereof.

Any person other than the permittee-applicant who contests the modification, vacation, or termination of notices of violation or orders of cessation shall have both the burden of going forward to establish a prima facie case and the ultimate burden of persuasion.

C. Amend § 4.1194 to Read as Follows:

§ 4.1194 Burden of proof in suspension or revocation proceedings.

In proceedings to suspend or revoke a permit, OSM shall have both the burden of going forward to establish a prima facie case and the ultimate burden of persuasion for suspension or revocation of the permit.

D. Amend § 4.1307 to Read as Follows:

§ 4.1307 Elements; burden of proof.

(a) OSM shall have the burden of going forward with evidence to establish a prima facie case and the ultimate burden of persuasion that:

(1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under § 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under sections 518(b) or 703 of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under § 4.1150 through § 4.1158, § 4.1160 through § 4.1171, or § 4.1180 through § 4.1187, and § 4.1270 or § 4.1271 of this part, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;

(2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and

(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

Delete existing paragraph ''(b),'' redesignate paragraph ''(c)'' as paragraph ''(b),'' and revise as follows:

(b) OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the amount of the penalty.

E. Amend § 4.1366(b) to Read as Follows:

§ 4.1366 Burdens of proof.

* * * * *

(b) In a proceeding to review a permit revision ordered by OSMRE, OSMRE shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit should be revised.

* * * * *

IV. Statement of Facts and Law Supporting the Amendment and Modification of Existing Federal Enforcement Regulations

A. Background

Since the passage of the Administrative Procedure Act (APA) in 1946, 5 U.S.C. 551, *et seq.,* various views emerged about the meaning of ''burden of proof'' as used in § 7(c) of the APA. Section 7(c) of the APA states that:

Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.

[1] Formerly 43 CFR 4.1193 (*See* 67 FR 61510 (October 1, 2002)).

5 U.S.C. 556(d).

OHA interpreted the term ''burden of proof'' to mean the ''burden of going forward to establish a prima facie case.'' In adopting this interpretation, OHA relied primarily on a supplemental opinion in a single case holding that the ''burden of proof'' in § 7(c) of the APA is the burden of going forward with proof, and not the ultimate burden of persuasion. 43 FR 34381 (August 3, 1978), quoting *Environmental Defense Fund, Inc.* v. *EPA,* 548 F.2d 998 (D.C. Cir. 1976).

However, this interpretation by OHA has proven to be incorrect by the U.S. Supreme Court's decision in *Director, Office of Workers' Compensation Programs, Department of Labor* v. *Greenwich Collieries,* 512 U.S. 267, 276 (1994). That case involved the use of the Department of Labor's ''true doubt'' rule as it applied to adjudications under the Black Lung Benefits Act (BLBA), 83 Stat. 792, as amended, 30 U.S.C. 901 *et seq.* (1988), and the Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, as amended, 33 U.S.C. 901, *et seq.* (1984). The ''true doubt'' rule allowed the benefit claimant to prevail when the evidence was equally balanced, or in equipoise. Thus, the rule essentially placed the burden of persuasion upon the party opposing the benefits instead of the proponent of the rule, the benefit claimant. In determining whether or not the ''true doubt'' rule violates the APA, the Court determined first, whether the burden of proof established in § 7(c) applies to adjudications under the LHWCA and the BLBA, and second, the meaning of the term ''burden of proof.''

In holding that the APA was applicable to hearings under the LHWCA and BLBA (and that these statutes do not ''provide otherwise''), the Supreme Court noted that it does not lightly presume exemptions from the APA. 512 U.S. at 271, citing *Brownwell* v. *Tom We Shung,* 352 U.S. 180, 185 (1956). And, although the LHWCA provides that the agency's hearings ''shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure * * *'', 33 U.S.C. 923(a), the Court found this provision insufficient to exempt the LHWCA from § 7(c) of the APA. *Id; See also Maher Terminals Inc.* v. *Director, Office of Workers' Compensation Programs, United States Department of Labor,* 992 F.2d 1277, 1281 n.3 (3rd Cir. 1993) (holding that § 12 of the APA, 5 U.S.C. 559, allows only express statutory language to supersede the APA), aff'd, 512 U.S. 267 (1994).

With regard to the meaning of the term ''burden of proof,'' the Court, after a lengthy discussion of the APA and its legislative history, held that: ''These principles lead us to conclude that the drafters of [§ 7(c) of] the APA used the term 'burden of proof' to mean the burden of persuasion.'' *Id.* at 276. In other words, when an agency is a proponent of a rule or order, the burden of proof referred to in § 7(c) of the APA means the burden of going forward to establish a prima facie case *and* the burden of persuasion. *Id.* at 279. This holding by the Court requires that in situations governed by the APA where OSM is the proponent of a rule or order, the agency has both the burden of going forward to establish a prima facie case and the ultimate burden of persuasion.

The Senate Committee report on the APA explains that:

Except as applicants for a license or other privilege may be required to come forward with a prima facie showing, no agency is entitled to presume that the conduct of any person or status of any enterprise is unlawful or improper.

S. Rep. No. 752, 79th Cong., 1st Sess. 22 (1945), reprinted in S. Doc. 248 at 208; Accord, H.R. Rep. 1980, 79th Cong., 2d Sess. 34 (1946), reprinted in S. Doc. 248 at 270.

As the Court in Greenwich Collieries held:

That Congress intended to impose a burden of production does not mean that Congress did not also intend to impose a burden of persuasion. Moreover, these passages are subject to a natural interpretation compatible with congressional intent to impose a burden of persuasion on the party seeking an order.

512 U.S. 267, 279 (1994).

The Court in Greenwich Collieries was not oblivious to the repercussions of their holding, nor were they unaware of their previous statements on this issue. The Court noted that ''We recognize that we have previously asserted the contrary conclusion as to the meaning of burden of proof in § 7(c) of the APA.'' *Id.* at 276. However, the Court also noted that the APA was a statute designed ''to introduce greater uniformity of procedure and standardization of administrative practice among the diverse agencies whose customs had departed widely from each other.'' *Id.* at 280–281, (quoting *Wong Yang Sung* v. *McGrath,* 339 U.S. 33, 41 (1950)). The Court's opinion manifests an appreciation for the situation that many administrative agencies, including OHA, find themselves in today. That is, when the burden of proof was thought to mean only the burden of going forward to establish a prima facie case, it left each agency free to decide who shall bear the ultimate burden of persuasion. Greenwich Collieries at 281. Such a chaotic and arbitrary system is exactly what Congress was trying to prevent in establishing the uniform procedures under the APA. That is why, in the words of the Supreme Court, ''[Agencies] cannot allocate the burden of persuasion in a manner that conflicts with the APA.'' *Id.*

Moreover, the Court *expressly* rejected the analysis of *EDF* v. *EPA* regarding the legislative history of § 7(c) of the APA, which OHA has relied upon in shifting the burden of persuasion to the regulated party in several of its regulations. After noting the Department of Labor's reliance on *NLRB* v. *Transportation Management,* 462 U.S. 393 (1983), and on Judge Leventhal's analysis in the *EDF* v. *EPA* case, the Court held that ''We find this legislative history unavailing.'' Greenwich Collieries at 278.

In those proceedings where SMCRA does not expressly [2] provide a burden of proof distinct from that set forth in the APA, OHA has improperly relieved OSM of the burden of persuasion when OSM is the proponent of a rule or order. This is in direct conflict with Greenwich Collieries, which states that ''The Department cannot allocate the burden of persuasion in a manner that conflicts with the APA.'' 512 U.S. at 281. Since the ultimate burden of persuasion under § 7(c) of the APA requires the agency as a proponent of a rule or order to prove its case by a preponderance of the evidence, *Steadman* v. *SEC,* 450 U.S. 91 (1981), OHA must revise its regulations concerning the burden of proof to require OSM, as the proponent of a rule or order, to prove its case by a preponderance of the evidence.

B. Administrative History

1. Office of Hearings and Appeals

Commenters have recommended changes in the burdens of proof assigned in OHA regulations since the first rules were published in 1978. These early comments objected to inconsistencies between the burden of proof allocation in § 7(c) of the APA, 5 U.S.C. 556(d), and 43 CFR 4.1171 and 4.1194 which assign the ultimate burden of persuasion to the applicant seeking review of enforcement actions. OHA, however, refused to place the ultimate burden of persuasion in these regulations on the agency. In response to recommended changes in § 4.1171, OHA stated that:

* * * The comment was rejected. Section 556(d) of the APA * * * was analyzed by Judge Leventhal in his supplemental opinion on petition for rehearing in *Environmental Defense Fund* v. *EPA,* 548 F.2d 998, 1012 (D.C. Cir. 1976). He concluded at 1013 that the burden of proof referred to in section 556 ''is the burden of going forward with proof, and not the ultimate burden of persuasion.'' In addition, the legislative history clearly states that an applicant for review has the ultimate burden of proof in proceedings to review notices and orders. S. Rep. No. 128, 95th Cong. 1st Sess. 93 (1977).

43 FR 34381 (August 3, 1978).

The Supreme Court decision in Greenwich Collieries now provides a clear statement of law which requires OHA to revisit and revise these regulations. The two primary justifications that OHA has used in the past to shift the burden of persuasion from the agency to the permittee has been the *EDF* v. *EPA* case, quoted supra, and the argument that SMCRA's legislative history supports this result. However, the central holding of the *EDF* v. *EPA* case, that the burden of proof in § 7(c) of the APA means only the burden of going forward with a prima facie case, was expressly rejected in Greenwich Collieries. 512 U.S. at 279. This rationale, therefore, can no longer be accepted.

The second rationale, OHA's reliance on SMCRA's ''legislative history,'' is also unavailing. First, the isolated passage OHA relied upon conflicts with the language of SMCRA. In this case, SMCRA requires compliance with § 7(c) of the APA because it does not provide for a distinct burden of proof. Moreover, in many instances the statute expressly cross-references the APA. As the Supreme Court has made very clear, legislative history may not be used to override the plain language of a statute. *Ratzlaf* v. *United States,* 114 S.Ct. 655, 662 (1994) (One does not resort to legislative

[2] *See* Maher Terminals, 992 F.2d 1277, 1281 n.3 (3rd Cir. 1993), aff'd, 512 U.S. 267.

history to cloud a statutory text that is clear); *Davis* v. *Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989) (legislative history is irrelevant to the interpretation of an unambiguous statute); *Immigration and Naturalization Service* v. *Cardoza-Fonsecca,* 480 U.S. 421, 432 (1987) (when the plain language appears to settle the question, the strong presumption is that Congress expresses its intent through the language it chooses).

Second, the legislative history that the agency relied upon appears in only the Senate committee's report on the bill. It is nowhere to be found in either the House or the conference report. If this were a proper interpretation, it would have been agreed to by both the House and Senate conferees and included in their report. In any event, the single passage in the Senate report is most likely based upon the same ambiguity the Supreme Court notes in Greenwich Collieries that has led to the misapprehension that the APA burden of proof meant only the burden of production. 512 U.S. at 276. Immediately preceding the SMCRA legislative history discussion on the burden of proof is the clear statement that hearings of record under SMCRA are ''subject to the Administrative Procedure Act.'' S. Rep. No. 128 at 93. In short, this single isolated passage in the Senate report cannot carry the day in the face of the statutory language of SMCRA and the APA.[3]

More recently, OSM has acknowledged the changes in burden of proof requirements that resulted from Greenwich Collieries. The agency stated:

* * *the Court held that, under that APA provision [§ 7(c)], the proponent of an order has the burden of persuasion, not just the burden of production (or the burden of going forward with the evidence). [512 U.S. 267].

60 FR 16740 (March 31, 1995).

Not only did OSM acknowledge that the *agency* bears the ultimate burden of persuasion in cases governed by § 7(c) of the APA, but the agency also bears the burden of going forward with the evidence (the burden of production).

2. Other Agencies

While OHA attempts to place the ultimate burden of persuasion on parties other than OSM, other agencies have followed a more logical approach. For example, the Federal Mine Safety and Health Review Commission (FMSHRC) also has promulgated regulations that place the burden of proof on the proponent of an order. 29 CFR 2700.63(b) (1994). In cases before the Commission's ALJs, it is clear that when an operator avails itself of statutory rights to a formal hearing to contest a citation, the government shoulders the ultimate burden of persuasion as to both the fact and the seriousness of the violation. *National Independent Coal Operators' Association et al.* v. *Kleppe, Secretary of the Interior,* 423 U.S. 388, 397 (1976) (holding that under the predecessor Coal Mine Safety and Health Act, when a hearing is requested, the burden of proof remains with the Secretary); *Secretary of Labor, Mine Safety and Health Administration (MSHA)* v. *Garden Creek Pocahontas Company,* 11 FMSHRC 2148, 2152 (November 21, 1989) (holding that the Mine Act imposes on the Secretary the burden of proving the violation the Secretary alleges by a preponderance of the evidence); *Secretary of Labor (MSHA)* v. *Consolidation Coal Company,* 11 FMSHRC 966, 973 (June 27, 1989) (holding that the Mine Act imposes on the Secretary the burden of proving a violation alleged by a preponderance of the evidence in a civil penalty proceeding).

Numerous decisions from the Courts of Appeals have made it clear that in proceedings governed by the APA's § 7(c), the government must bear the burden of proof when it is the proponent of a rule or order. *Kirby* v. *Shaw,* 358 F.2d 446, 449 (9th Cir. 1966) (holding that in a formal hearing under the APA, the burden rested on the Post Office Department as the proponent of the order denying the use of the mails); *Twigger* v. *Schultz,* 484 F.2d 856, 862 (3rd Cir. 1973) (holding that in license suspension proceeding, the Secretary of the Treasury, as proponent of suspension order, had burden of proof under 5 U.S.C. 556(d)); *Rice* v. *National Transportation Safety Board,* 745 F.2d 1037, 1039 (6th Cir. 1984) (holding that the burden of proof in a proceeding to suspend pilot's license is upon the agency, rather than upon the pilot).

As these cases demonstrate, when agencies are the proponents of orders in proceedings on the record, they are expected to carry their burden by a preponderance of the evidence. The Supreme Court has now made this proposition clear in the recent *Greenwich Collieries* decision.

C. The Rules OHA Must Revise To Place the Ultimate Burden of Persuasion on the Agency Where the Agency is the Proponent of a Rule or Order Governed by § 556(d) of the APA

1. § 4.1155 Burdens of Proof in Civil Penalty Proceedings

This regulation divides the burden of proof between OSM and the petitioner regarding the fact of the violation. 43 CFR 4.1155 (1994). Under the existing rule, OSM is charged with the burden of going forward to establish a prima facie case, and the person who petitioned for review is improperly assigned the ultimate burden of persuasion. Civil penalty proceedings are governed by § 518 of the Act, which provides that:

A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing * * * Any hearing under this section *shall be of record and shall be subject to section 554 of title 5* of the United States Code. (emphasis added)

30 U.S.C. 1268(b).

Section 554 of the APA provides in relevant part:

The agency shall give all interested parties opportunity for—

(1) * * *

(2) * * * hearing and decision on notice and in accordance with sections 556 and 557 of this title.

5 U.S.C. 554(c).

Since § 554 of the APA requires the agency to comply with § 556 of the APA, the proponent of the rule or order must bear the burden of proof unless otherwise provided by statute. 5 U.S.C. 556(d). In cases of civil penalties, the agency is the proponent of the rule or order. *See Merrit* v. *U.S.,* 960 F.2d 15 (2nd Cir. 1992) (stating that the Shipping Act of 1984 allocates burden of proof according to APA § 556(d) and that the Federal Maritime Commission was proponent of order assessing fines for violation of that Act); and *Hazardous Waste Treatment Council* v. *EPA,* 886 F.2d 355, 367 (D.C. Cir. 1989) (holding that EPA administrator bears burden of proof in APA § 554 hearing to review agency compliance order), *cert. denied,* 498 U.S. 849 (1989). In a case involving civil penalty proceedings conducted in accordance with 43 C.F.R. § 4.1155, there can be no doubt that OSM, in seeking to charge a violation of SMCRA, is the proponent of the order, and therefore must carry both the burden of production and the burden of persuasion.

Moreover, the statute does not ''provide otherwise'' for a different party to bear the burden of proof, other than the agency. To the contrary, it expressly references the APA and further requires *the Secretary* to ''make findings of fact, and * * * issue a written decision as to the occurrence of the violation *and* the amount of the penalty which is warranted * * * (emphasis added) 30 U.S.C. § 1268(b). Nowhere in that section did Congress manifest an intent to either (1) place the ultimate burden of persuasion on the petitioner as to his innocence, or (2) provide differing burdens for the fact of the violation and the amount of the penalty. It is clear that Congress intended that the Secretary bear the burden of proof, and that the fact of the violation and the amount of the penalty be proven by the same party. Therefore, in light of the decision in *Greenwich Collieries,* 43 CFR 4.1155 must be amended to place the ultimate burden of persuasion on the agency for both the fact of the violation and the amount of the penalty.

2. Review of Section 521 Notices or Orders—§ 4.1171

This regulation also divides the burden of proof between the petitioner and the agency. The applicant for review is improperly charged with the burden of persuasion in reviewing § 521 notices of violation or orders of cessation. This regulation was issued pursuant to SMCRA § 525, 30 U.S.C. 1275, titled ''Review by the Secretary.'' Section 525(a)(1) provides a permittee with an opportunity to request review of the notice or order by the Secretary, and requires the Secretary to cause ''such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing * * *'' Section 525(a)(2) further dictates that ''Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code.''

Read together, subsections (a)(1) and (a)(2) of § 525 clearly require the Secretary, as the

[3] As the Third Circuit noted in Maher Terminals, only as express statutory provision may override the standards of the APA; and legislative history, longstanding use of a rule, judicial acceptance of the rule, or Congressional inaction do not constitute an express statutory provision having the authority to supercede the APA. 992 F.2d 1277, 1281 n.3 (3rd Cir. 1993), aff'd, 512 U.S. 267.

proponent of the original notice or order, to conduct a hearing pursuant to APA § 554 upon the request of the permittee. Moreover, § 525 of the Act does not ''provide otherwise'' for the burden of proof. In fact, it expressly adopts, by cross-reference, the APA standard. Therefore, since the proponent must have the ultimate burden of persuasion, OHA must modify 43 CFR 4.1171 to be consistent with federal law and the *Greenwich Collieries* case.

3. Permit Suspension or Revocation Proceedings—§ 4.1194

This regulation improperly places the ultimate burden of persuasion on the permittee in proceedings to suspend or revoke a permit that has previously been approved. OSM merely bears the burden of going forward with a prima facie case for suspension or revocation of the permit. 43 CFR 4.1194. The allocation of the burden of proof for this regulation must be amended to place both the burden of going forward with a prima facie case and the ultimate burden of persuasion on the agency. *See, e.g. Roach* v. *National Transportation Safety Board*, 804 F.2d 1147, 1159 (10th Cir. 1986) (holding that in a proceeding to suspend commercial pilot's license, the burden of proof always remained with the Administrator), *cert. denied*, 486 U.S. 1006.

Section 525(d) of SMCRA governs hearings held following the issuance of an order under § 521(a)(4) to show cause why a permit should not be suspended or revoked. Section 525(d) specifically requires the Secretary to ''hold a public hearing * * * [and that] any hearing shall be of record and shall be subject to § 554 of title 5 of the United States Code.'' 30 U.S.C. 1275(d). Section 525(d) does not provide a burden of proof distinct from that in the APA, but expressly incorporates the APA as the governing procedure. Since OSM is the proponent of the order to show cause, it must bear the burden of presenting a prima facie case and proving it by a preponderance of the evidence. [4]

4. Petitions for Review of Proposed Individual Penalty Assessments Under § 518(f) of the Act—§ 4.1307

This regulation inappropriately requires ''the individual'' to carry the burden of proof on the issues of (1) whether the individual at the time of the violation, failure, or refusal was a director or officer of the corporation; and (2) whether the individual violated a condition of a permit or failed or refused to comply with an order issued under § 521 of the Act or an order incorporated in a final decision by the Secretary under the Act. 43 CFR 1307(b) (1994). This regulation was issued pursuant to § 518(f) of the Act.

Section 518(b) of the Act expressly provides that any hearings arising under § 518 are to be governed by § 554 of the APA. The assignment of the burden of proof by the agency to the individual by this regulation is improper and inconsistent with SMCRA and the APA. A defendant's status as a corporate officer or director and the fact of the violation are both necessary elements to impose the civil penalties called for in § 518(f) of the Act. Therefore, the agency must amend 43 CFR § 4.1307 so that the proponent of the notice or order, the agency, has the ultimate burden of persuasion on all of these critical elements.

5. Request for Review of Approval or Disapproval of Permit Revisions—§ 4.1366(b)

Section 4.1366(b) improperly requires the permittee to carry the ultimate burden of persuasion that a revision of their permit ordered by OSM is not justified. While a new permit applicant may bear the burden of persuasion that he has complied with all of the permitting requirements, 30 U.S.C. 1260(a); 43 CFR 4.1366(a)(1) (1994); *see also Greenwich Collieries* at 280, (holding that applicants for statutory benefits bear ultimate burden of proof on entitlement thereto); *United States Steel Corp.* v. *Train*, 556 F.2d 822, 834, (7th Cir. 1977) (holding that where law prohibits conduct for which applicant seeks a permit, unless applicant receives permit, applicant is proponent); the agency becomes the proponent once the applicant becomes a permittee and the agency is trying to change the status quo. *Roach* v. *National Transportation Safety Board*, 804 F.2d 1147, 1159 (10th Cir. 1986) (holding that in a proceeding to suspend a commercial pilot's license, the burden of proof always remained with the Administrator), *cert. denied*, 486 U.S. 1006 (1988).

Pursuant to § 511(c), 30 U.S.C. 1261(c), the regulatory authority may require reasonable revisions provided that such revision or modification shall be based upon a written finding and subject to notice and hearing requirements. Section 511(c) of SMCRA does not provide for a burden of proof different than that established under § 7(c) of the APA. Moreover, as a general matter, OSM's rules provide that administrative hearings under Federal programs for such permit revisions ''shall be of record and subject to 5 U.S.C. 554 * * *'' 30 CFR 775.11(c) (1994). Accordingly, when the regulatory authority orders the permittee to revise its permit, the regulatory authority is the proponent of the order, and thus bears the burden of proof.

Since the burden of proof carried by the proponent of a rule or order has now been settled to mean the burden of persuasion, OHA must amend 43 CFR 4.1366(b) to place the ultimate burden of persuasion on the agency when the agency seeks to revise a permit.

V. Conclusion

The requested amendments and modifications to OHA's burden of proof requirements in situations where the agency is the proponent of the rule or order (and the Act does not provide for a different burden of proof) will conform the agency's regulatory review procedures to the plain language of the Act, Congressional intent, and the controlling Supreme Court decision in Greenwich Collieries. Moreover, these changes will correct several flaws in OSM's current approach to adjudicatory proceedings and will provide for a more consistent and equitable system of jurisprudence. Under OHA's current regulations, OSM may essentially assess penalties, revise or revoke valid permits, and/or have their notices of violation or cessation orders affirmed without proving their case by a preponderance of the evidence. As the D.C. Circuit noted:

> * * * in American law a preponderance of the evidence is rock bottom at the fact-finding level of civil litigation. Nowhere in our jurisprudence have we discerned acceptance of a standard of proof tolerating ''something less than the weight of the evidence.'' * * * the bare minimum for a finding of misconduct is the greater convincing power of the evidence. That the proceeding is administrative rather than judicial does not diminish this wholesome demand * * *

Charlton v. *F.T.C.*, 543 F.2d 903, 907–8 (D.C. Cir. 1976).

Amending the OHA regulations outlined above will afford mine operators this minimum level of protection that is required by SMCRA and the APA.

Accordingly, for the reasons stated herein, the National Mining Association requests that the Director immediately grant the petition pursuant to § 201(g) of the Surface Mining Act, 30 U.S.C. 1211(g), and 30 CFR 700.12, and promptly thereafter commence an appropriate proceeding to promulgate the requested amendments and modifications in accordance with § 501 of the Surface Mining Act, 30 U.S.C. 1251, and 5 U.S.C. 553.

Respectfully submitted,

National Mining Association,
101 Constitution Avenue, NW.,
Washington, DC 20001.

By: _____
Harold P. Quinn, Jr.,
Senior Vice President & General Counsel.

_____
Bradford V. Frisby,
Associate General Counsel.

[FR Doc. 03–6555 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–79–P

[4] In additioin to properly allocating the burden of proof to OSM in review of suspension or revocation proceedings, this modification to 43 CFR § 4,1194 would correct an inconsistency with 43 CFR § 4.1355. In § 4.1355, OHA correctly allocated to OSM both the burden of going forward with a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[I.D. 022803A]

Endangered and Threatened Wildlife; Revision of the Loggerhead Sea Turtle Recovery Plan

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce, and Fish and Wildlife Service (USFWS), Interior.

ACTION: Notice to announce the revision of the loggerhead sea turtle recovery plan; request for information.

SUMMARY: We, NMFS and USFWS, announce our intention to revise the 1991 recovery plan for the loggerhead sea turtle (*Caretta caretta*), listed as threatened throughout its range, under the Endangered Species Act of 1973 (ESA), as amended. The 1991 recovery plan addressed recovery needs for the U.S. population of the loggerhead in the northwestern Atlantic Ocean and the Gulf of Mexico. A comprehensive revision of the 1991 recovery plan is needed to incorporate an abundance of new information on the biology and population status of the loggerhead and to provide an updated framework for addressing problems of the species and for prioritizing actions necessary for recovery.To ensure a comprehensive revision, we are soliciting information on the loggerhead population status and trends, threats and conservation efforts.

DATES: Information related to this notice must be received by May 5, 2003, to be considered in the initial stages of the revision. However, we will accept information and comments submitted after this date, for consideration at later stages in the recovery process, until further notice.

ADDRESSES: Information should be addressed to the National Sea Turtle Coordinator, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216. Information may also be sent via fax to 904–232–2404 or through the internet website address for the loggerhead recovery plan at *http://northflorida.fws.gov/SeaTurtles/loggerhead-recovery/default-loggerhead.htm.*

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*) or Sandy MacPherson (ph. 904–232–2580, fax 904–232–2404, e-mail *sandy__macpherson@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

The loggerhead was listed as threatened under the ESA in 1978. Upon listing a species, section 4(f) of the ESA requires the preparation and implementation of a recovery plan and revisions to such plans as necessary. Under section 4(f)(1)(B), each plan, at a minimum, must contain: (a) A description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; (b) objective, measurable criteria that, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and (c) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

In addition, recovery plans must include a concise summary of the current status of the species and its life history, and an assessment of the factors that led to population declines and/or which are impeding recovery. The plan must also include a comprehensive monitoring and evaluation program for gauging the effectiveness of recovery measures and overall progress toward recovery.

Conservation and recovery of listed sea turtles, including the loggerhead, are the joint responsibility of NMFS and USFWS. In 1984, we issued a multi-species recovery plan for listed sea turtles in the southeastern United States region. This plan was revisited in the early 1990's culminating in an individual species recovery plan for the loggerhead in the northwestern Atlantic Ocean and Gulf of Mexico in 1991. In 2001, we initiated the process to revise the plan for a second time. An Atlantic Loggerhead Sea Turtle Recovery Team, consisting of species experts, was established to draft this revision.

Since the development of the 1991 plan, significant research has been accomplished and important conservation and recovery activities have been undertaken. As a result, we have a greater knowledge of the species and its status. These advances in our understanding of the loggerhead turtle make a second revision to the recovery plan necessary. The revised recovery plan will serve as a basis for future recovery efforts, guide research to ensure that new information will contribute toward the greatest research needs, and enable effective monitoring to allow us to track the status of the loggerhead and the factors that may affect the species.

A schedule for completing the revised recovery plan is available on the internet website address for the loggerhead recovery plan (see ADDRESSES). Draft sections of the Work in Progress will also be made available on the internet website to provide interested stakeholders an opportunity to review and provide input on the revised plan during its development. Once all sections of the revised plan have been drafted, we will publish a notice of availability of the draft recovery plan in the **Federal Register** and will formally solicit public comment on the draft prior to finalizing the plan.

To ensure that the revised recovery plan is based on the best available data, we are soliciting information on historical and current abundance; historical and current distribution and movements; population status and trends; genetic stock identification; current or planned activities that may adversely impact the species; and ongoing efforts to protect the loggerhead in the northwestern Atlantic and Gulf of Mexico. We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

All submissions must contain the submitter's name, address, and any association, institution, or business that the person represents. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the USFWS' Jacksonville Field Office (see **ADDRESSES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with

applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 14, 2003.

Phil Williams,

Chief, Endangered Species Division, National Marine Fisheries Service

Dated: March 5, 2003.

Sam D. Hamilton,

Regional Director, Southeast Region, Fish and Wildlife Service.

[FR Doc. 03–6714 Filed 3–19–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI21

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed designation of critical habitat for the threatened *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch) in Ventura and Santa Barbara Counties, California, and the availability of the draft economic analysis for the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed critical habitat rule that was published in the **Federal Register** on October 9, 2002 (67 FR 62926), need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in the final rule.

DATES: We will accept public comments until April 21, 2003.

ADDRESSES: Comments and information should be sent to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. Written comments may also be sent by fax to 805/644–3958 or hand-delivered to our office at the above address. You may also send comments by electronic mail (e-mail). For instructions, see Public Comments Solicited under **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rick Farris or Anna Toline of the Ventura Fish and Wildlife Office at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2002, we proposed to designate approximately 170 ha (420 ac) of land in three units in Ventura and Santa Barbara counties as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* (67 FR 62926). We accepted public comments on this proposed rule until December 9, 2002. Private lands comprise approximately 33 percent of the proposed critical habitat, and State lands comprise 67 percent. No Federal lands are proposed for inclusion. No federally listed animal species are known to occur on the proposed critical habitat units.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Endangered Species Act of 1973, as amended (Act), with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for *Astragalus pycnostachyus* var. *lanosissimus*, we have prepared a draft economic analysis of the proposed critical habitat designation. The economic analysis shows that the proposed designation is not likely to result in any consultation costs pursuant to section 7 of the Act. As a result, the analysis concluded that the potential economic cost attributed to the proposed designation is expected to be $0. The draft analysis is available on the Internet and from the mailing address in the **ADDRESSES** section above. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis.

Public Comments Solicited

We have reopened the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat determination for *Astragalus pycnostachyus* var. *lanosissimus*, and the draft economic analysis associated with the designation of critical habitat. Previously submitted written comments on the critical habitat proposal need not be resubmitted. We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Field Supervisor (*see* **ADDRESSES** section). Hand deliveries must be made during normal business hours.

You may send comments by electronic mail (e-mail) to: *fw1venturamilkvetch@fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of any special characters and any form of encryption. Also, please include ''Attn: RIN 1018–AI21'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact the Ventura Fish and Wildlife Office at 805/644–1766.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat and the draft economic analysis, will be available for inspection, by appointment, during normal business hours at the address above. You may obtain copies of the draft economic analysis on the Internet at *http://www.r1.fws.gov.* or by writing to the Field Supervisor at the address above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions for organizations or businesses, and from individuals

identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

We solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

(1) Does the analysis accurately capture and discuss plans or potential for development or conversion to agriculture within the area proposed to be designated;

(2) Does the analysis adequately address the indirect effects *e.g.:* property tax losses due to reduced home construction, losses to local business due to reduced construction activity

(3) Does the analysis accurately define and capture opportunity costs.

(4) Does the analysis adequately address the likelihood of ''stigma effects'' and costs associated with the designation; and

(5) Does the analysis adequately address the likely effects and resulting costs arising from the California Environmental Quality Act and other State laws as a result of the designation.

References Cited

A complete list of all references cited herein, as well as others used in the development of the proposed critical habitat and draft economic analysis, is available upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this notice is Rick Farris (*see* **ADDRESSES** section)

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 7, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–6292 Filed 3–19–03; 8:45 am]

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Notices

Federal Register
Vol. 68, No. 54
Thursday, March 20, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade; Reestablishment, Establishment, and Nominations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. II), notice is hereby given that the Secretary of Agriculture (Secretary), after consultation with the Office of the United States Trade Representative (USTR), intends to reestablish the Agricultural Policy Advisory Committee (APAC) for Trade and the five existing Agricultural Technical Advisory Committees (ATAC) for Trade; and establish a new ATAC for Trade in Processed Foods. The Foreign Agricultural Service (FAS) is requesting nominations for persons to serve on these seven committees.

DATES: Written nominations must be received by FAS before the close of business on April 4, 2003.

ADDRESSES: Nominations must be hand-delivered (including FedEx, DHL, UPS, etc.) to the Legislative Affairs Office, Foreign Agricultural Service, USDA, Room 5065–S, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments regarding the establishment or reestablishment of these committees can also be sent by electronic mail to *LegAffairs@fas.usda.gov,* or by fax to (202) 720–8097 or (202) 720–5936. The Legislative Affairs Office can be contacted by telephone at (202) 720–7829, with inquiries directed to Chanda Beckman or Tanya Fariña.

SUPPLEMENTARY INFORMATION:

Introduction

The APAC and the ATACs are authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. No. 93–618, 19 U.S.C. 2155). The purpose of these committees is to advise the Secretary of Agriculture and the U.S. Trade Representative (USTR) concerning agricultural trade policy. The committees are intended to ensure that representative elements of the private sector have an opportunity to express their views to the U.S. Government.

Rechartering of Existing Committees and Establishment of New Committees

Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), the FAS gives notice that the Secretary and the USTR intend to reestablish the APAC and the following five ATACs:

- Animals and Animal products;
- Fruits and Vegetables;
- Grains, Feed, and Oilseeds;
- Sweeteners and Sweetener Products; and
- Tobacco, Cotton, Peanuts, and Planting Seeds.

FAS also gives notice that the Secretary and the USTR intend to establish a new ATAC for Processed Foods.

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests. The private sector advisory committee system currently consists of three tiers:

- The President's Advisory Committee on Trade and Policy Negotiations;
- Five general policy advisory committees, including the APAC and;
- 28 technical advisory committees, including the ATAC for Processed Foods.

The establishment and renewal of such committees is in the public interest in connection with the duties of the USDA imposed by the Trade Act of 1974, as amended.

Committee Membership Information

- All committee members are appointed by the Secretary and the USTR, and serve at the discretion of the Secretary and the USTR.
- Committee size will be limited up to approximately 35 members each.
- All committee appointments will expire in 2 years, but the Secretary and USTR may renew an appointment for one or more additional terms.
- All committee members must be U.S. citizens.
- To attend certain meetings, committee members must have a current security clearance or have submitted an application for a security clearance.
- Committee members serve without compensation; they are not reimbursed for their travel expenses.
- No person can serve on more than one USDA advisory committee at the same time.

General Committee Information

- Each committee has a chairperson, who his elected from the membership of that committee.
- All committee meetings will be held in Washington, DC.
- Committee meetings will be open to the public, unless the USTR determines that a committee will be discussing issues that justify closing a meeting or portions of a meeting, in accordance with 5 U.S.C. 552(c).
- In addition to their other advisory responsibilities, all committees are required to meet at the conclusion of negotiations of any trade agreement, and to provide a report on each agreement to the President, Congress, and the USTR.

Agricultural Policy Advisory Committee for Trade

The APAC is composed of a broad spectrum of agricultural interests. The APAC provides advice concerning:

- Negotiating objectives and bargaining positions before the U.S. enters into a trade agreement;
- The operation of various U.S. trade agreements; and
- Other matters arising from the administration of U.S. trade policy.

Agricultural Technical Advisory Committees for Trade

The ATACs provide advice and information regarding trade issues which affect both domestic and foreign production in their commodities, drawing upon the technical competence and experience of its members. There will be six ATACs, one for each of the following sectors:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, and Oilseeds;

- Processed Foods;
- Sweeteners and Sweetener Products; and
- Tobacco, Cotton, Peanuts, and Planting Seeds.

Nominations and Appointment of Members

Nominations for APAC and ATAC membership are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that the recommendations of the committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Members are appointed primarily for their expertise and knowledge of agricultural trade as it relates to policy and commodity specific products. No person, company, producer, farm organization, trade association, or other entity has a right to membership on a committee. In making appointments, every effort will be made to maintain balanced representation on the committees: representation from producers, farm and commodity organizations, processors, traders, and consumers. Geographical balance on each committee will also be sought.

Nominees to the new ATAC for processed foods should represent a company or trade association of companies engaged in the production and/or trade of processed or value-added food, pet food, or beverage products at the retail, distribution, or processor level, and have knowledge of the effects that various trade barriers (including technical barriers to trade) can have on the products they represent. Each nominee representing a trade association should represent a membership comprised largely of processed food companies and/or companies engaged in the trade of processed or value-added products. All nominees should be recognized leaders in their fields, and be able to defend those interests fully and professionally. Processed products, according to the International Trade Commission's report *Processed Foods and Beverages: A Description of Tariff and Non-tariff Barriers for Major Products and Their Impact on Trade,* ''generally include food and beverage products that have some degree of value-added through processing beyond any minimal first-stage processing (*e.g.,* grading, sorting, washing) and either (i) can be directly consumed as a food or beverage product, either immediately or with minimal preparation, or (ii) can be directly used as an input in the production of a food or beverage product without significant further processing.''

Nominations: Nominating a person to serve on any of the committees requires submission of a *current resume* for the nominee and the following form:

- AD–755 (Advisory Committee Membership Background Information), available on the Internet at *www.fas.usda.gov/admin/ad755.pdf.* In addition, FAS encourages the submission of the optional form AD–1086 (Applicant for Advisory Committees Supplemental Sheet), available on the Internet at *www.fas.usda.gov/admin/ad1086.pdf.* Forms can also be requested by phone at (202) 720–6829.

Foreign Firms: Persons who are employed by firms that are 50 percent plus one share foreign-owned must state the extent to which the organization or interest to be represented by the nominee is owned by non-U.S. citizens, organizations, or interests. If the nominee is to represent an entity or corporation with 10 percent or greater non-U.S. ownership, the nominee must demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as an advisor on the U.S. agriculture advisory committee for trade.

Issued at Washington, DC this 18th day of March, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–6794 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ash Creek Fire Salvage, Umpqua National Forest, Douglas County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for the Ash Creek Fire Salvage within the Ash/Zinc sub-watershed on the Tiller Ranger District of the Umpqua National Forest. During 2002, the Boulder Creek fire burned about 4,130 acres of the sub-watershed. About 35,430 mature of late seral trees were killed or are dying. These trees represent a substantial economic value to nearby communities and ecological value to species that depend on large wood. The sub-watershed is about 120 miles south and east of Roseburg, and 120 miles north and east of Medford, Oregon. Proposed activities include the harvest of dead and dying trees through a commercial timber sale on about 350 acres in the matrix land allocation, and the planting of the harvested areas with a mixture of conifers, hardwoods, and shrubs. This proposal complies with the 1990 Umpqua National Forest Land and Resource Management Plan (Forest Plan), as amended. The Wildfire Effects Evaluation Project (2003) disclosed the effects of the Boulder Fire on the Ash/Zinc sub-watershed. Forest Service plans to implement salvage portion of proposal by the fall of 2004 and post-sale activities, such as planting harvested areas, in the winter of 2005. The Forest Service gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the proposal should be received in writing by April 25, 2003.

ADDRESSES: Send written comments to James A. Caplan, Forest Supervisor, Umpqua National Forest, PO Box 1008, Roseburg, Oregon 97470.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action or EIS to Alan Baurmann, Timber Management Assistant, Tiller Ranger District, 27812 Tiller Trail Hwy., Tiller Oregon 97484; e-mail: *abaumann@fs.fed.us*; Phone: 541–825–3201.

SUPPLEMENTARY INFORMATION: The Ash Creek Fire Salvage planning area comprises about 14,197 acres of which about 156 acres (11 percent) are private lands. About 1,480 acres of plantations were burned in the fire and will need to be re-established. There are no planned activities within the inventoried roadless area or the Rogue-Umpqua Divide Wilderness. The Planning Area includes all or portions of in sections 27–29 and 32–34, T. 28S, R. 2W; sections 3–8, 17 and 18 T. 29S, R. 2W; and section 13, T. 29S, R. 1W, Willamette Meridian, Douglas County, Oregon.

Purpose and Need for Action. There is a need to salvage merchantable dead and dying trees for the purpose of recovering salvageable volume from fire damaged trees and begin essential reforestation efforts. There is a need to maintain the ecological value for species that depend on large wood on the forest floor or standing as snags. The trees are

within the Ash Creek Planning Area and will be removed in a manner consistent with the Forest Plan.

Proposed Action. The proposed action is to harvest about 350 acres of mature and late seral dead and dying trees, spread throughout 23 separate timber stands comprising about 1,366 acres that were killed in the Boulder Fire. Of these dead trees, about 2 to 6 trees per acre will be left as coarse down wood and snags. No new roads or temporary roads are being planned. The proposed harvest is in the matrix land allocation of the Ash/Zinc sub-watershed. Upon completion of harvest activities, the area will be planted with a mixture of conifers: Douglas-fir; sugar pine; white pine; incense-cedar; Pacific yew; and native hardwoods and shrubs.

This analysis will consider a range of alternatives that will address the purpose and need for the proposed project. The no-action alternative will be part of this range so that effects associated with not implementing any of the proposed activities can be evaluated. Preliminary issues identified include effects on: habitat of species associated with late-successional and old growth forests; aquatic habitats; and hydrologic processes.

Scoping Process. The Umpqua National Forest is seeking public input on this proposed action. A comment sheet will be posted to the Forest website and mailed with the scoping letter. The proposed action will be published in the Umpqua National Forest Quarterly Schedule of Proposed Actions and posted on the Forest Web site on the Internet: *www.fs.fed.us/r6/umpqua/planning/planning1.html.*

The Forest Service will be seeking additional information, comments, and assistance from Federal, State, and local agencies, tribal governments, and other individuals or organizations who may be interested or affected by the proposed project. Public meetings and field trips are scheduled. Dates and locations for these activities will be announced. The scoping process will include identifying: issues; alternatives to the proposed action; and potential environmental effects (that is, direct, indirect and, cumulative effects) of the proposed action and alternatives.

Comment Requested. Comments received in response to this notice and through scoping, include names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review May 2003. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available September 2003.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the Ash Creek Fire Salvage. The Responsible Official is James A. Caplan, Forest Supervisor, Umpqua National Forest. The Responsible Official will document the decision and rationale for the Ash Creek Fire Salvage decision in the Record of Decision. The decision will be subject to review under Forest Service Appeal Regulations (36 CFR part 215).

Dated: March 11, 2003.

James A. Caplan,

Forest Supervisor.

[FR Doc. 03–6686 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Tuesday, April 8, 2003. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.2.

The meeting agenda includes the following:

(1) Welcome/Introductions/Agenda

(2) General Information Update on Land Between The Lakes

(3) Update on Environmental Education Projects

(4) Land and Resource Management Planning—Appreciative Inquiry Process

(5) Presentation by Mr. David Nickell, representing Concept Zero

(6) Review of Public Comments Received

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by March 31, 2003, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting. At this meeting on April 8, 2003, Mr. David Nickell, representing Concept Zero, will make an oral presentation approved by the Board at the October 2002 meeting.

DATES: The meeting will be held on Tuesday, April 8, 2003, 8:30 a.m. to 3:30 p.m., CDT.

ADDRESSES: The meeting will be held at the Stewart County Public Library, 102 Natcor Road, Dover TN, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

Dated: March 14, 2003.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 03–6678 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section 4 of the Pennsylvania State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Pennsylvania NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Pennsylvania that changes must be made in the NRCS State Technical Guide specifically in practice standard 338 Prescribed Burning to account for improved technology. The prescribed burning practice can be used in systems that have a need to control undesirable vegetation, improve forage quality and quantity, or reduce wildfire hazards through the use of controlled burning.

These *draft* standards include the following: Prescribed Burning PA338.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Robin E. Heard, State Conservationist, USDA—Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 237–2200; fax (717) 237–2238.

Copies of these *draft* practice standards are made available electronically on the Pennsylvania Natural Resources Conservation Service (NRCS) Web site at *http://www.pa.nrcs.usda.gov.* Click on the ''New eFOTG'' button, select Pennsylvania on the map, and access Section IV to review the *draft* practice standards.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law 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 Pennsylvania will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Pennsylvania regarding disposition of those comments and a final determination of change will be made.

Dated: February 28, 2003.

Robin E. Heard,

State Conservationist.

[FR Doc. 03–6669 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that conference call of the Louisiana Advisory Committee to the Commission will begin at 10:30 a.m. and end at 12 p.m. on Thursday, March 27, 2003. The purpose of the conference call is to discuss the Committee's environmental justice report and to plan future activities. The conference call is available to the public through the following call-in number: 1–800–497–7709, access code: 15708639. Any interested member of the public may call this number and listen to the meeting.

To ensure that the Commission secures an appropriate number of lines, persons are asked to register by contacting Farella E. Robinson of the Central Regional Office, 913–551–1400 (TDD 913–551–1414), by 4 p.m. on Wednesday, March 26, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 4, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–6738 Filed 3–19–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that conference call of the Mississippi Advisory Committee to the Commission will begin at 10 a.m. and end at 11:30 a.m. on Wednesday, April 2, 2003. The purpose of the conference call is to discuss the Committee's project on state human relations legislation and plan future activities. The conference call is available to the public through the following call-in number: 1–800–473–8794, access code: 15708651. Any interested member of the public may call this number and listen to the meeting.

To ensure that the Commission secures an appropriate number of lines, persons are asked to register by contacting Farella E. Robinson of the Central Regional Office, 913–551–1400 (TDD 913–551–1414), by 4 p.m. on Tuesday, April 1, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 4, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–6737 Filed 3–19–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–

463 as amended by Pub. L. 94–409), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee will address issues regarding Census Bureau programs and activities related to their areas of expertise. Members will address policy, research, and technical issues related to the design of the 2010 decennial census, including the American Community Survey and related programs. The Committee also will discuss the 2002 Economic Census and Economic Initiatives, as well as data sharing prospects and challenges, and the current status of the Annual Capital Expenditures Survey. Last-minute changes to the agenda are possible, which could prevent giving advance notice of schedule adjustments.

DATES: The meeting will convene on April 10–11, 2003. On April 10, the meeting will begin at 9 a.m. and adjourn at approximately 5 p.m. On April 11, the meeting will begin at 9 a.m. and adjourn at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233. Her telephone number is (301) 763–2070, TDD (301) 457–2540.

SUPPLEMENTARY INFORMATION: The Census Advisory Committee of Professional Associations is composed of 36 members, appointed by the Presidents of the American Economic Association, the American Statistical Association, and the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee addresses issues regarding Census Bureau programs and activities related to their respective areas of expertise.

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing, at least three days before the meeting, to the Committee Liaison Officer named above in the **FOR FURTHER INFORMATION CONTACT** heading. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer.

Dated: March 14, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–6694 Filed 3–19–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Glycine From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on glycine from the People's Republic of China (PRC) in response to a request from Tianjin Tiancheng Pharmaceutical Co. Ltd. (TTPC). The period of review (POR) is March 1, 2001, through February 28, 2002. The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' Interested parties are invited to comment on these preliminary results. (*See* the ''Preliminary Results of Review'' section of this notice.)

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Matthew Renkey, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–2312, respectively.

Background

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. See *Antidumping Duty Order: Glycine from the People's Republic of China,* 60 FR 16116, (March 29, 1995). On March 29, 2002, the Department received a request for a new shipper review from TTPC; however, this request was not filed in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and section 351.214(c) of the Department's regulations. On April 29, 2002, the Department sent a letter to TTPC asking them to properly refile their request with the Department by May 1, 2002. The Department allowed TTPC to correct its business proprietary information (BPI) as it had done with a concurrent request for a new shipper review in another case. *See* the *Memorandum to the File through Maureen Flannery from Matthew Renkey, Initiation of New Shipper Review of Glycine from the People's Republic of China* (May 17, 2002). On May 1, 2002, the Department received a properly filed request for a new shipper review from TTPC for the antidumping duty order on glycine from the People's Republic of China. On May 24, 2002, the Department published its initiation of this new shipper review for the period March 1, 2001, through February 28, 2002. *See Glycine from the People's Republic of China: Initiation of Antidumping New Shipper Review,* 67 FR 36572 (May 24, 2002).

On May 24, 2002, we issued a questionnaire to TTPC. On July 11, 2002, we received TTPC's section A questionnaire response, and on July 12, 2002 we received the sections C and D questionnaire response. On November 13, 2002, we issued a supplemental questionnaire to TTPC. We received the response to this questionnaire on December 9, 2002. On February 26, 2003, we requested information from the U.S. importer of TTPC's new shipper merchandise. We have not yet received a response to this request. Any information provided by the importer will be analyzed for purposes of the final results of this new shipper review. On November 12, 2002, the Department extended the preliminary results of this new shipper review by 120 days until March 13, 2002. *See Glycine from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review,* 67 FR 69717 (November 19, 2002).

Scope of the Antidumping Duty Order

The product covered by this proceeding is glycine which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). This proceeding includes glycine of all purity levels.

Verification

As provided in section 782(i) of the Act, we conducted verification of the questionnaire responses of TTPC and its producer, Baoding Mancheng Eastern Chemical Plant (Eastern Chemical). We used standard verification procedures,

including on-site inspection of the production and sales facilities, and an examination of relevant sales and financial records. Our verification results are outlined in the *New Shipper Review of Glycine from the People's Republic of China: Sales and Factors Verification Report for Tianjin Tiancheng Pharmaceutical Co. Ltd.,* dated March 6, 2003. (*TTPC Verification Report*), and *New Shipper Review of Glycine from the People's Republic of China: Factors Verification Report for Baoding Mancheng Eastern Chemical Plant,* dated March 6, 2003 (*Eastern Chemical Verification Report*). A public version of this report is on file in the Central Records Unit located in room B–099 of the Main Commerce Building.

Separate Rates

TTPC requested a separate, company-specific rate. In its questionnaire response, the company stated that it is an independent legal entity.

To establish whether a company operating in a non-market economy (NME) country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). Under this policy, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record supports the claim made by TTPC that its export activities are not controlled by the government. TTPC submitted evidence of its legal right to set prices independently of all government oversight. The business license of TTPC indicates that the company is permitted to engage in the exportation of glycine. We found no evidence of *de jure* government control restricting this company's exportation of glycine.

In general, no export quotas apply to glycine. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Law),* issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC, the *Company Law of the People's Republic of China (Company Law),* adopted by the National People's Congress and promulgated by the President on December 29, 1993 and effective on July 1, 1994, and the *Foreign Trade Law of the People's Republic of China (Foreign Trade Law),* adopted by the National People's Congress and promulgated by the President on May 12, 1994 and effective on July 1, 1994, provided in the record of this review, all indicate a lack of *de jure* government control over privately-owned companies, such as TTPC. They demonstrate that control over the company rests with the enterprise itself. The *Legal Persons Law, Company Law,* and *Foreign Trade Law* provide that, to qualify as legal entities, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These laws also state that, as an independent legal entity, a company is responsible for its own profits and losses. (*See Notice of Final Determination of Sales at Less Than Fair Value; Manganese Metal from the People's Republic of China,* 60 FR 56045 (November 6, 1995) (*Manganese Metal*).) At verification, we saw that the business license for TTPC was granted in accordance with these laws. The results of verification support the information provided regarding these laws. *See TTPC Verification Report* at 2. Compliance with these laws supports a finding of *de jure* absence of central control. Therefore, we preliminarily determine that there is an absence of *de jure* control with respect to TTPC.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification, indicates that the management of TTPC is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The general manager of TTPC has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. TTPC stated that its management is selected by a board of directors and there is no government involvement in the selection process. Finally, decisions made by the respondent concerning purchases of subject merchandise from suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's activities, we preliminarily determine that a separate rate should be applied to TTPC.

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value (NV), we compared its United States price to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

We based the United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight, foreign brokerage and handling, international freight, and marine insurance expenses from the starting

price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. TTPC did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Surrogate Values Used for the Preliminary Results of the Antidumping Duty New Shipper Review of Glycine from the People's Republic of China,* dated March 13, 2003 *(Factor Values Memo).*

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the subsequent new shipper review of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. We valued the factors of production using publicly available information from India. We adjusted the Indian import prices and price quotes from *Chemical Weekly* (which publishes chemical prices in India and which has been used as a source in other antidumping duty cases) by adding foreign inland freight expenses to make them delivered prices.

We valued the factors of production as follows:

Materials and Energy

To value chloroacetic acid (also known as monochloroacetic acid), we used prices concurrent with the POR as reported in *Chemical Weekly.* To value liquid ammonia, we used the weighted-average unit import value derived from the *Monthly Trade Statistics of Foreign Trade of India—Volume II—Imports (Indian Import Statistics)* for the period March 2001 through January 2002. To value hexamine, we used prices reported in *Chemical Weekly* during the months coinciding with the POR. To value methanol (also known as methyl alcohol), we used the weighted-average unit import value derived from the *Indian Import Statistics* for the period March 2001 through January 2002. We adjusted these values to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on these inputs, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distance between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China,* 62 FR 51410, 51413 (October 1, 1997) *(Roofing Nails).*

To value coal, we relied upon Indian import data for steam coal for the period March 2001 through January 2002 from the *Indian Import Statistics.* We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the 2001 total cost per kilowatt hour (KWH) for ''Electricity for Industry'' as reported in the International Energy Agency's publication, *Key World Energy Statistics, 2002.* For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region,* published by the Asian Development Bank. To achieve comparability of electricity and water prices to the factors reported for the POR, we adjusted these factor values to reflect inflation to the POR using the Wholesale Price Index (WPI) for India, as published in the 2002 *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

To value packing materials (plastic bags and cardboard drums), we relied upon Indian import data. To value plastic bags, we used data for the period March 2001 through January 2002 as reported in the *Indian Import Statistics.* To value cardboard drums, we used data for the period March 2001 through December 2001 from the *Indian Import Statistics,* which was the latest available to the Department for this factor. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory following the methodology discussed above.

Labor

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. *See http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm.* Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2001,* International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

Factory Overhead, SG&A, and Profit

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used financial information from the most recent financial statements of two Indian chemical producers: Calibre Chemicals Pvt. Ltd. and National Peroxide Ltd. This information was used in the preliminary determination in the antidumping duty investigation of saccharin from the PRC. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Saccharin from the People's Republic of China,* 67 FR 79049 (December 27, 2002). We applied these rates to the calculated cost of manufacture. *See Factor Values Memo.* Other information regarding potential surrogate values for factory overhead, SG&A, and profit has recently been placed on the record of this case. We will consider this information, and any other new surrogate information, for the final results of this review.

Transportation Expenses

To value truck freight expenses we used nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express* (an Indian business publication), which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China,* 67 FR 36570 (May 24, 2002) *(China Pipe).* We adjusted the rates to reflect inflation to the POR using the WPI for India from the IFS.

To value foreign brokerage and handling, we used a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India,* 66 FR 50406 (October 3, 2001) *(Hot-Rolled from India),* which was also used in *China Pipe.* We used the average of the

foreign brokerage and handling expenses reported in the U.S. sales listing of the public questionnaire response submitted in the antidumping investigation of Essar Steel Ltd. in *Hot-Rolled from India.* Charges were reported on a per metric ton basis. We adjusted these values to reflect inflation to the POR using the WPI for India from the IFS. *See Factor Values Memo.*

To value marine insurance, we used marine insurance data collected in the tenth administrative review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. *See Memorandum to the File: Marine Insurance Rates* (June 30, 1998) included in the *Factor Values Memo*, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1996–1997 Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR 63842 (November 17, 1998). We adjusted this value for inflation during the POR using the U.S. dollar PPI data published by the IMF.

TTPC obtained its international freight service from a market economy carrier. Therefore, we are using the amount reported by TTPC, which it incurred in U.S. dollars.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/ Exporter	Time period	Margin
Baoding Mancheng Eastern Chemical Plant/Tianjin Tiancheng Pharma-ceutical Co. Ltd.	3/1/01–2/28/02	43.44%

Cash-Deposit Requirements

If these preliminary results are not modified in the final results of this review, a cash deposit rate of 43.44 percent will be effective upon publication of the final results of this new shipper review for all shipments of glycine from the PRC produced by Eastern Chemical and exported by TTPC and entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(c) of the Act. For glycine exported by TTPC but not produced by Eastern Chemical, we will apply as the cash deposit rate the PRC-wide rate, which is currently 155.89 percent.

Assessment Rates

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service within 15 days of the completion of this review. For assessment purposes, we calculated importer-specific assessment rates for glycine from the PRC. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rates on each entry of the subject merchandise by the importer during the POR. For glycine exported by TTPC but not produced by Eastern Chemical, we will assess antidumping duties at the PRC-wide rate.

Schedule for Final Results of Review

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f) of the Department's regulations.

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: March 11, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6733 Filed 3–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin from Italy; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: In response to a request from Solvay Solexis SpA and Solvay Solexis, Inc., the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy (PTFE) (*see Antidumping Duty Order; Granular Polytetrafluoroethylene Resin from Italy*, 53 FR 33163 (August 30, 1988)) and issuing this notice of preliminary results. We have preliminarily determined that Solvay Solexis is the successor-in-interest to Ausimont SpA.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1756.

SUPPLEMENTARY INFORMATION:

Background:

On January 27, 2003, Solvay Solexis SpA and Solvay Solexis, Inc. (collectively, Solvay Solexis) requested that the Department of Commerce (the Department) initiate and conduct an expedited changed circumstances review, in accordance with section 351.216 and 351.221(c)(3)(ii) (2003) of the Department's regulations, to confirm that Solvay Solexis is the successor-in-interest to Ausimont SpA and Ausimont USA, Inc. (collectively, Ausimont). In its request, Solvay Solexis stated that Solvay S.A. acquired the assets of Ausimont from its parent company, Montedison, on May 7, 2002. Furthermore, Solvay Solexis requested that Ausimont's cash deposit rate be applied to Solvay Solexis retroactive to January 1, 2003, the effective date of Ausimont's name change. Solvay Solexis also requested that the Department conduct an expedited changed circumstances review pursuant to section 351.221(c)(3)(ii).

On February 10, 2003, Solvay Solexis, formerly Ausimont, submitted additional information and documentation regarding its purchase by the Solvay Group, an international chemical and pharmaceutical company, and Ausimont's subsequent name change to Solvay Solexis. On February 11, 2003, the petitioner, E.I. DuPont de Nemours & Company, opposed Solvay Solexis' requests for an expedited changed circumstances review and for a retroactive assignment of a company-specific cash deposit rate.

Scope of the Review

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Final Affirmative Determination; Granular Polytetrafluoroethylene Resin from Italy*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. Such merchandise is classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS). We are providing this HTSUS number for convenience and customs purposes only. The written description of the scope remains dispositive.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the Background section, we have received information indicating that Ausimont has been acquired by the Solvay Group. This constitutes changed circumstances warranting a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Solvay Solexis' submissions.

Section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice if the Department concludes that expedited action is warranted. In this instance, because we have the information necessary to make a preliminary finding already on the record, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making successor-in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Polychloroprene Rubber from Japan: Final Results of Changed Circumstances Review*, 67 FR 58 (January 2, 2002) citing, *Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *Id.* citing, *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash-deposit rate of its predecessor.

In its January 23, 2003, submission Solvay Solexis stated that, prior to its acquisition of Ausimont, neither the Solvay Group, nor any affiliated party of the Group, manufactured or exported subject merchandise. The Solvay Group merged its fluoropolymers business with that of Ausimont's and Ausimont changed its name to Solvay Solexis effective January 1, 2003. Furthermore, in both its January 23 and February 10, 2003, submissions, Solvay Solexis stated that the change in ownership has not significantly changed the companies' personnel, operations, supplier/customer relationships, or facilities. To support its claims, Solvay Solexis provided press releases discussing Solvay Group's purchase of Ausimont, investor presentations, an application for amended certificate of authority, an amended certificate of incorporation, shareholder meeting minutes, management charts, a letter to customers, and product labels.

In its February 11, 2003, submission the petitioner contended that Solvay Solexis did not provide adequate legal documentation regarding the acquisition or support for its claim that management had not changed substantially as a result of the purchase of Ausimont by the Solvay Group. Furthermore, the petitioner argued that the Department should require Solvay Solexis to submit additional information before the Department made a preliminary finding in this review. Finally, the petitioner argued that the applicable cash deposit rate should not apply to Solvay Solexis retroactively.

Based on the information submitted by Solvay Solexis, we preliminarily find that Solvay Solexis is the successor-in-interest to Ausimont. We find that the company's senior management, production facilities, supplier relationships, and customers have not changed significantly. Furthermore, Solvay Solexis provided management charts in its February 10, 2003, submission that addressed the petitioner's concerns and demonstrated management did not change significantly as a result of the Solvay Group's purchase of Ausimont. Based on all the evidence reviewed, we find that Solvay Solexis operates as the same business entity as Ausimont. Thus, we preliminarily find that Solvay Solexis should receive the same antidumping duty cash-deposit rate (*i.e.*, 12.08 percent) with respect to the subject merchandise as Ausimont, its predecessor company.

However, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive. If Solvay Solexis believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper

assessment rate and receive a refund of any excess deposits. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880 (November 30, 1999). As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct the Customs Service to suspend shipments of subject merchandise made by Solvay Solexis at Ausimont's cash deposit rate (*i.e.*, 12.08 percent). Until that time, the cash deposit rate assigned to Solvay Solexis' entries is the rate in effect at the time of entry (i.e., the ''all others'' rate).

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

March 13, 2003.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6732 Filed 3–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–879]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that polyvinyl alcohol from the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Alice Gibbons, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–0498, respectively.

Preliminary Determination

We preliminarily determine that polyvinyl alcohol (PVA) from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 61591 (Oct. 1, 2002)) (*Initiation Notice*), the following events have occurred:

On October 21, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is reasonable indication that imports of PVA from the PRC are materially injuring the United States industry. *See* ITC Investigation Nos. 731-TA–1014–1018 (Publication No. 3553 *Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore*, 67 FR 65597 (Oct. 25, 2002)).

Also on October 21, 2002, we issued an antidumping questionnaire to the Chinese Ministry of Foreign Trade and Economic Cooperation (MOFTEC) with a letter requesting that it forward the questionnaire to Chinese producers/exporters accounting for all known exports of subject merchandise from the PRC during the period of investigation (POI). The Department also sent courtesy copies of the antidumping questionnaire to the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters, to all companies identified in U.S. customs data as exporters of the subject merchandise during the POI with shipments in commercial quantities, and any additional companies identified in the petition as exporters of PVA. These companies included: B.V. Rebes, Chang Chun Plastics Co., Ltd. (Chang Chun),[1] Sichuan Mianyang International Trade Co., Ltd., Sinopec Maoming Refining & Chemical Co., Ltd., Sinopec Sichuan Vinylon Works (SVW), and Sichuan Weinilun Chang. For further discussion, see the November 7, 2002, memorandum from Alice Gibbons to the File entitled ''Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China—Selection of Respondents.'' The letters sent to MOFTEC and individual exporters provided deadlines for responses to the different sections of the questionnaire.

On October 28, 2002, B.V. Rebes informed us that it is merely a provider of logistics services and, therefore, it did not intend to respond to the Department's questionnaire in this investigation. For further discussion, see the October 28, 2002, memorandum from Elizabeth Eastwood to the File entitled ''Response from B.V. Rebes to the Questionnaire in the Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China.'' On November 4, 2002, Chang Chun informed us that its records did not reflect any exports of PRC-produced PVA to the United States during the POI. Chang Chun also requested additional U.S. customs information in order to ascertain the reason that it appeared as an exporter. See the February 19, 2003, memorandum from Alice Gibbons to the File entitled ''Placing Information on the Record in

[1] Both B.V Rebes and Chang Chun appeared to be third country resellers.

the Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China.'' On November 7, 2002, we informed Chang Chun that, due to the fact that the customs data in question was not public information, we were unable to provide it with this information. We received no further correspondence from Chang Chun.[2]

On November 6, 2002, Wego Chemical & Mineral Corporation (Wego), an importer of PVA from the PRC, notified the Department that it sold subject merchandise in the United States, and that these sales constituted ''relevant sales'' within the meaning of sections 772(a) and (b) of the Act. Based on these assertions, we informed Wego that it was eligible to participate as a voluntary respondent in this investigation and on November 7, 2002, we issued it a questionnaire. For further discussion, see the November 7, 2002, memorandum from Alice Gibbons to the File entitled ''Issuance of Questionnaire to Wego Chemical & Mineral Corp. in the Antidumping Duty Investigation of Polyvinyl Alcohol from the People's Republic of China.'' On November 25, 2002, Wego informed us that it did not intend to submit a voluntary response in this proceeding.

On November 25, 2002, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received a response from the petitioners on January 6, 2003, and from SVW on February 14, 2003.

During the period November 2002 through February 2003, the Department received responses to sections A, C, and D of the Department's original and supplemental questionnaires from SVW. We received no other responses to our questionnaire from any of the other exporters noted above.

On January 21, 2003, pursuant to 19 CFR 351.205(e), the petitioners[3] made a timely request to postpone the preliminary determination for 30 days. We granted this request and, on January 23, 2003, postponed the preliminary determination until no later than March 14, 2003. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Polyvinyl Alcohol from the People's Republic of China and the Republic of Korea*, 68 FR 4763 (Jan. 30, 2003).

[2] We note, however, that we did not designate Chang Chun as a mandatory respondent in this investigation.

[3] The petitioners in this investigation are Celanese Chemicals Ltd. and E.I. Dupont de Nemours & Co. (collectively, ''the petitioners'').

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On January 9, 2003, SVW requested that the Department postpone its final determination until 135 days after the publication of the preliminary determination. SVW also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination and no compelling reasons for denial exist, we have postponed the final determination until not later than 135 days after the publication of the preliminary determination.

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), the POI for an investigation involving merchandise from a non-market economy (NME) is the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002). Therefore, in this case, the POI is January 1, 2002, through June 30, 2002.

Scope Comments

In accordance with the preamble to our regulations (see Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. *See* the *Initiation Notice*, 67 FR 61591. Although no comments on the scope of the investigation were received in this proceeding, scope comments were received in the companion Japanese case. Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, we have placed on the record of this proceeding all public scope comments as well as all public versions of the proprietary scope documents filed in the companion Japanese case, and we have modified the scope to conform to that set forth in the preliminary determination of that proceeding. *See* the ''Scope Comments'' section of the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, 68 FR 8203, 8204–05 (Feb. 20, 2003).

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Nonmarket Economy Country Status

The Department has treated the PRC as an NME country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998) (*Mushrooms*). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section of the notice, below.

No party in this investigation has requested a revocation of the PRC's NME status. We have, therefore, preliminarily continued to treat the PRC as an NME.

Separate Rates

SVW is owned by ''all the people'' and has provided separate rates information in its November 22, 2002, section A response and in its January 9, January 13, and January 21, 2003, supplemental responses. SVW has stated that there is no element of government ownership or control and has requested a separate company-specific rate.

As stated in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 25586 (May 2, 1994) (*Silicon Carbide*) and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 25545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of the company by ''all the people'' does not require the application of a single rate. Accordingly, SVW is eligible for consideration of a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991), as modified by Silicon Carbide. Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol*.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

SVW has placed on the record a number of documents to demonstrate absence of *de jure* control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People.''

In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995);[4] *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China,* 60 FR 56045, 56046 (Nov. 6, 1995). We have no new information in this proceeding which would cause us to reconsider this determination.

According to SVW, PVA exports are not affected by export licensing provisions or export quotas. SVW claims to have autonomy in setting the contract prices for sales of PVA through independent price negotiations with its foreign customers without interference from the PRC government. Based on the assertions of SVW, we preliminarily determine that there is an absence of *de jure* government control over the pricing and marketing decisions of SVW with respect to its PVA export sales.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Mushrooms*, 63 FR 72257. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes

[4] This was unchanged in the final determination. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472, 54474 (Oct. 24, 1995).

independent decisions regarding disposition of profits or financing of losses. *See Id*.

SVW has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales and uses profits according to its business needs. Additionally, SVW's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that SVW has met the criteria for the application of separate rates.

In addition to the above analysis, the Department further analyzed information provided by the petitioners in a submission dated December 11, 2002. In this submission, the petitioners provided documentation which indicated that SVW was part of a debt-equity conversion agreement in April 2000, mandated by the PRC government between Sinopec Group Company (a ministry-level enterprise) and certain PRC banks. However, because there is no evidence on the record that shows that Sinopec Group Company exercises any influence or control in the day-to-day operations of SVW, we preliminarily determine that SVW has met the criteria for the application of separate rates. For further discussion, see the memorandum entitled ''Concurrence Memorandum for the Preliminary Determination in the Investigation of Polyvinyl Alcohol from the People's Republic of China,'' dated March 14, 2003 (the Concurrence Memorandum), on file in room B–099 of the Department's Central Records Unit (CRU).

PRC-Wide Rate and Use of Facts Otherwise Available

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC. As noted in the ''Case History'' section above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of PRC exporters (including correspondence received in this proceeding) and the fact that U.S. import statistics show that the responding company did not account for all imports into the United States from the PRC, we have preliminarily determined that PRC exporters of PVA failed to respond to our questionnaire. As a result, use of facts available (FA), pursuant to section 776(a)(2)(A) of the Act, is appropriate.

In selecting among the facts otherwise available, section 776(b) of the Act authorizes the Department to use adverse facts available (AFA) if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19028 (April 30, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). MOFTEC was notified in the Department's questionnaire that failure to submit the requested information by the date specified might result in use of FA. The producers/exporters that decided not to respond to the Department's questionnaire failed to act to the best of their ability in this investigation. Absent a response, we must presume government control of these companies. The Department has determined, therefore, that in selecting from among the facts otherwise available an adverse inference pursuant to section 776(b) of the Act is warranted.

In accordance with our standard practice, as AFA, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin); or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 64 FR 34660 (May 31, 2000) and accompanying decision memorandum at *Comment 1*. In this case, the preliminary AFA margin is 97.86 percent, which is the highest margin stated in the notice of initiation. *See Initiation Notice*, 67 FR 61594.

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d). The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics, customs data, and information obtained from interested parties during the particular investigation. *See* the SAA at 870.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available

for this purpose. *See* the October 1, 2002, *Initiation Checklist*, on file in the CRU, Room B–099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and NV calculations on which the margins in the petition were based.

In order to corroborate the petition's EP calculations, we compared the prices in the petition for PVA to the prices submitted by SVW. In order to corroborate the petitioners' NV calculation, we compared the petitioners' factor consumption and/or surrogate value data for PVA to the data reported by SVW for the most significant factors—vinyl acetate monomer (VAM) and its by-product acetic acid, electricity, factory overhead, and selling, general, and administrative (SG&A) expenses, and profit—and to surrogate values selected by the Department for the preliminary determination, as discussed below.

As discussed in the March 14, 2003, memorandum from the team to the file entitled ''Corroboration of Data Contained in the Petition for Assigning an Adverse Facts Available Rate,'' we found that the U.S. price and factors of production information in the petition to be reasonable and of probative value. As a number of the surrogate values selected for the preliminary determination differed from those used in the petition, we compared the petition margin calculations to the calculations based on the selected surrogate values wherever possible and found they were reasonably close. Therefore, we preliminarily determine that the petition information has probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 97.86 percent, is corroborated within the meaning of section 776(c) of the Act. For further discussion, see the March 14, 2003, memorandum to the file from the team entitled ''Corroboration of Data Contained in the Petition for Assigning an Adverse Facts Available Rate.''

Fair Value Comparisons

To determine whether sales of PVA from the PRC were made at LTFV, we compared the EP to the NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs by product to the appropriate product-specific NV.

Export Price

In accordance with section 772(a) of the Act, we based our calculations on EP for SVW because the subject merchandise was sold by the producer/exporter directly to the first unaffiliated purchaser prior to importation. We based EP on the packed FOB PRC port or CIF U.S. port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions for movement expenses, in accordance with 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight (including truck, rail, and waterway), foreign brokerage and handling, ocean freight, and marine insurance. As certain of these movement services were provided by NME suppliers, we valued them using Indian or other market-economy rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, see the ''Normal Value'' section of this notice, below.

For foreign inland truck freight we used price quotes obtained by the Department from Indian truck freight companies. These price quotes were recently used in the 2000–2001 antidumping duty administrative review of persulfates from the PRC. *See Persulfates From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Rescission*, 67 FR 50866, 50867, 50869 (Aug. 6, 2002) [5] (*Persulfates*).

For foreign inland rail freight, we used per kilometer price quotes published in the July 2001 *Reserve Bank of India Bulletin*. These price quotes were used in the 2001–2002 antidumping duty investigation of non-malleable cast iron pipe from the PRC and in the 2001–2002 antidumping duty administrative review of synthetic indigo from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 67 FR 60214 (Sept. 25, 2002) [6] and *See Synthetic Indigo from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11371, 11372 (Mar. 10, 2003) (*Indigo from the PRC*).

For foreign inland waterway freight, we used an Indian domestic ship rate obtained in the 1999–2000 antidumping duty administrative review and used in the 2000–2001 antidumping duty administrative review of helical spring lock washers from the PRC. *See Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 67 FR 8520 and accompanying decision memorandum at Comment 5 (Feb. 25, 2002) and *Certain Helical Spring Lock Washers From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 45702, 45704 (July 10, 2002).[7]

For foreign brokerage and handling expenses, we used brokerage and handling data obtained in the 1998–1999 antidumping duty investigation and used in the 2001–2002 antidumping duty administrative review of synthetic indigo from the PRC. *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 69723 (December 14, 1999) [8] and *Indigo from the PRC*, 68 FR 11372.

With respect to ocean freight, SVW asserted that it used market-economy suppliers for its shipments of PVA. However, based on the submitted information, we could not establish that the ocean freight expenses SVW paid reflect prices set by market-economy carriers. Specifically, SVW's questionnaire responses indicate that ocean freight was paid to a PRC company, not a market-economy supplier. Therefore, in accordance with our practice, we valued ocean freight using a surrogate value. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000) and accompanying decision memorandum at *Comment 3*. Specifically, we valued ocean freight for SVW's CIF shipments using a price quote obtained in the 2001–2002 antidumping duty administrative review of synthetic indigo from the PRC. *See Indigo from the PRC*, 68 FR 11372.

[5] This was unchanged in the final determination. *See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 68 FR 6712 (Feb. 10, 2003) (*Persulfates Final*).

[6] This was unchanged in the final determination. *See Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China,* 68 FR 7765 (Feb. 18, 2003).

[7] This was unchanged in the final determination. *See Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 67 FR 69717 (Nov. 19, 2002).

[8] This was unchanged in the final determination. *See Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000).

For marine insurance we used price quotes obtained by the Department from a market-economy provider and used in the 2000–2001 antidumping duty administrative review of persulfates from the PRC. *See Persulfates*, 67 FR 50867.

Where appropriate, we adjusted the values to reflect inflation up to the POI using the wholesale price indices (WPI) or the purchase price indices published by the International Monetary Fund (IMF), as appropriate.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. *See* the October 30, 2002, memorandum from Jeffrey May to Louis Apple entitled ''Antidumping Duty Investigation on Polyvinyl Alcohol from the People's Republic of China (PRC).''

According to the available information on the record, we have determined that India is a significant producer of merchandise comparable to PVA (*i.e.*, polyvinyl acetate, the precursor polymer of fully-hydrolyzed PVA). For purposes of the preliminary determination, we have selected India as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using Indian values for the PRC producer's factors of production. We have obtained and relied upon publicly available information wherever possible.

B. Self-Produced Inputs

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by SVW for the POI. As the basis for NV, SVW reported factors of production information for each separate stage of production, including the factors used in the production of all self-produced material and energy inputs, and by-products.[9]

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. *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*, 68 FR 4986 (January 31, 2003).

If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. *See* the final results valuation memorandum for *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001). This policy has been applied to both agricultural and industrial products. *See, e.g., Persulfates Final and Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*; 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in a recent case, we addressed whether we should value the respondent's factors used in extracting iron ore—an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*; 66 FR 49632 (September 28, 2001); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*; 62 FR 61964 (November 20, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*; 60 FR 22544 (May 8, 1995).

The petitioners have argued that the Department's policy is inappropriate in this investigation because the surrogate producer from which the financial ratios are derived is at a level of integration which differs significantly from SVW's own. Given these circumstances, the petitioners conclude that valuing each component would understate factory overhead, SG&A expenses, and profit; instead, the petitioners request that the Department begin its valuation at either the ultimate or penultimate stage of the production process.

After analyzing this issue, we find that the facts on the record do not warrant a departure from our normal practice, because we find that SVW and the surrogate producer in question are at similar levels of vertical integration. Therefore, we have valued the factors reported for each self-produced input for purposes of the preliminary determination. For further discussion, see the March 14, 2003, memorandum

[9] In addition to its own factors of production, SVW reported the factors of production used by a joint venture to produce acetic acid. However, we did not value those factors when calculating NV in this investigation. Rather, we have valued the acetic acid purchased from the joint venture and consumed during the POI, accordance with our practice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium From the People's Republic of China,* 67 FR 45088, 45092 (July 8, 2002). For further discussion, see the Concurrence Memorandum.

from the team to Susan Kuhbach, Acting Deputy Assistant Secretary for Group 1, entitled ''Treatment of Self-Produced Inputs in the Less Than Fair Investigation on Polyvinyl Alcohol from the People's Republic of China.''

C. Factors of Production

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the memorandum entitled ''Preliminary Determination Factors Valuation Memorandum,'' dated March 14, 2003 (the Factors Memorandum), on file in the CRU.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values surrogate freight costs using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation* v. *United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). For a discussion of the valuation of SVW's freight costs, *see* the ''Export Price'' section of this notice, above.

We valued acetic acid, d-tartaric acid, solid sodium hydroxide, sodium hexametaphosphate, sodium nitrite, sulfuric acid, and zinc oxide using Indian domestic market prices reported in *Chemical Weekly* contemporaneous with the POI. We valued activated carbon,[10] antioxidant, azodiisobutyronitrile, bacteria killer, hydroquinone, liquid ammonia, liquid sodium hydroxide, monoethanolamine, n-butyl acetate, polyferric sulfate, and sodium carbonate using India import statistics as published by the *Monthly Statistics of Foreign Trade of India* covering the period April 2001 through January 2002.

We valued natural gas using a price obtained from the website of the Gas Authority of India Ltd., a supplier of natural gas in India, covering the period January through June 2002. For further discussion, see the Factors Memorandum.

To value paper bags and polyethylene plastic bags (*i.e.*, the packing materials reported by the respondent), we used import values from the *Monthly Statistics of Foreign Trade of India*.

Regarding the remaining raw material factors of production reported by SVW, we did not value these factors because: (1) Surrogate value information was not available; and (2) the materials were reported as used in very small amounts. Moreover, we did not value certain treatment chemicals used in treated water in our calculation of NV. Rather, we classified these treatment chemicals as part of factory overhead, in order to avoid the possibility of double counting them. *See* the Concurrence Memorandum.

Regarding electricity and steam, we valued each of the factors of production reported by SVW for which we were able to obtain surrogate value information (*i.e.*, direct labor, compressed air, and steam coal) using the regression-based wage rate from the Department's Import Administration website, the input factors provided by SVW, and the *Monthly Statistics of Foreign Trade of India*, respectively. We find that it is appropriate to value SVW's energy inputs in this manner given that the surrogate producer from which the factory overhead ratio is derived also produces its own electricity and steam. For further discussion on the valuation of electricity and steam, see the Concurrence Memorandum and the Factors Memorandum.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To determine factory overhead, depreciation, SG&A expenses,[11] interest expenses, and profit for the finished product, we relied on rates derived from the financial statements of Jubilant Organosys Ltd. (formerly VAM Organic Chemical Ltd.), an Indian producer of comparable merchandise. We applied these ratios to SVW's costs (determined as noted above) for materials, labor, and energy, prior to the offset for the recovery of acetic acid. For further discussion, see the Factors Memorandum. *See also* the March 14, 2003, memorandum from the team to Susan Kuhbach entitled ''Treatment of Self-Produced Inputs in the Less Than Fair Investigation on Polyvinyl Alcohol from the People's Republic of China.''

Finally, SVW reported that it generated certain by-products as a result of the production of PVA or the inputs used to produce PVA.[12] Because either SVW did not provide sufficient information to permit the accurate valuation of these by-products or we were unable to obtain appropriate surrogate value data for them, we did not value these by-products for the preliminary determination. For further discussion, *see* the Concurrence Memorandum.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Because the estimated weighted-average preliminary dumping margin for SVW is *de minimis*, we are not directing the Customs Service to suspend liquidation of entries of merchandise produced and exported by SVW. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin for all entries of PVA from the PRC, except for entries of this merchandise produced and exported by SVW. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (in percent)
Sinopec Sichuan Vinylon Works	0.20
PRC-wide	97.86

[10] *See* the Factors Memorandum for discussion of our selection of surrogate value data for activated carbon.

[11] Because we believe that SG&A labor is not classified as part of the SG&A costs reflected on Jubilant's financial statements, we have accounted for SG&A labor hours by calculating a dollar-per-MT labor hours amount and adding this amount to SG&A. For further discussion, see the March 14, 2003, memorandum from the Team, entitled ''U.S. Price and Factors of Production Adjustments for the Preliminary Determination.''

[12] These by-products included alkynes gas, methyl acetate, and PVA scrap.

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. *See* 19 CFR 351.309.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310.

We will make our final determination by 135 days after the date of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: March 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6735 Filed 3–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–850]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyvinyl Alcohol From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that polyvinyl alcohol from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656.

Preliminary Determination

The Department has conducted this antidumping investigation in accordance with section 733 of the Tariff Act of 1930, as amended (the Act). We preliminarily determine that polyvinyl alcohol (PVA) from the Republic of Korea (Korea) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore,* 67 FR 61591 (Oct. 1, 2002)) (*Initiation Notice*), the following events have occurred.

On October 11, 2002, the petitioners [1] and one Korean exporter of PVA, DC Chemical Company, Ltd. (DC CHEM), submitted comments on the model-matching criteria to be used by the Department. Two interested parties in the companion case on PVA from Japan, Kuraray Co., Ltd. (Kuraray) and Marubeni Specialty Chemicals, Inc. (Marubeni), also filed comments on the model-matching criteria to be used by the Department. On October 15, 2002, Marubeni submitted an amendment to its model-matching comments. On December 13, 2002, the petitioners and another Japanese exporter, the Nippon Synthetic Chemical Industry Co., Ltd. (Nippon Gohsei), submitted additional model-matching comments.[2]

On October 21, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of PVA from Korea are materially injuring the United States industry. *See* ITC Investigation Nos. 731–TA–1014–1018 (Publication No. 3553, *Polyvinyl Alcohol from Germany, Japan, the People's Republic of China, the Republic of Korea, and Singapore,* 67 FR 65597 (Oct. 25, 2002)).

On October 22, 2002, we selected DC CHEM, the only known producer/exporter of PVA from Korea, as the mandatory respondent in this proceeding. For further discussion, see the memorandum to Louis Apple, Director, Office 2, from the Team entitled ''Respondent Selection,'' dated October 22, 2002. We also issued the antidumping questionnaire to DC CHEM on October 22, 2002.

During the period November 2002 through February 2003, we received responses to the Department's original and supplemental questionnaires.

On January 21, 2003, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination for 30 days. We granted this request and, on January 30, 2003, postponed the preliminary

[1] The petitioners in this investigation are Celanese Chemicals Ltd. and E.I. Dupont de Nemours & Co. (collectively, ''the petitioners'').

[2] Because the comments submitted by the parties in the companion investigation of PVA from Japan relate to this investigation, we placed them on the record of this case.

determination until no later than March 14, 2003. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Polyvinyl Alcohol from the People's Republic of China and the Republic of Korea,* 68 FR 4763 (Jan. 30, 2003).

In March 2003, as provided in section 782(i)(3)(a) of the Act, we verified the constructed export price (CEP) sales data reported by DC CHEM. We used standard verification procedures, including examination of relevant sales and financial records. Because this verification was conducted immediately prior to the preliminary determination, we have had insufficient time to incorporate any verification findings into this determination. Therefore, we will consider any such findings in our final determination.

On March 12, 2003, DC CHEM requested that the Department revise the scope to exclude certain additional copolymers. Because there was insufficient time to properly consider DC CHEM's exclusion request, we will address it in the final determination.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on February 12, 2003, DC CHEM requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. DC CHEM also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination and no compelling reasons for denial exist, we are granting DC CHEM's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the initiation notice. *See* the *Initiation Notice,* 67 FR at 61591. Although no comments on the scope of the investigation were received in this proceeding, scope comments were received in the companion Japanese case. Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, we have placed on the record of this proceeding all public scope comments as well as all public versions of the proprietary scope documents filed in the companion Japanese case, and, for the reasons specified in that preliminary determination, we have modified the scope of this investigation based on these comments. *See* the ''Scope Comments'' section of the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan,* 68 FR 8203, 8204–05 (Feb. 20, 2003).

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Fair Value Comparisons

To determine whether sales of PVA from Korea to the United States were made at LTFV, we compared the CEP to the normal value (NV), as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by DC CHEM in the home market during the POI that fit the description in the ''Scope of Investigation'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In October 2002, DC CHEM, Kuraray, Marubeni, and the petitioners submitted comments on the model-matching criteria to be used by the Department.[3] Based on these comments, we proposed to match products sold in the United States to products sold in the home market in the ordinary course of trade that were identical with respect to the following hierarchy of characteristics: molecular structure, hydrolysis, viscosity, degree of modification, particle size, tackifier, defoamer, ash, color, volatiles, and visual impurities. We invited interested parties to submit additional comments on these criteria prior to the preliminary determination. In December, the petitioners and Nippon Gohsei submitted additional model-matching comments.[4]

After analyzing these comments, we have reconsidered the model-matching hierarchy and revised it as follows: (1) We added as the most important criterion whether the product is a homo- or a co-polymer; (2) we placed hydrolysis and viscosity before molecular structure (*i.e.*, the type of copolymer); and (3) we allowed the reporting of hydrolysis, viscosity, and degree of modification in ranges.[5] All other characteristics remain the same. For further discussion, see the memorandum entitled ''Concurrence Memorandum for the Preliminary Determination in the Investigation of Polyvinyl Alcohol from Korea,'' dated March 14, 2003, (Concurrence Memo), on file in room B–099 of the Department's Central Records Unit.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated the CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of DC CHEM's U.S. sales as CEP sales because they were made in the United States by DC CHEM's U.S. affiliate on behalf of DC CHEM, within the meaning of section 772(b) of the Act.

We based the CEP on the packed delivered prices to unaffiliated purchasers in the United States. We added duty drawback received on imported materials, where applicable, pursuant to section 772(c)(1)(B) of the Act. Where appropriate, we made adjustments for billing errors and discounts. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. customs duties (including U.S. duties, harbor maintenance fees, and merchandise processing fees), U.S. customs brokerage charges, U.S. inland freight expenses (*i.e.*, freight from port to warehouse and freight from warehouse to the customer), and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States related to sales to an unaffiliated purchaser, including direct selling expenses (imputed credit costs and other direct selling expenses), and indirect selling expenses (including U.S. inventory carrying costs and other indirect selling expenses incurred in the United States).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at the CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by DC CHEM and its affiliates on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Affiliated-Party Transactions and Arm's-Length Test

DC CHEM reported sales of the foreign like product to affiliated end-users. To test whether these sales to affiliated customers were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to the affiliated party was, on average, 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). Based on this analysis, we found that 100 percent of DC CHEM's sales to affiliates in the home market were made at arm's length.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of PVA in the home market were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs. *See Initiation Notice,* 67 at FR 61594.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), including interest expenses. *See* the ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses. We relied on

[3] As noted in the ''Case History'' section of this notice, Kuraray and Marubeni submitted their comments for the record of the companion case on PVA from Japan. Because these comments are relevant in this proceeding, we have placed them on the record here as well.

[4] These comments were only placed on the record for the companion case on PVA from Japan. Because they are relevant to this proceeding, we have placed them on the record here as well.

[5] In the companion case of PVA from Japan, we also revised the particle size field to include PVA in standard, fine, pellet and liquid forms. Because DC CHEM sold PVA in only the two original size classifications, standard and fine, this revision is not relevant to this proceeding.

the COP data submitted by DC CHEM, except as noted below:

- We revised the calculation of the G&A expense ratio to: (1) Include losses from the impairment of goodwill, losses on the valuation of inventories, donations, losses on the disposal of non-current assets, losses on construction, and losses on the cancellation of contracts; (2) exclude the cost offsets taken for equity gains on investments, duty drawback, rental income of a training institute, and other non-operating income; and (3) exclude gains and losses from foreign currency transactions and translation; and
- We revised the financial expense ratio to only include the amounts for gains and losses on foreign currency exchange transactions and translation from the 2001 consolidated financial statements.

For further discussion, see the memorandum from James Balog to Neal Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination,'' dated March 14, 2003.

For this preliminary determination, we have implemented a change in practice regarding the treatment of foreign exchange gains and losses. The Department's previous practice was to have respondents identify the source of all foreign exchange gains and losses (*e.g.*, debt, accounts receivable, accounts payable, cash deposits) at both a consolidated and unconsolidated corporate level. At the consolidated level, the current portion of foreign exchange gains and losses generated by debt or cash deposits were included in the interest expense rate computation. At the unconsolidated producer level, foreign exchange gains and losses on accounts payable were either included in the G&A rate computation, or under certain circumstances, in the cost of manufacturing. Gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded from the COP and CV calculations.

Instead of splitting apart the foreign exchange gains and losses as reported in an entity's financial statements, we will normally include in the interest expense computation all foreign exchange gains and losses. In doing so, we will no longer include a portion of foreign exchange gains and losses from two different financial statements (*i.e.*, consolidated and unconsolidated producer). Instead, we will only include the foreign exchange gains and losses reported in the financial statement of the same entity used to compute each respondent's net interest expense rate. This approach recognizes that the key measure is not necessarily what generated the exchange gain or loss, but rather how well the entity as a whole was able to manage its foreign currency exposure in any one currency. As such, for these preliminary results, we included all foreign exchange gains or losses in the interest expense rate computation. We note that there may be unusual circumstances in certain cases which may cause the Department to deviate from this general practice. We will address exceptions on a case-by-case basis.

As this is a change in practice, we invite the parties to the proceeding to comment on this issue.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time in substantial quantities; and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of DC CHEM's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Level of Trade

In accordance with section 773(a)(1)(B)(i), to the extent practicable, the Department will determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (Nov. 19, 1997) (Plate from South Africa). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[6] including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[7]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* Court Nos. 00–1058,–1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it

[6] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[7] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative expenses, and profit for CV, where possible.

practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa,* 62 FR at 61732.

We obtained information from DC CHEM regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by DC CHEM and its affiliates for each channel of distribution. Regarding the home market, DC CHEM reported home market sales through only one channel of distribution: direct sales to end-users and distributors. We examined the chain of distribution and the selling activities associated with sales reported by DC CHEM to each of these customer categories. The information on the record demonstrates that DC CHEM performs the same selling functions across customer categories. *See* DC CHEM's response to the Department's questionnaire, dated December 9, 2001, at page B–22. Based on our analysis of this information, we find that only one LOT exists in the home market.[8]

In the U.S. market, DC CHEM reported CEP sales through three channels of distribution. DC CHEM also reported that it performed the same selling functions for all U.S. sales regardless of distribution channel. Because the selling functions performed for sales through each channel of distribution were essentially the same, a finding of separate LOTs is not warranted.[9] Therefore, we determine that DC CHEM made sales through only one LOT in the U.S. market.

In order to determine whether NV was established at an LOT which constituted a more advanced stage of distribution than the LOT of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States. We found that DC CHEM performed essentially the same marketing functions when selling in both the home market and the United States. Therefore, we determine that these sales are at the same LOT and no LOT adjustment is warranted. Because we find that no difference in the LOT exists between markets, we have not granted a CEP offset to DC CHEM. For further discussion, see the Concurrence Memorandum.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. In accordance with our practice, for DC CHEM's local export sales, we also made an addition to home market price for duty drawback. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Korea* 67 FR 3149, 3151 (Jan. 23, 2002). We made deductions for rebates, where appropriate. We also made deductions, where appropriate, for movement expenses, including inland freight (plant to distribution warehouse and plant/warehouse to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we also made deductions for home market imputed credit expenses and commissions. In accordance with 19 CFR 351.410(e), we offset home market commissions by the lesser of the commission amount or the amount of U.S. indirect selling expenses because DC CHEM incurred commissions only in the home market.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
DC Chemical Company, Ltd.	8.06
All Others	8.06

Disclosure

The Department will disclose calculations performed within five days of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. *See* 19 CFR 351.309.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made

[8] Because DC CHEM claimed business proprietary treatment for this information, we are unable to discuss it further here. For a description of the selling functions in question, *see* the Concurrence Memorandum.

[9] As noted above, because DC CHEM claimed business proprietary treatment for this information, we are unable to discuss it further here. For a description of these selling functions, *see* the Concurrence Memorandum.

in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 10 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: March 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6736 Filed 3–19–03; 8:45 am]

BILLING CODE 3510–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review of stainless steel sheet and strip from Mexico.

EFFECTIVE DATE: March 20, 2003.

SUMMARY: On February 11, 2003, the Department of Commerce (the Department) published in the **Federal Register** its notice of final results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Mexico for the period July 1, 2000 through June 30, 2001. *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review,* 68 FR 6889 (February 11, 2003). We are amending our final determination to correct ministerial errors alleged by respondent and petitioners.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses

of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [5]

Amendment to Final Results

Ministerial Error Allegation by Respondent

On February 10, 2003, respondent ThyssenKrupp Mexinox, S.A. de C.V. (Mexinox) timely filed, pursuant to 19 CFR 351.224(c)(2), an allegation that the Department made one ministerial error in its final results. Mexinox states the Department recalculated U.S. indirect selling expenses (INDIRSU) for the final results by multiplying the revised indirect selling expense ratio by the net price, which was calculated as gross unit price plus billing adjustments minus rebates. Mexinox alleges the Department erred in its recalculation of INDIRSU by failing to deduct early payment discounts from gross unit price. Therefore, Mexinox requests that the Department correct this error. Petitioners submitted no rebuttal comments to this clerical error allegation.

Department's Position

We agree with Mexinox. Mexinox calculated its indirect selling expense ratio using a sales denominator net of discounts and other adjustments. *See, e.g.*, Mexinox's May 8, 2002 supplemental questionnaire response at Attachment C–36; *see also* the Mexinox USA sales reconciliation in Mexinox's July 17, 2002 supplemental questionnaire response at Attachment A–39–A. Although we revised the indirect selling denominator for the final results by deducting raw material sales, the denominator remains net of discounts and other adjustments. Since the sales denominator of the indirect selling expense ratio is net of discounts and other adjustments, it is proper to deduct early payment discounts from the gross unit price before applying the indirect selling expense ratio. Therefore, we have amended our final results by subtracting early payment discounts from the gross unit price in our recalculation of U.S. indirect selling expenses. *See* line 2338 of the margin calculation program.

Ministerial Error Allegation by Petitioners

On February 11, 2003, Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel, Inc., Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC (collectively, petitioners) timely filed a

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

ministerial error allegation. Petitioners allege that for sales made by Mexinox's U.S. affiliated reseller, Ken-Mac Metals, Inc. (Ken-Mac), the Department inadvertently set to zero further manufacturing expenses incurred by Mexinox USA. Thus, petitioners request that the Department correct this error by removing two lines of code from the final margin calculation program. Mexinox did not comment on this ministerial error allegation.

Department's Position

We agree with petitioners. In our margin calculation program, we calculated U.S. price based on sales made by Mexinox USA and Ken-Mac. Mexinox reported sales made by these entities in two separate databases. To append the two databases without error, if a particular variable appeared in one database but not the other, we assigned a value of zero to that variable in the latter database. In doing so, we erroneously set the variables FURMAN1U and FURMAN2U to zero when introducing the database containing Ken-Mac's sales. Because these two variables are not unique to the Mexinox USA sales listing but rather appear in the Ken-Mac sales listing as well, they should not have been set to zero. Thus, we have amended this error by removing the language found at lines 2372 and 2373 of the final margin calculation program.

Amended Final Results of Review

In accordance with 19 CFR 351.224(e), we have amended the final results of the 2000–2001 antidumping duty administrative review of stainless steel sheet and strip in coils from Mexico, as noted above. However, the weighted-average percentage margin for Mexinox remains unchanged at 6.15 percent.

This administrative review and notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: March 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–6734 Filed 3–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031703C]

Notice of Availability of the National Coral Reef Action Strategy for Public Comment

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for public comment.

SUMMARY: The Coral Reef Conservation Act of 2000 requires the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to submit to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Resources of the House of Representatives, and publish in the **Federal Register**, a national coral reef action strategy (Strategy), consistent with the purposes of the Act.

Pursuant to the Act, NOAA has prepared a National Coral Reef Action Strategy, in cooperation with the U.S. Coral Reef Task Force (Task Force), which provides a statement of Goals and Objectives, implementation plans, and a description of federal funding directly related to advancing coral reef conservation each fiscal year. The Strategy is intended to help guide and improve U.S. government and non-government efforts to conserve coral reefs. This notice announces the availability of the National Coral Reef Action Strategy for use in implementing the Coral Reef Conservation Grant Program and public review.

DATES: Comments on the National Coral Reef Action Strategy must be received no later than May 19, 2003.

ADDRESSES: Written comments and public inspection of these comments may be sent to NOAA Coral Reef Conservation Program, 1305 East West Highway, NOS/ORR 10201, Silver Spring, MD 20910; faxed to (301)-713–4389; or emailed to *roger.b.griffis@noaa.gov*. Copies of the Strategy are available from this address.

FOR FURTHER INFORMATION CONTACT: Roger Griffis; (301)-713–2989 extension 115; *roger.b.griffis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Coral Reef Action Strategy was produced through extensive consultation with the federal, state, territory and commonwealth members of the Task Force and its Working Groups. The Coral Reef Conservation Act of 2000 states that in developing this Strategy, the Secretary may consult with the Task Force. The Strategy builds on the existing National Action Plan to Conserve Coral Reefs, which was adopted by the Task Force in 2000 as the national blueprint for U.S. action to address the coral reef crisis. The Coral Reef Conservation Act of 2000 also establishes a Coral Reef Conservation Program to provide grants of financial assistance for projects that are consistent with the Strategy.

The Strategy is designed to track accomplishments and identify priorities to implement the goals and objectives of the Coral Reef Conservation Act and the National Action Plan to Conserve Coral Reefs. The Strategy provides partial summaries of accomplishments and needs to address 13 major goals. The intent is to work closely with the Task Force, other partners, and the public to update the Strategy annually or as needed to help guide future actions.

The Task Force was established by Executive Order 13089 in 1998 to help lead and coordinate U.S. government efforts (both domestically and internationally) to conserve and sustain coral reef ecosystems. The Task Force is co-chaired by the Secretary of Commerce and the Secretary of the Interior, and includes the heads of 11 federal agencies and the Governors of 7 states, territories and commonwealths with coral reef management responsibilities.

After the close of the comment period, NOAA will consider the comments received during review and possible revision of the Strategy in the future. The Strategy is available from the web site *www.coralreef.noaa.gov* or from see **ADDRESSES**.

Authority: Pub. L 106–562.

Dated: February 26, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management.

[FR Doc. 03–6713 Filed 3–19–03; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board (CERB) Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Dates of Meeting: April 9, 2003.

Place: Sheraton Gateway Hotel Atlanta Airport, College Park, Georgia.

Time: 10 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel John W. Morris III, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Research and Development Center, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: An Executive Session of the CERB will be held April 9, 2003. Topics to be discussed will include Section 227 Shoreline Erosion and Control Demonstration Projects and Contracting Process, Regional Sediment Management (RSM) Demonstration and RSM Research and Development, Field Data Collection Programs and Performance of Shore Protection projects, the National Shoreline Management Study, and Coastal Louisiana.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

John W. Morris III,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 03–6700 Filed 3–19–03; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.215L]

Office of Vocational and Adult Education—Smaller Learning Communities Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

Purpose of Program: On January 8, 2002, President George W. Bush signed into law the No Child Left Behind Act of 2001, which reauthorized the Smaller Learning Communities Program. The purpose of the Smaller Learning Communities Program is to support academic achievement through awarding competitive grants to LEAs applying on behalf of large public high schools for the planning and implementation or expansion of small, safe, and successful learning environments in large public high schools. These grants are authorized by Title V, part D, subpart 4 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7249), as amended by Public Law 107–110, the No Child Left Behind Act of 2001.

Eligible Applicants: Local educational agencies (LEAs), including schools funded by the Bureau of Indian Affairs (BIA schools), applying on behalf of large high schools are eligible. For purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and enrolls at least 1,000 students in grades 9 and above.

Applications Available: March 20, 2003.

Deadline for Transmittal of Applications: May 19, 2003.

Deadline for Intergovernmental Review: July 18, 2003.

Estimated Available Funds: $135,000,000.

Types and Ranges of Awards: The Secretary will award both planning and implementation grants under this competition. In an effort to encourage systemic, district-level reform efforts, the Secretary is permitting an individual LEA to submit a maximum of one planning grant application and one implementation grant application under this competition, specifying in each application which high schools the LEA intends to fund. An LEA may not apply for both a planning and implementation grant on behalf of the same high school. A high school may only be included in either the LEA's planning grant application or its implementation grant application. Applicants pursuing planning grant funds must not yet have developed a viable plan for creating smaller learning communities in the schools that would be served through the grant. To apply for implementation grant funds, applicants must be prepared either to implement a new smaller learning community program within each targeted high school, or to expand an existing smaller learning community program.

For a one-year planning grant, LEAs may receive, on behalf of a single school, $25,000 to $50,000 per project. LEAs applying on behalf of a group of eligible schools may receive up to $250,000 per planning grant. As this program is designed for redesign and improvement efforts at the individual school level, districts must stay within the minimum and maximum school allocations when determining their award request. In addition, in order to ensure sufficient planning funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides eligible ranges for awards under a planning grant:

Number of schools in LEA application	Award ranges
One school	$25,000–50,000
Two schools	$50,000–100,000
Three schools	$75,000–150,000
Four schools	$100,000–200,000
Five schools	$125,000–250,000
Six schools	$150,000–250,000
Seven schools	$175,000–250,000
Eight schools	$200,000–250,000
Nine schools	$225,000–250,000
Ten schools	$250,000

In previous SLC competitions, applicants have routinely requested more money than the above award ranges dictate. As a result, plans submitted to the Department have included any number of activities that could only be made possible if an applicant received a funding amount much higher than intended in the award range. Based on this experience, the Department will fund only those applications that correctly request funds within the award ranges specified in this notice for both planning and implementation grants. Applicants requesting funding amounts higher than the award ranges dictated by the number of schools to be served will be declared ineligible and will not receive funding. Further, schools that received support through planning grants in the FY 2000 or FY 2001 competition are not eligible to receive support through additional planning grants under this competition.

For a three-year implementation grant, LEAs may receive, on behalf of a single school, $250,000 to $500,000. LEAs applying on behalf of a group of eligible schools may request up to $2,500,000 per implementation grant. As with planning grants, districts must stay within the minimum and maximum school allocations when determining their group award request, or the Department will consider the application ineligible. In order to ensure sufficient implementation funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides eligible ranges for awards under the implementation grant:

Number of schools in LEA application	Award ranges
One school	$250,000–500,000
Two schools	500,000–1,000,000

Number of schools in LEA application	Award ranges
Three Schools	750,000–1,500,000
Four schools	1,000,000–2,000,000
Five schools	1,250,000–2,500,000
Six schools	1,500,000–2,500,000
Seven schools	1,750,000–2,500,000
Eight schools	2,000,000–2,500,000
Nine schools	2,250,000–2,500,000
Ten schools	2,500,000

As previously noted, LEAs may not apply on behalf of a single high school in more than one application. Schools that benefited from FY 2000 or FY 2001 implementation awards are not eligible to receive additional support under this competition.

Applicants should note that the requirements listed in this notice are material requirements. Please note that a failure to comply with any applicable program requirement (for example, failure to reasonably implement the proposed grant-funded project) may subject a grantee to administrative action, including the imposition of special conditions or termination of the grant.

Note: The size of awards will be based on a number of factors. These factors include the scope, quality, and comprehensiveness of the proposed program, and the recommended range of awards indicated in the application.

Estimated Number of Awards: The Secretary anticipates making approximately 100 new planning grant awards and approximately 100 new implementation awards under this competition.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Planning grants will fund activities up to 12 months. Implementation grants will fund activities up to 36 months. Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, the Secretary anticipates awarding the entire grant amount for implementation projects at the time of the initial award. This will provide the applicant with the capacity to effectively carry out the comprehensive long-term activities involved in these projects.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the regulations in the notice of final priorities, application requirements, and selection criteria for FY 2002 as published elsewhere in this issue of the **Federal Register**.

Priorities

This competition gives absolute and competitive priorities to applicants that meet the conditions outlined in the Notice of the Final Priorities for this program, which is published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For information on the program and to download an application, you may access the SLC program Web site at *http://www.ed.gov/offices/OVAE/HS/SLCP/.* If you need further assistance and need to speak with someone in the SLC program, you may contact Karen Stratman Clark, by phone at (202) 205–3779, or by mail 330 C Street, SW., Room 5523, Washington, DC 20202. Requests for applications may also be sent by fax to (202) 401–4079.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

Electronic Access to This Document

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7249.

Dated: March 14, 2003.

Richard La Pointe,

Acting Assistant Secretary, Vocational and Adult Education.

[FR Doc. 03–6695 Filed 3–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education—Smaller Learning Communities Program

AGENCY: Department of Education.

ACTION: Notice of final priorities, application requirements, and selection criteria for Fiscal Year (FY) 2002.

SUMMARY: The purpose of the program is to promote academic achievement through the planning, implementation, or expansion of small, safe, and successful learning environments in large public high schools through competitive grants to local educational agencies (LEAs). LEAs, including schools funded by the Bureau of Indian Affairs (BIA schools), applying on behalf of large high schools are eligible applicants. For the purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and enrolls at least 1,000 students in grades 9 and above.

The Assistant Secretary for Vocational and Adult Education announces final priorities, application requirements, and selection criteria for the Smaller Learning Communities (SLC) program for FY 2002. The Assistant Secretary may use one or more of these priorities for competitions in later years.

EFFECTIVE DATE: These priorities, application requirements and selection criteria are effective March 20, 2003.

FOR FURTHER INFORMATION CONTACT: For information on the program and to download a grant application, you may access the SLC program Web site at *http://www.ed.gov/offices/OVAE/HS/SLCP/.* If you have questions pertaining to the application, need further assistance or need to speak with someone in the SLC program, you may contact Karen Stratman Clark at (202) 205–3779, or by mail at 330 C Street, SW., Room 4423, Washington, DC 20202 or via the internet at *karen.clark@ed.gov.* Please type ''SLC Notice Correspondence'' as the subject line of your electronic message. Requests for applications may also be sent by fax to (202) 401–4079.

Individuals who use the telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed above.

Note: This notice of priorities, application requirements, and selection criteria does not

solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**. The notice inviting applications specifies the deadline date by which applications for an award must be mailed or hand-delivered to the Department.

SUPPLEMENTARY INFORMATION:

General

The No Child Left Behind Act of 2001 is the most sweeping reform of Federal education policy in a generation. It is designed to implement the President's agenda to improve America's public schools by: (1) Ensuring accountability for results, (2) providing unprecedented flexibility in the use of Federal funds in implementing education programs, (3) focusing on proven educational methods, and (4) expanding educational choice for parents. Since the enactment of the original Elementary and Secondary Education Act in 1965, the Federal Government has spent more than $130 billion to improve public schools. Unfortunately, this investment in education has not yet eliminated the achievement gap between well-off and lower-income students or between minority students and non-minority students.

In implementing the No Child Left Behind Act of 2001, the U.S. Department of Education has developed a strategic plan that will serve as the roadmap for all Departmental activities and investments. The plan specifically focuses on, among other areas, improving the performance of all high school students and holding schools accountable for raising the academic achievement level of all students. The Department will work with States to ensure that students attain the strong academic knowledge and skills necessary for future success in postsecondary education and adult life. The Department will encourage students to take more rigorous courses, especially in the areas of math and science. In addition, the Department of Education is committed to ensuring that our Nation's schools are safe environments conducive to learning.

One strategy that holds promise for improving the academic performance of our Nation's young people is the establishment of smaller learning communities as components of comprehensive high school improvement plans. The problems of large high schools and the related question of optimal school size have been debated for the last 40 years and is of growing interest today. Approximately 70 percent of American high schools enroll 1,000 or more students; nearly 50 percent of high school students attend schools enrolling more than 1,500 students. Some students attend schools enrolling as many as 4,000 to 5,000 students.

While the research to date on school size is largely non-experimental, there is a growing body of evidence that suggests that smaller schools may have advantages over larger schools. Research suggests that the positive outcomes associated with smaller schools stem from the schools' ability to create close, personal environments in which teachers can work collaboratively, with each other and with a small set of students, to challenge students and support learning. A variety of structures and operational strategies are thought to provide important supports for smaller learning environments; some data suggest that these approaches offer substantial advantages to both teachers and students (Ziegler 1993; Caroll 1994).

The Smaller Learning Communities program is authorized under Title V, Part D, Subpart 4 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7249), as amended by Pub. L. 107–110, the No Child Left Behind Act of 2001.

Structural changes for recasting large schools as a set of smaller learning communities are described in the Conference Report for the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, H.R. Conference Report No. 106–479, at 1240 (1999)). Such methods include establishing small learning clusters, ''houses,'' career academies, magnet programs, and schools-within-a-school. Structural changes are necessary but not sufficient to ensure that the reorganization will result in improved academic performance. It is also necessary to define a set of operational considerations that describe what learning looks like in the restructured smaller learning community. For example, strategies that complement a restructured large high school should include at a minimum a focus on a rigorous academic course of study. Other activities may include: freshman transition activities, advisory and adult advocate systems, academic teaming, multi-year groupings, ''extra help'' or accelerated learning options for students or groups of students entering below grade level, and other innovations designed to create a more personalized high school experience for students and, thus, improve student achievement.

Prospective applicants are encouraged to review the program Web site for non-regulatory guidance and information about current grantees, and to review a successful application that received fiscal year 2001 funding at: *http://www.ed.gov/offices/OVAE/HS/SLCP/*.

Discussion of Priority or Priorities

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt from this requirement rules governing the first competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). This competition is the first Smaller Learning Communities competition under the program as reauthorized by Public Law 107–110, the No Child Left Behind Act of 2001 and, therefore, qualifies for this exemption. The Secretary, in accordance with section 437(d)(1) of GEPA, exercises his authority to waive public comment in order to ensure timely grant awards. These rules will apply to the FY 2002 grant competition only.

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute priority to applications in which the following conditions are met: (1) The applicant will place students in smaller learning communities based on student/parent choice or through random assignment—

consistent with the statute, students may not be placed according to ability or any other measure, and not pursuant to testing or other judgments; and (2) The application must address the following instructional or operational issues:

a. How the applicant will provide a common core of rigorous academic courses tied to standards;

b. A process that the applicant will use for distribution of highly qualified teachers among SLCs in the school and strategies for improving teacher content knowledge;

c. Explicit strategies for providing assistance for struggling students; and

d. Strategies for securing widespread staff, community, and parent support for the initiative.

The Secretary will fund only applicants that meet the absolute priority described above and that meet all of the other requirements for this competition described elsewhere in this notice and in the accompanying notice inviting applications for new awards for fiscal year 2002.

Note: Applicants must clearly identify the proposed grant-funded smaller learning community in their application.

Competitive Preference Priority (up to 5 points)

In addition to the points to be awarded under the selection criteria for both planning and implementation grants, the Secretary proposes to award additional points to an application from an LEA applying on behalf of a high school that has failed to achieve adequate yearly progress for two or more consecutive years, as defined by section 1111 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. LEAs applying on behalf of one or more than one school will be awarded additional competitive preference points (up to five points) proportionate to the number of schools in the application that meet the criterion above. For example, an LEA applying on behalf of five schools would be awarded the maximum of five points if all five schools meet the criterion. An LEA applying on behalf of five schools would be awarded three out of a possible five points if only three of the schools meet the criterion.

Application Requirements

The Secretary announces the following application requirements for the Smaller Learning Communities program. A discussion of each requirement follows. These requirements are in addition to the content that all Smaller Learning Communities grant applicants must include in their applications as required by the program statute under Title V, Part D, Subpart 4, Section 5441(b) of the Elementary and Secondary Education Act. A discussion of each requirement follows:

A. Proof of Eligibility

To be considered for funding, LEAs must include for each eligible school included in the application the name of the eligible school and the number of students enrolled in the school. Enrollment must be based upon data from the current school year or from the most recently completed school year. LEAs, including schools funded by the BIA, applying on behalf of schools that are still being constructed and do not have an active student enrollment at the time of application are not eligible under this program.

B. Types and Ranges of Awards

The Secretary will award both planning and implementation grants under this competition. In an effort to encourage systemic, district-level reform efforts, the Secretary is permitting an individual LEA to submit only one planning grant application and one implementation grant application under this competition, specifying in each application which high schools the LEA intends to fund. An LEA may not apply for both a planning and implementation grant on behalf of the same high school. A high school may only be included in either the LEA's planning grant application or its implementation grant application. Applicants pursuing planning grant funds must not yet have developed a viable plan for creating smaller learning communities in the schools that would be served through the grant. To apply for implementation grant funds, applicants must be prepared either to implement a new smaller learning community program within each targeted high school, or to expand an existing smaller learning community program.

For a one-year planning grant, LEAs may receive, on behalf of a single school, $25,000 to $50,000. LEAs applying on behalf of a group of eligible schools may receive up to $250,000 per planning grant. As this program is designed for redesign and improvement efforts at the individual school level, districts must stay within the minimum and maximum school allocations when determining their award request. In addition, in order to ensure sufficient planning funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides eligible ranges for awards under a planning grant:

Number of schools in LEA application	Award ranges
One school	$25,000–$50,000
Two schools	50,000–100,000
Three schools	75,000–150,000
Four schools	100,000–200,000
Five schools	125,000–250,000
Six schools	150,000–250,000
Seven schools	175,000–250,000
Eight schools	200,000–250,000
Nine schools	225,000–250,000
Ten schools	250,000

In previous SLC competitions, applicants have routinely requested more money than the above award ranges dictate. As a result, plans submitted to the Department have included any number of activities that could only be made possible if an applicant received a funding amount much higher than intended in the award range. Based on this experience, the Department will fund only those applications that correctly request funds within the award ranges specified in this notice for both planning and implementation grants. Applicants requesting funding amounts higher than the award ranges dictated by the number of schools to be served will be declared ineligible and will not receive funding. Further, schools that received support through planning grants in the FY 2000 or FY 2001 competition are not eligible to receive support through additional planning grants under this competition.

For a three-year implementation grant, LEAs may receive, on behalf of a single school, $250,000 to $500,000. LEAs applying on behalf of a group of eligible schools may request up to $2,500,000 per implementation grant. As with planning grants, districts must stay within the minimum and maximum school allocations when determining their group award request, or the Department will consider the application ineligible. In order to ensure sufficient implementation funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides eligible ranges for awards under the implementation grant:

Number of schools in LEA application	Award ranges
One school	$250,000–$500,000
Two schools	500,000–1,000,000
Three schools	750,000–1,500,000
Four schools	1,000,000–2,000,000
Five schools	1,250,000–2,500,000

Number of schools in LEA application	Award ranges
Six schools	1,500,000–2,500,000
Seven schools	1,750,000–2,500,000
Eight schools	2,000,000–2,500,000
Nine schools	2,250,000–2,500,000
Ten schools	2,500,000

As previously noted, LEAs may not apply on behalf of a single high school in more than one application. Schools that benefited from FY 2000 or FY 2001 implementation awards are not eligible to receive additional support under this competition.

Applicants should note that the requirements listed in this notice are material requirements. Please note that a failure to comply with any applicable program requirement (for example, failure to reasonably implement the proposed grant-funded project) may subject a grantee to administrative action, including the imposition of special conditions or termination of the grant.

C. Project Period

Planning grants will fund activities up to 12 months. Implementation grants will fund activities up to 36 months.

Note: Applicants for multi-year awards must provide detailed, yearly budget information for the total grant period requested. Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, the Secretary anticipates awarding the entire grant amount for implementation projects at the time of the initial award.

D. Page Limits

Applicants should limit the application narrative to no more than 25 double-spaced pages using the following standards:

- A page is 8.5″ x 11″, on one side only;
- The page limit includes all narrative, titles, headings, footnotes, quotations, references, and captions, as well as charts, tables, figures, and graphs. Charts, tables, figures, and graphs may be single-spaced;
- The font should be 12-point or larger;

The page limit does not apply to the Application for Federal Education Assistance Form (424); the SLC cover page; the Budget information Form (ED 524) and attached itemization of costs; any other required or supplementary application forms and attachments to those forms; the assurances and certifications; the table of contents; the one-page abstract (which should precede the narrative section and provide enrollment data for each eligible high school and a short description of the project); or appendices. Appendices used should relate directly to the selection criteria and project activities. Pages should be numbered.

E. Application and Reporting Requirements Related to Expected Outcomes

For both planning and implementation grants, applicants must describe their:

(a) Project activities, including measurable goals, objectives and timelines; and

(b) Indicators to gauge progress toward meeting project objectives.

In addition, the Secretary requires implementation grantees to collect data that address the performance indicators for this program, in order for them to produce annual performance reports. These reports will document the grantees' yearly progress toward expected project objectives. The Secretary will use these reports to measure the success of each grantee's project, as well as the effects of the Smaller Learning Communities program nationwide. A copy of the Smaller Learning Communities Annual Performance Report form for implementation grantees is included in the application package. Planning grantees will be required to submit a performance report, including their implementation plan, at the end of their project.

Applicants for an implementation grant must submit initial baseline data for each student outcome measure described below. Baseline data should come from either the current or previous school year. Applicants *must* report these data as an appendix. Upon notification of award, implementation grantees will be required to submit student outcome data for all participating schools for three years preceding the baseline year within forty-five days of the award date.

Required student outcome measures include:

I. Student Achievement
  (a) Whether the schools achieved adequate yearly progress, as such term is defined under Title I, Part A of the Elementary and Secondary Education Act; and
  (b) The percentage and number of students taking the SAT and ACT, and their average scores;

II. Academic Rigor and Student Retention
  (a) The number of students who take courses for which they receive both high school and college credit, including AP or International Baccalaureate courses; and
  (b) The overall reported average daily attendance for October.

III. School Climate
  (a) The number of incidents of student violence and alcohol and drug use;
  (b) The number of expulsions, suspensions, or other serious disciplinary actions; and
  (c) The number of students involved in extracurricular activities.

Applicants for implementation grants who do not provide initial baseline data on the student outcome measures indicated above will be declared ineligible and will not receive funding.

Note: Percentages may be used in place of number of students where appropriate.

F. Definitions

(a) Definitions in EDGAR—Definitions defined in 34 CFR 77.1 are applicable to this program.

(b) Other definitions—The following definitions also apply to this program:

BIA school is a school operated or supported by the Bureau of Indian Affairs.

A *group of schools* is two or more schools that each meet the definition of a large high school.

A *large high school* is an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

Selection Criteria

The following selection criteria will be used to evaluate applications submitted for planning and implementation grants. Please note:

(a) The maximum score for both planning and implementation grants is 110 points. The additional 10 points will be awarded to those applicants that respond to the competitive preference described earlier in the notice.

(b) The maximum score for each criterion is indicated in parentheses.

Planning Grants

(a) *Need for the project. (10 points)*

In determining the need for the proposed project, the Department will consider the extent to which the applicant:

(1) Describes and documents evidence of the applicant schools' need for the proposed restructuring of the school learning environment. Need may be demonstrated by such factors as: Low student achievement scores; number of students enrolled; low attendance; low graduation rates; and high dropout rates; incidents of violence, drug and alcohol use, and disciplinary actions;

percentage of students who have limited English proficiency, come from low-income families, or are otherwise disadvantaged; evidence of achievement gaps among student populations; or other need factors as identified by the applicant. (5 points)

(2) Documents how the creation of smaller learning communities will address the nature and magnitude of specific gaps or weaknesses in both structural and operational services, infrastructure, or opportunities within the learning environment. (5 points)

(b) *Foundation for planning. (30 points)*

In determining the merit of the proposed process for developing its smaller learning communities plan, the Department will consider the extent to which the applicant:

(1) Provides evidence on how the applicant has involved and secured the support of, and will continue to involve and secure the support of, teachers, administrators, and other pertinent staff within each school to be restructured in the planning process, particularly those teachers and other staff who will be directly affected by the implementation plan. (10 points)

(2) Provides evidence on how the applicant has involved and secured, and will continue to involve and secure, the support of individuals within the broader local community (such as parents, institutions of higher education, businesses, employers, and community organizations, including local non-profit agencies, faith-based organizations, and other service organizations) in the planning process. (5 points)

(3) Provides evidence on how the proposed effort aligns with the State's education reform efforts and State, or, when applicable, industry standards. (5 points)

(4) Describes the applicant's approach for identifying and utilizing evidence-based practices, particularly practices that are grounded in ''scientifically-based research'' as defined in section 9101(37) of the Elementary and Secondary Education Act, in designing the structural and operational changes necessary to accomplish the desired change in the learning environment. (10 points)

(c) *Feasibility and soundness of the planning process. (40 points)*

In determining the feasibility and soundness of the applicant's planning process, the Department will consider the extent to which the applicant:

(1) Proposes a process for developing a plan that, within a three-year grant period, will result in identification of the structural changes necessary to create smaller learning communities, assign all students to a smaller learning community within the school(s), and describe the method the school(s) will use to place students in a smaller learning community. (10 points)

(2) Proposes a feasible and sound process to conduct research and plan for the development of smaller learning communities that address the operational and instructional considerations needed to facilitate student achievement. These considerations include a common core of rigorous academic coursework and a clear, sequenced program of study, appropriate teacher assignment and professional development, strategies for assisting struggling students, and strategies for ensuring school, district and community engagement and support. (15 points)

(3) Proposes a process for developing a plan that would ensure appropriate autonomy of the smaller learning communities in their administrative and managerial relationship to the governance structure of the high school(s) and the local school district, including other Federal grants and how those programs will come together to produce a comprehensive and successful smaller learning communities project. (10 points)

(4) Proposes a process for developing a plan that includes quantifiable goals, objectives, and timelines for implementing structures and operational strategies needed for the implementation of smaller learning communities, and phasing them in over the period of the grant, addresses evidence of achievement gaps within student populations, and identifies key personnel who are qualified to undertake project activities. (5 points)

(d) Commitment of resources to the planning effort. (20 points)

In determining the commitment of resources to the planning process, the Department will consider the extent to which the applicant:

(1) Requests a budget that adequately supports the proposed activities. Expenditures on equipment and administrative costs should be limited. (10 points)

(2) Provides evidence that the administrators of the district and school(s) understand and are committed to the smaller learning community concept, and to the inclusion of rigorous academic courses in smaller learning communities and propose to integrate project planning activities with local policy and to use other State, local, and Federal funds to ensure sustainability of efforts after Federal support ends. (10 points)

Implementation Grants

(a) *Need for the project. (10 points)*

In determining the need for the proposed project, the Secretary will consider the extent to which the applicant:

(1) Describes and documents evidence of the applicant schools' need for implementation funds and how a smaller learning communities approach will facilitate improved student learning. Need may be demonstrated by such factors as: student achievement scores and enrollment; attendance and dropout rates; incidents of violence, drug and alcohol use, and disciplinary actions; percentage of students who have limited English proficiency, come from low-income families, or are otherwise disadvantaged; or other need factors as identified by the applicant. (5 points)

(2) Describes and documents the nature and magnitude of specific gaps or weaknesses in current school services, infrastructure, or opportunities and how the proposed project will address these gaps and weaknesses. (5 points)

(b) *Foundation for implementation. (25 points)*

In determining the quality of the implementation plan, the Department will consider the extent to which the applicant:

(1) Provides evidence of the involvement and support of teachers, administrators, and other pertinent staff within each school in the planning, development, and implementation of the proposal, particularly those teachers who will be directly affected by the implementation plan. (5 points)

(2) Provides evidence of how the applicant has involved and secured, and will continue to involve and secure, the on-going support of stakeholders within the broader local community (such as parents, institutions of higher education, businesses, employers, and community organizations, including local non-profit agencies, faith-based organizations, and other service organizations) in the planning process. (5 points)

(3) Provides evidence of how the proposed effort aligns with State education reform efforts designed to increase student achievement (5 points); and

(4) Provides evidence of how the applicant has identified and used evidence-based practices in the development of structural and operational strategies for creating smaller learning communities designed to improve student achievement. (10 points)

Note: Implementation grant applicants who received planning grants under either the FY

2000 or the FY 2001 SLC competition are further required to describe the impact of the funded planning activities on their implementation plan. Further, such applicants should note that the Secretary will review both the expenditure rates and the progress achieved of SLC planning grantees requesting implementation funds.

(c) *Project design. (30 points)*

In determining the quality of the design of the project the Department will consider the extent to which the applicant:

(1) Proposes both structural and operational changes that result in the establishment of smaller learning communities designed to improve the academic performance of participating students. These changes may include, but are not limited to, development of programs of study that include rigorous academic coursework, freshman transition activities, and innovations to create a more personalized and safe learning environment. The applicant clearly defines the proposed smaller learning community, including the structures and strategies to be implemented, the grade levels or ages of the students who will participate and the rationale and research base supporting the applicant's contention that these particular structures are likely to be effective in raising achievement and helping all students make more informed choices about postsecondary education and longer-term career options. (10 points)

(2) Provides evidence that decisions about how students will be placed in the smaller learning community or communities will be made based on student/parent choice or random assignment. The applicant provides assurances that placement by smaller learning community will not be based on ability, testing or other judgments or any other measure, and describes the process for making smaller learning community student assignments. The applicant also assures that, by the end of the three-year grant period, all students will be assigned to a smaller learning community structure within the school(s). (5 points)

(3) Describes the applicant's operational strategies for improving the learning environment including (1) the common academic core curriculum and standards, (2) how teachers will be assigned to SLCs and provided with appropriate content and knowledge specific to smaller learning community implementation, (3) strategies for assisting struggling students, and strategies for securing and maintaining widespread staff, community and parent buy-in. (10 points)

(4) Documents the administrative and managerial relationship of the smaller learning communities to the governance structure of the high school(s) and the local school district, including the LEA's operation of other Federal grants, and demonstrates a commitment to sustain the smaller learning community structures beyond the period covered by the Federal smaller learning communities grant. The applicant must describe the timeline and milestones for implementing the proposed structures and strategies and for phasing them in over the period of the grant. (5 points)

(d) *Feasibility of the plan. (15 points)*

In determining the feasibility of the implementation plan, the Department will consider the extent to which the applicant:

(1) Provides a budget that adequately supports the proposed activities. In addition, items in the budget must clearly reflect the proposed goals and objectives in the application. (5 points)

(2) Provides evidence that the proposed project will provide high-quality professional development for teachers in their academic content areas as well as professional development for other pertinent staff, to enable them to improve classroom instruction and target instruction to helping all students meet challenging academic content standards. This professional development must be aligned with the goals, curriculum, and evidence-based instructional practices of the proposed smaller learning communities. (5 points)

(3) Provides evidence of, or proposes, an ongoing partnership with an external technical assistance provider. (5 points)

(e) *Quality of the project evaluation. (10 points)*

In determining the quality of the applicant's project evaluation plan, the Department will consider the extent to which the applicant:

(1) Describes the overall evaluation strategy, including the applicant's plan to contract with an independent, third-party evaluator and the measures that evaluator will use to determine (a) progress of implementation and (b) changes in student outcomes, especially student achievement, both school-wide and disaggregated by the population categories identified in section 1111(b)(3)(C)(xiii) of the Elementary and Secondary Education Act; (5 points)

(2) Describes the method of collecting and reporting the required data for the Annual Performance Reports to the Department of Education (2 points); and

(3) Describe how the proposed project will address the school's efforts to make adequate yearly progress as defined in section 1111 of the Elementary and Secondary Education Act and how information gleaned from student assessments, and used in adequate yearly progress determination, will be used for project improvement within the school. (3 points)

(f) *Adequacy of resources. (10 points)*

In determining the adequacy of resources, the Department will consider the extent to which the applicant:

(1) Focuses grant expenditures on activities that directly affect the structural and operational changes needed to establish SLCs that will endure beyond the life of the grant, and how the applicant will limit expenditures on equipment and administrative costs. (5 points)

(2) Documents qualifications and availability of project personnel responsible for implementing the project plan, and the amount of time they will dedicate to this effort. (5 points)

Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://access.gpo.gov/nara/index.html.*

(Catalogue of Federal Assistance Number: 84.215L Smaller Learning Communities program)

Applicable Program Regulations: 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Program Authority: 20 U.S.C. 7249.

Dated: March 14, 2003.

Richard La Pointe,

Acting Assistant Secretary, Vocational and Adult Education.

[FR Doc. 03–6699 Filed 3–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Wallula-McNary Transmission Line Project and Wallula Power Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD for the Wallula-McNary Transmission Line Project and Wallula Power Project, based on the Final Environmental Impact Statement (DOE/EIS–0330, August 2002). BPA has decided to implement its portion of the proposed action identified in the Final EIS, which includes interconnection with the Federal Columbia River Transmission System (FCRTS) of a power plant that Wallula Generation LLC (Wallula LLC) has proposed to construct. The interconnection would be accomplished through the construction of a new transmission line and substation, and negotiation of interconnection and transmission agreements with Wallula LLC or its successor.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA toll-free at 1–888–276–7790. The ROD and EIS Summary are also available on the Transmission Business Line Web site at *http://www.transmission.bpa.gov/projects.*

FOR FURTHER INFORMATION CONTACT: Donald L. Rose, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *dlrose@bpa.gov.*

SUPPLEMENTARY INFORMATION: The proposed Wallula Project is a 1,300-megawatt (MW) natural-gas-fired, combined-cycle turbine power plant that Wallula LLC is planning to construct on a site near the Columbia River in Walla Walla County, Washington, approximately eight miles south of the City of Pasco. BPA will construct a new 5.1-mile, 500-kilovolt (kV) transmission line to interconnect the Wallula Project with the FCRTS and the new Smiths Harbor Substation, where the interconnection will be located. The new substation will be located adjacent to the existing 500-kV Lower Monumental-McNary transmission line, which is a part of the FCRTS. Power generated by the Wallula Project will be made available for purchase in the wholesale power market.

Wallula LLC has also requested firm transmission service be available on the FCRTS to John Day and Big Eddy Substations. The proposed action evaluated in the EIS included an additional 28 miles of 500-kV line that was expected to be needed for firm transmission service to John Day and Big Eddy. The need for the 28-mile segment of line diminished as other proposed generation projects that requested firm transmission on existing transmission lines were cancelled or put on hold. This has resulted in adequate transmission capacity for Wallula Project service becoming available on the existing Lower Monumental-McNary line. Although construction of all project components and negotiation of contract agreements were originally expected to be completed by Fall of 2004, the current schedule is uncertain.

For BPA, implementing the proposed action involves offering contract terms to Wallula LLC or its successor for interconnecting the Wallula Project into the FCRTS and providing firm transmission service to John Day and Big Eddy Substations. Under these contracts, BPA will construct, operate, and maintain the necessary interconnection facilities (including the new transmission line and substation) and integrate power from the Wallula Project into the FCRTS. Firm transmission service will require transmission capacity be available on the existing Lower Monumental-McNary transmission line. All practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and will be implemented in accordance with Appendix A of the Final EIS, Revised Mitigation Measures.

Issued in Portland, Oregon, on March 10, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–6690 Filed 3–19–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–077]

Columbia Gulf Transmission Company; Notice of Compliance Filing

March 14, 2003.

Take notice that on March 12, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 20C; Fourth Revised Sheet No. 20E; Fourth Revised Sheet No. 20F; and Fourth Revised Sheet No. 20G, with an effective date of March 1, 2003.

Columbia Gulf states that it is filing these tariff sheets to comply with the Commission's orders approving negotiated rate agreements in Docket Nos. RP96–389–052, 055, 060 and 067. Columbia Gulf states that the instant filing contains revised tariff sheets reflecting the rate effective on March 1, 2003.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: March 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6727 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–41–000 and CP03–43–000]

Dominion Transmission, Inc., Texas Eastern Transmission, LP; Notice of Site Visit

March 14, 2003.

On Monday, March 24, 2003, the Federal Energy Regulatory Commission (FERC) staff will conduct a site visit of Dominion Transmission, Inc.'s (DTI) Mid-Atlantic Expansion Project and Texas Eastern Transmission, L.P.'s (Texas Eastern) Dominion Expansion Project. DTI's project would be in Wetzel County, West Virginia; Greene and Franklin Counties, Pennsylvania; and Loudoun and Fauquier Counties, Virginia. Texas Eastern's project would be in Greene, Fayette, Somerset, Fulton, and Franklin Counties, Pennsylvania.

We will meet at these locations, at the specified times and dates, to visit the identified portions of the projects:

Monday, March 24, 2003 at 1:30 p.m.

Location: Simon's Market.
Address: Route 20.
Town: Pine Grove, WV 20419.
Contact: For DTI: Bob Pastorik, 304–627–3458.
Itinerary: DTI's proposed Mockingbird Hill Compressor Station site in Wetzel County, West Virginia; and DTI's existing Crayne Compressor Station in Greene County, Pennsylvania.

Tuesday, March 25, 2003, 8 a.m.

Location: BP/7–11 Gas Station.
Address: Route 21W on the northeast corner of the intersection with Route 79.
Town: Waynesburg, PA.
Contact: For Texas Eastern: Dana Rogers, 877–626–7410.
Itinerary: Texas Eastern's proposed Waynesburg Discharge pipeline segments 1 and 2 in Greene and Fayette Counties, Pennsylvania; and possibly portions of Texas Eastern's proposed Uniontown Discharge pipeline segment in Somerset County, Pennsylvania.

Wednesday, March 26, 2003, 8 a.m.

Location: Somerset Ramada.
Address: 215 Ramada Road.
Town: Somerset, PA 15501.
Contact: For Texas Eastern: Dana Rogers, 877–626–7410.
Itinerary: Texas Eastern's proposed Uniontown Discharge pipeline segment in Somerset County, Pennsylvania; Texas Eastern's proposed Bedford Discharge pipeline segment in Fulton and Franklin Counties, Pennsylvania; and DTI's existing Chambersburg Compressor Station in Franklin County, Pennsylvania.

Thursday, March 27, 2003, 8 a.m.

Location: Leesburg Compressor Station.
Address: 40620 Consolidated Lane.
Town: Leesburg, VA 20175.
Contact: For DTI: Wayne Burkhammer, 703–327–4163.
Itinerary: DTI's existing Leesburg Compressor Station, Loudoun County, Virginia; and DTI's proposed Quantico Compressor Station, Fauquier County, Virginia.

For further information call the Office of External Affairs, at (202) 502–8004 or (866) 208–3372.

Magalie R. Salas,
Secretary.

[FR Doc. 03–6722 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–300–000]

KO Transmission Company; Notice of Tariff Filing

March 14, 2003.

Take notice that on March 11, 2003, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirteenth Revised Sheet No. 10, with a proposed effective date of April 1, 2003.

KO Transmission states that the purpose of the filing is to revise its fuel retainage percentage consistent with section 24 of the General Terms and Conditions of its Tariff. According to KO Transmission, Columbia Gas Transmission Corporation (Columbia) operates and maintains a portion of KO Transmission facilities pursuant to the Operating Agreement referenced in its Tariff at Original Sheet No. 7. KO Transmission explains that, pursuant to the Operating Agreement, Columbia retains certain volumes associated with gas transported on behalf of KO Transmission. Columbia has notified KO Transmission that under terms of the Operating Agreement, KO Transmission will be subject to a 1.05% retainage. Accordingly, KO Transmission states that the instant filing tracks this fuel retainage.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 24, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. 03–6726 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–441–001]

Northern Natural Gas Company; Notice of Compliance Filing

March 14, 2003.

Take notice that on March 10, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets proposed to be effective on February 21, 2003:

Fifth Revised Volume No. 1

8 Revised Sheet No. 4

Original Volume No. 2

32 Revised Sheet No. 1A
First Revised Sheet No. 1965

Northern states that the above referenced sheets represent cancellation of Rate Schedule X–107 from Northern's Original Volume No. 2 FERC Gas Tariff, and the associated deletions from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and

regulations. All such protests must be filed on or before March 20, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6721 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–59–000]

Questar Pipeline Company; Notice of Application

March 14, 2003.

Take notice that on March 5, 2003, Questar Pipeline Company, (Questar), filed an application pursuant to Section 7(b) of the Natural Gas Act requesting authority to abandon natural-gas transportation service provided to Mid-Power Resource Corporation under Questar's Rate Schedule X–34 to Original Volume No. 3 of its FERC Gas Tariff. This service agreement has been inactive since April 3, 2002, and will never be re-activated. A Termination Agreement between Mid-Power and Questar was signed with an effective date of March 1, 2003, evidencing agreement of both parties to the proposed termination.

Questar requests expedited consideration of its request that authority to abandon the rate schedule may be effective March 1, 2003. Questar states that it does not propose to construct or abandon, any facilities in conjunction with this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before March 21, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6723 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–43–000, et al.]

Bowie Power Station, et al.; Electric Rate and Corporate Filings

March 13, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bowie Power Station, LLC

[Docket No. EG03–43–000]

Take notice that on March 7, 2003, Bowie Power Station, LLC (Bowie), a Delaware limited liability company with its principal place of business at 4350 East Camelback Road, Suite B–150, Phoenix, Arizona, 85018, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Bowie describes the application as an amendment of its application filed in Docket No. EG03–39–000.

Bowie states that it owns and, following completion of construction, will operate a nominal 1000 MW power generation facility located in Cochise County, Arizona (the Facility). Electric energy produced from the Facility will be sold by Bowie to the wholesale power market.

Comment Date: April 3, 2003.

2. California Power Exchange Corporation

[Docket No. ER02–2234–008]

Take notice that on March 10, 2003, the California Power Exchange Corporation made a filing to comply with the Commission's February 25, 2003, Order in this proceeding (102 FERC¶ 61,208).

Comment Date: March 31, 2003.

3. Allegheny Power

[Docket No. ER03–309–002]

Take notice that on March 10, 2003, Allegheny Power (Allegheny) filed revised sheets to the unexecuted Interconnection and Operating Agreement (Agreement) with Duke Energy Fayette, LLC (Duke) filed with the Federal Energy Regulatory Commission (Commission) on December 19, 2002. The purpose of this filing is to comply with the Commission's ''Order Conditionally Accepting Interconnection Service Agreement and Interconnection and Operating Agreement and Rejecting Amendment To Interconnection Agreement'' issued in the above-referenced proceedings on February 7, 2003 (Order), 102 FERC ¶ 61,161.

Allegheny Power states that copies of the filing were served on Duke, the interested state commissions and on all parties listed on the official service list to this proceeding.

Comment Date: March 31, 2003.

4. Southern California Edison Company

[Docket Nos. ER03–338–001]

Take notice that on March 10, 2003, Southern California Edison Company (SCE) tendered for filing a revised rate sheet for its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6. The purpose of this filing is to comply with the Commission's February 21, 2003, Order in Docket No. ER03–338–000.

SCE state that copies of this filing were served on the parties listed on the Service List in Docket No. Er03–338–000.

Comment Date: March 31, 2003.

5. ManChief Power Company, L.L.C.

[Docket No. ER03–438–001]

Take notice that on March 10, 2003, ManChief Power Company, L.L.C. (ManChief Power) filed amendments to its market-based rate authority proposal.

ManChief Power states that it is the owner of a generating plant located near Brush, Colorado that sells its output to Public Service Company of Colorado under a negotiated long-term power purchase agreement. The tariff had been shared by ManChief Power with Fulton Cogeneration Associates, L.P. with whom ManChief Power previously was, but is no longer, affiliated.

Comment Date: March 31, 2003.

6. New York State Electric & Gas Corporation

[Docket No. ER03–603–000]

Take notice that on March 10, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing revisions to its revised retail tariff leaves for retail transmission service relating to NYSEG's Retail Access Program and Economic Development Power service. NYSEG's tariff sheets for electric retail access were filed previously in Docket No. ER00–316–000.

NYSEG states that copies of the filing have been served on the parties listed on the Service List for ER00–316–000. The New York State Public Service Commission, New York Power Authority (NYPA) and NYPA Economic Development Power customers have also been served with copies of the filing.

Comment Date: March 31, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6724 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF03–1–000]

El Paso Corporation; Notice of Pre-Filing Environmental Review and Scoping for the Cheyenne Plains Pipeline Project and Request for Comments on Environmental Issues

March 14, 2003.

The Federal Energy Regulatory Commission's (FERC or Commission) staff has begun a pre-filing environmental review for El Paso Corporation's (El Paso) planned Cheyenne Plains Pipeline Project.[1] El Paso is planning a 380-mile-long, 30-inch-diameter natural gas pipeline which would extend from northeastern Colorado into western Kansas. This project is currently in an early design stage. As a stakeholder in this process, we invite you to assist us in our review. Specifically, you can provide us with written comments which identify potential environmental impacts of constructing and operating the project.

The Commission staff is currently planning to prepare an environmental impact statement (EIS) for El Paso's project[2]. This EIS will be used by the Commission in its decision-making process to determine whether or not the project is in the public convenience and necessity.

If you are an affected property owner receiving this letter, you may be contacted by an El Paso representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. You may have already been contacted by El Paso about the Cheyenne Plains Pipeline Project, or may have attended the Open Houses recently sponsored by El Paso in February 2003. El Paso would seek to negotiate a mutually acceptable agreement. However, if the project is filed with the Commission and is ultimately approved, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A preliminary route has been established by El Paso, however, if minor reroutes or variations are required to avoid or minimize impacts to certain features on your property, this is your opportunity to assist us and El Paso in identifying those specific areas of concern on your property. Provided as Appendix 2 is a Fact Sheet for your information. It includes information on how to contact El Paso. It also further describes the Commission's National Environmental Policy Act (NEPA)-pre-filing process.

El Paso has initiated a Public Participation Plan to provide a means of communication for participating stakeholders and has established a toll-free telephone number for communicating with El Paso representatives (1–877–598–5263). *See* Appendix 2 for additional information on how to contact El Paso. If you have any further questions for El Paso regarding its planned project, we encourage you to contact their representatives to answer your questions and address your concerns.

This notice is being mailed to landowners whose properties are currently within the Cheyenne Plains Pipeline Project's 200-foot-wide corridor along the planned route; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned action and encourage them to comment on their areas of concern.

The Commission is the lead Federal agency for conducting the environmental review, pursuant to NEPA. The following State and Federal agencies and organizations have agreed to participate in this pre-filing process:

U.S. Forest Service, Pawnee National Grasslands;

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[1] The El Paso Corporation would actually file with the Commission an application under a new subsidiary to construct the Cheyenne Plains Project. The Cheyenne Plains Gas Pipeline Company has recently been formed by its parent corporation, El Paso. El Paso has also indicated that the new facilities would be operated by Colorado Interstate Gas Company (CIG), also a subsidiary of El Paso. After the certificate application is filed, we will refer to the proponent of the project as Cheyenne Plains Pipeline Company.

[2] El Paso's preliminary environmental information for this project is filed in Docket No. PF03–1–000. El Paso's certificate application would be given a ''CP'' docket number filing designation when it is filed with the Commission. This application should fall under section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations.

National Park Service, Long Distance Trails Office;

U.S. Fish and Wildlife Service, Kansas and Colorado Field Offices;

U.S. Army Corps of Engineers, Colorado and Kansas Districts;

Kansas State Historic Preservation Office;

Colorado State Historic Preservation Office;

Kansas Department of Wildlife and Parks;

Colorado Division of Wildlife; Santa Fe Trail Association.

Other agencies or organizations who are interested in participating should indicate this in a written request to the Secretary of the Commission (Secretary). Please carefully follow the instructions in the ''Public Participation'' section of this notice. All participating agencies are encouraged to take part in the scoping process and provide us written comments. Agencies are also welcome to suggest format and content changes that will make it easier for them to adopt the EIS. However, we will decide what modifications will be adopted in light of our production constraints.

Summary of the Project

El Paso states that its project would transport up to 540,000 dekatherms per day from the hub at Cheyenne to major pipelines in the Midwest. The preliminary facilities include:

- About 380 miles of 30-inch-diameter pipeline in Weld, Morgan, Washington, Yuma, and Kit Carson Counties, Colorado; and Sherman, Wallace, Logan, Scott, Lane, Finney, Hodgeman, Ford, and Kiowa Counties, Kansas;
- An additional 32,675 horsepower to be installed at CIG's existing Cheyenne Compressor Station in Weld County, Colorado;
- Two new meter stations to be installed at the Cheyenne Compressor Station for Wyoming Interstate Gas Company and CIG. A new amine processing facility is also planned;
- Up to six meter stations/interconnects with various other major pipeline companies' facilities at the termination of the mainline; and
- Various aboveground facilities, such as pig launchers and receivers, and block valves placed about every 15 to 18 miles.

El Paso plans to construct this project in the third quarter of 2004, to be placed in-service by mid-2005. A general location map of the project facilities is shown in Appendix 2.[3]

Construction of the planned pipeline would require about 4,700 acres including the pipeline construction right-of-way (ROW) and additional temporary work spaces. Following construction, about 2,300 acres would be retained as new permanent ROW for the pipeline. The remaining 2,400 acres of temporary work space would be restored and allowed to revert to its former use. Construction at the existing Cheyenne Compressor Station would occur on the existing site.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to solicit and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the EIS on the important environmental issues. With this notice, the Commission is continuing to seek public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by El Paso. This preliminary list of issues may be changed based on our analysis:

- Federally listed endangered or threatened species, may occur in the project area.
- The Pawnee National Grasslands is crossed.
- Numerous streams and wetlands are crossed.
- Agricultural fields and pastures are crossed, including those that are actively cultivated and irrigated.
- Rangelands, including those that are actively grazed, are crossed.
- The Santa Fe Trail is crossed in Ford County, Kansas.

Our evaluation will also include possible alternatives to the proposed project or portions of the project, and we will make recommendations on how to lessen or avoid impacts on the various resource areas of concern.

Our independent analysis of the issues will result in the publication of a draft EIS that will be mailed to Federal, State, and local government agencies; Native American tribes; elected officials; public interest groups; interested individuals; interested affected landowners; newspapers; libraries; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. The final EIS will include our response to comments received on the draft EIS and will be used by the Commission in its decision-making process to determine whether or not to approve the project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Refer to Docket No. PF03–1–000;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, or call 1–866–208–3676. Copies of the appendices were sent to all those receiving this notice in the mail.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Mailing List Retention Form included in Appendix 1. If you do not return the form, you will be taken off the mailing list.

The Pre-Filing NEPA Process

FERC has initiated work on evaluating the Cheyenne Plains Pipeline Project using the Pre-Filing NEPA Process. FERC has assigned a Pre-Filing Docket Number (PF01–3–000). When El Paso files an application, it will be assigned a ''CP'' docket number, and all information filed under Docket No. PF03–1–000 will be become part of the record for the ''CP docket.'' All comments received during the pre-filing period will be considered during the preparation of the EIS.

Becoming an Intervenor

Once El Paso files a certificate application at the FERC for the Cheyenne Plains Pipeline Project, you may want to become an official party to the proceeding, known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Parties cannot intervene in this project until a certificate application is filed at the FERC. The company will mail a notice of this filing to affected landowners shortly after it occurs.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6725 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically. *See www.ferc.gov* for more information.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–7–000]

Natural Gas Price Formation; Notice of Staff Technical Conference

March 14, 2003.

The Federal Energy Regulatory Commission (FERC) will hold a technical conference on Thursday, April 24, 2003, to be held at FERC headquarters, 888 First Street, NW., Washington, DC, in the Commission Meeting Room (Room 2C). The purpose is to discuss issues related to the adequacy of natural gas price information. This would include how data are collected, how publicly available quotes are checked for authenticity and reliability, adequacy of coverage, what effort is made to determine whether the information received and published is complete or representative of its type of transaction, and what models best serve price discovery needs for natural gas markets.

We plan to hear from those who report the transactions, those receiving and publishing the price information, those using the published data reports, and those with constructive suggestions for overcoming impediments and inconsistencies and specific proposals. We request that anyone with a specific proposal that would be useful to review before the conference file the proposal in this docket number for all to access. (Instructions on filing electronically can be found at *http://www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm*.) We would like to explore actions necessary to develop trustworthy price information.

The one-day meeting will begin at 8:30 a.m. and conclude about 5 p.m. All interested parties are invited to attend. There is neither pre-registration nor a registration fee to attend.

We look forward to an informative discussion of the issues and options that would best provide all participants in the market clear, transparent, dependable, and accurate price signals with which to make informed decisions.

The Capitol Connection offers coverage of all open and special Commission meetings held at the Commission's headquarters live over the Internet, as well as via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit *www.capitolconnection.org*. Capitol Connection also offers FERC open meetings through its Washington, DC-area television service.

The conference will be transcribed. Those interested in obtaining transcripts of the conference should contact Ace Federal Reporters at (202) 347–3700 or (800) 336 6646. Transcripts will be made available to view electronically under this docket number seven working days after the conference. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

We will issue further details on the conference, including the Agenda and a list of participants, as plans evolve. For additional information, please contact Saida Shaalan of the Office of Market Oversight & Investigations at 202–502–8278 or by e-mail, *Saida.Shaalan@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–6720 Filed 3–19–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7470–4]

Notice of a Final Determination on a Construction Permit for Minergy Detroit, Detroit, Wayne County, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces the final decision on a prevention of significant deterioration (PSD) Clean Air Act (CAA) permit issued by the Michigan Department of Environmental Quality (MDEQ) to Minergy Detroit LLC (Minergy) for a proposed facility in Detroit, Wayne County, Michigan. The MDEQ originally issued this permit on September 20, 2001, but two citizens petitioned EPA's Environmental Appeals Board's (EAB) to review it. On March 1, 2002 the EAB issued its decision dismissing the petitions for review. The state's permit became effective on March 25, 2002.

DATES: The effective date of this notice of final decision is March 20, 2003. *See* 40 CFR 124.19(a). Judicial review of the permit decision may be sought by filing a petition for review in the United States Court of Appeals for the Sixth Circuit by no later than May 19, 2003.

ADDRESSES: Documents relevant to the above action are available for public inspection during normal business

hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange inspection of these documents, call Laura L. David at (312) 886–0661.

FOR FURTHER INFORMATION CONTACT: Laura L. David, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–0661. The EAB decision is available at: *http://www.epa.gov/eab/orders/minergy.pdf*

SUPPLEMENTARY INFORMATION: On June 5, 2000, the MDEQ received an application from Minergy for a permit to install a glass aggregate facility that would utilize municipal wastewater solids (MWWS) in a cyclone furnance located at 7819 West Jefferson Avenue, Detroit, Michigan.

The proposed facility is a major source under federal air construction permit regulations, due to the potential significant emissions of nitrogen oxides (NO_X), carbon monoxide (CO), sulfur dioxide (SO_2), particulate matter (PM), particulate matter less than 10-microns in diameter (PM–10), volatile organic compounds (VOCs), and lead (Pb). The facility has the following major sources of emissions: a 550 MMBtu/hr glass furnace and a 249 MMBtu/hr natural gas fired boiler. The roadways and the MWWS silos are additional sources of PM.

Pursuant to 40 CFR 52.21(j), Minergy was required to conduct a Best Available Control Technology (BACT) analysis for pollutants regulated under the Act. Under Michigan regulations, it was also required to determine Best Available Control Technology for Toxics (T–BACT) for each toxic air contaminant (TACs) and hazardous air pollutant (HAPs).

The following technologies will be employed as air quality control equipment: fabric filters to control PM/PM–10 and trace metals; fuel controls by using a coal flux at minimum available sulfur concentration (0.32 percent) and a dry scrubbing process; a selective non-catalytic reduction system using urea/ammonia upon an optimization study to control NO_X and ammonia emissions; ultra-low-NO_X burners in the stand-by boiler, for controlling the NO_X emissions; an overfire air system and good combustion practice to control CO emissions; high temperature retention, exceeding 1700 degrees Fahrenheit for greater than 2 seconds residence time and good combustion practices, to control VOCs and also for the State of Michigan's T–BACT for toxics such as acrolein, acrylonitrile, formaldehyde, dioxin, and furans; in addition to lime injection, carbon injection to reduce mercury emissions, dioxin and furans; and a vitrification process to minimize solid waste production, produce an inert product, and minimize metal emissions such as arsenic, beryllium and lead.

The combustion of natural gas, coal flux and municipal wastewater solids also has the potential to emit TACs and HAPs. Combustion techniques will be used to control the emission of TACs and HAPs and ensure the applicable screening levels are not exceeded. Each screening level is established to protect public health.

USEPA reviewed the permit application and the draft permit, and found their conditions in compliance with all federal regulations. State environmental officials reviewed Minergy's pollution estimates and evaluated the comments received during the public hearing held on June 28, 2001 and during the public comment period which ended on July 13, 2001. MDEQ approved the permit application request in September 20, 2001. As part of the approval, as a result of information submitted during the public participation process, a few new conditions were added to the permit issued.

MDEQ issues PSD permits under an EPA delegated program. Permits issued under a delegated program may be appealed to the EAB. The Minergy PSD permit was appealed by Saulius Simoliunas to the EAB on January 11, 2002 and by John Riehl of American Federation of State, County and Municipal Employees (AFSCME), Local 207, on January 14, 2002. Both petitioners questioned the adequacy of the permit's testing requirements related to emissions from the facility's cyclone furnace, and requested that special condition number 7 be modified to require the testing be done by an independent laboratory having proper certification, with the participation of citizens chosen by local non-governmental organizations.

On February 19, 2002, MDEQ filed a motion for Summary Disposition arguing that there was no regulatory or jurisdictional basis for imposing the conditions proposed by Petitioner, and requested that the Board decline review. On March 1, 2002, the EAB issued an order denying review of the permit.

The MDEQ issued the permit on September 20, 2001. The permit became effective on March 25, 2002.

Dated: March 10, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–6706 Filed 3–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7470–3]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Deming, New Mexico, on April 9 and 10, 2003. It is open to the public.

DATES: On April 9, the meeting will begin at 8:30 a.m. (registration at 8 a.m.) and end at 5:30 p.m. On April 10, the Board will hold a routine business meeting from 8 a.m. until 12 noon (registration at 7:30 a.m.).

ADDRESSES: The meeting site is the Mimbres Valley Special Events Center, 2300 E. Pine St., Deming, New Mexico.

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer of the Good Neighbor Environmental Board, U.S. Environmental Protection Agency Region 9 Office, 75 Hawthorne St., San Francisco, California 94105. Tel: (415) 972–3437; E-mail: *koerner.elaine@epa.gov.*

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

SUPPLEMENTARY INFORMATION:

Agenda: On the morning of April 9, the first day of the meeting, guest speakers will discuss management techniques for groundwater, including the Mimbres Aquifer. The morning session will begin at 8:30 a.m. and conclude with a public comment session from 12–12:30 p.m. During the afternoon session, beginning at 2 p.m., guest speakers will discuss innovative environmental technology such as wind energy, solar stills, and water management technology. A second public comment session will be held

from 5–5:30 p.m., which will conclude the first day of the meeting. For both public comment sessions on April 9th, the Board invites comments on a wide range of issues, including the topic for its upcoming Seventh Report: links between children's health in the border region and the region's environmental infrastructure.

The second day of the meeting, April 10, will begin at 8 a.m. and conclude at 11:45 a.m. The format will be a routine business meeting, with agenda items including approval of minutes, planning for upcoming meetings, and status of reports.

Public Attendance: The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

Background: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and also holds an annual strategic planning session. It was created by the Enterprise for the Americans Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Public Law 92–463).

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 03–6705 Filed 3–19–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0056; FRL–7296–5]

Flufenacet; Notice of Filing Pesticide Petitions to Establish Tolerances 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 flufenacet in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0056, must be received on or before April 21, 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: James A. 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 affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have 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–2003–0056. 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–2003–0056. 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–2003–0056. 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–2003–0056.

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–2003–0056. 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: March 10, 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 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.

Bayer CropScience

PP 6F4631 and OF6095

EPA has received pesticide petitions (6F4631 and 0F6095) from BayerCropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.527(a) by establishing permanent tolerance[s] for residues of the herbicide flufenacet; *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the raw agricultural commodities: corn, field, forage at 0.4 parts per million (ppm); corn, field, grain at 0.05 ppm; corn, field, stover at 0.4 ppm; soybean, seed at 0.1 ppm (PP 6F4631); cattle, fat at 0.05 ppm; cattle, kidney at 0.5 ppm; cattle, meat at 0.05 ppm; cattle, meat byproducts at 0.1 ppm; goat, fat at 0.05 ppm; goat, kidney at 0.5 ppm; goat, meat at 0.05 ppm; goat, meat byproducts at 0.1 ppm; hog, fat at 0.05 ppm; hog, kidney at 0.5 ppm; hog, meat at 0.05 ppm; hog, meat byproducts at 0.1 ppm; horse, fat at 0.05 ppm; horse, kidney at 0.5 ppm; horse, meat at 0.05 ppm; horse, meat byproducts at 0.1 ppm; sheep, fat at 0.05 ppm; sheep, kidney at 0.5 ppm; sheep, meat at 0.05 ppm; sheep, meat byproducts at 0.1 ppm; wheat, forage at 10.0 ppm; wheat, grain at 1.0 ppm; wheat, hay at 2.0 ppm; wheat, straw at 0.50 ppm (PP 0F6095); and 40 CFR 180.527(d) by establishing permanent tolerances for indirect or inadvertent residues of the herbicide flufenacet; *N*-(4-fluorophenyl)-*N*-(1-methylethyl)-2-[[5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl]oxy]acetamide and metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety in or on the following raw agricultural commodities from the application of this herbicide to the raw agricultural commodities listed in 40 CFR 180.527(a): alfalfa, forage at 0.1 ppm; alfalfa, hay at 0.1 ppm; alfalfa, seed at 0.1 ppm; clover, forage at 0.1 ppm; clover, hay at 0.1 ppm; grain, cereal, group 15, except rice at 0.4 ppm; grain, cereal, forage, fodder and straw, group 16, except rice, forage at 10.0 ppm; grain, cereal, forage, fodder and straw, group 16, except rice, stover at 3.0 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, straw at 1.0 ppm; grass, forage, fodder, and hay, group 17 at 0.1 ppm (PP 6F4631).

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in field corn, soybean, rotational crops and livestock is adequately understood. The residues of concern for the tolerance expression are flufenacet parent and its metabolites containing the 4-fluoro-*N*-methylethyl benzenamine moiety. Based on the results of animal metabolism studies, it is unlikely that secondary residues would occur in animal commodities from the use of flufenacet on field corn and soybean.

2. *Analytical method.* An adequate analytical method, gaschromatography/mass spectrometry with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 119E, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5937).

3. *Magnitude of residues.* Field residue trials were conducted across the major regions of corn and soybean production in the United States. In both cases, the treatment regime was selected to represent the use patterns that are most likely to result in the highest residue and used a 60% dry flowable formulation of the active ingredient. In all cases, the test plots received a single application of the product at a rate of 0.9 lbs. of active ingredient per acre.

For corn, flufenacet was applied at preplant soil incorporated, preemergence broadcast, and early postemergence application timings. The highest average field trial residues in corn raw agricultural commodities were 0.36 ppm in forage, 0.16 ppm in fodder, and less than 0.05 ppm in grain. No significant concentration of these residues occurred when the corn grain was processed by either wet or dry milling procedures.

For soybean, flufenacet was applied as a preplant broadcast treatment that was incorporated to a depth of approximately 2 inches or as a preemergent broadcast treatment made within 1 day of planting the soybean crop. The maximum residues detected were 0.10 ppm in seed, 1.20 ppm in green forage, and 9.75 ppm in dry hay.

B. Toxicological Profile

1. *Acute toxicity.* i. Technical grade flufenacet has a low to moderate order of toxicity in rats by the oral route of exposure. The acute oral LD_{50} was 1,617 milligrams/kilogram (mg/kg) for males and 589 mg/kg for females.

ii. A dermal toxicity study on technical grade flufenacet revealed low acute toxicity to rats. The dermal LD_{50} for both sexes was >2,000 mg/kg, the highest dose tested.

iii. An acute inhalation study on technical grade flufenacet showed low toxicity in rats with a 4-hour liquid aerosol LC_{50} for males and females of >3,740 mg/m^3 air, the highest concentration tested.

iv. An eye irritation study on technical grade flufenacet in rabbits showed minimal irritation to the

conjunctiva completely reversible within 7 days.

v. A dermal irritation study on technical grade flufenacet in rabbits did not produced any irritation.

vi. Skin sensitization studies on technical grade flufenacet in guinea pigs have produced equivocal results. A skin sensitization potential was exhibited under the conditions of a maximization test, whereby, there was no skin sensitization potential when tested by the Buehler Topical Closed Patch Technique.

2. *Genotoxicty*. Flufenacet was negative for mutagenic/genotoxic effects in a gene mutation/*in vitro* assay in bacteria, a gene mutation/*in vitro* assay in Chinese hamster lung fibroblasts cells, a cytogenetics/*in vitro* assay in Chinese hamster ovary cells, a cytogenetics/*in vivo* mouse micronucleus assay, and an *in vitro* unscheduled DNA synthesis assay in primary rat hepatocytes.

3. *Reproductive and developmental toxicity*. i. A two-generation rat reproduction study with a parental systemic no observed adverse effect level (NOAEL) of 20 ppm (1.4 mg/kg/day in males and 1.5 mg/kg/day in females) and a reproductive NOAEL of 20 ppm (1.3 mg/kg/day) and a parental systemic lowest observed adverse effect level (LOAEL) of 100 ppm (7.4 mg/kg/day in males and 8.2 mg/kg/day in females) based on increased liver weight in F_1 females and hepatocytomegaly in F_1 males and a reproductive LOAEL of 100 ppm (6.9 mg/kg/day) based on increased pup death in early lactation (including cannibalism) for F_1 litters and the same effects in both F_1 and F_2 pups at the high dose level of 500 ppm (37.2 mg/kg/day in F_1 males and 41.5 mg/kg/day in F_1 females, respectively).

ii. A rat developmental study with a maternal NOAEL of 25 mg/kg/day and with a maternal LOAEL of 125 mg/kg/day based on decreased body weight gain initially and a developmental NOEL of 25 mg/kg/day and a developmental LOAEL of 125 mg/kg/day based on decreased fetal body weight, delayed development (mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages), and an increase in the incidence of extra ribs.

iii. A rabbit developmental study with a maternal NOAEL of 5 mg/kg/day and a maternal LOAEL of 25 mg/kg/day based on histopathological finds in the liver and a developmental NOAEL of 25 mg/kg/day and a developmental LOAEL of 125 mg/kg/day based on increased skeletal variations.

4. *Subchronic toxicity*. i. A 84–day rat feeding study with a NOAEL less than 100 ppm (6.0 mg/kg/day) for males and a NOAEL of 100 ppm (7.2 mg/kg/day) for females and with a LOAEL of 100 ppm (6.8 mg/kg/day) for males based on suppression of thyroxine (T4) level and a LOAEL of 400 ppm (28.8 mg/kg/day) for females based on hematology and clinical chemistry findings.

ii. A 13–week mouse feeding study with a NOAEL of 100 ppm (18.2 mg/kg/day for males and 24.5 mg/kg/day for females) and a LOAEL of 400 ppm (64.2 mg/kg/day for males and 91.3 mg/kg/day for females) based on histopathology of the liver, spleen and thyroid.

iii. A 13–week dog dietary study with a NOAEL of 50 ppm (1.70 mg/kg/day for males and 1.67 mg/kg/day for females) and a LOAEL of 200 ppm (6.90 mg/kg/day for males and 7.20 mg/kg/day for females) based on evidence that the biotransformation capacity of the liver has been exceeded, (as indicated by an increase in LDH, liver weight, ALK and hepatomegaly), globulin and spleen pigment in females, decreased T4 and ALT values in both sexes, decreased albumin in males, and decreased serum glucose in females.

iv. A 21–day rabbit dermal study with the dermal irritation NOAEL of 1,000 mg/kg/day for males and females and a systemic NOAEL of 20 mg/kg/day for males and 150 mg/kg/day for females and a systemic LOAEL of 150 mg/kg/day for males and 1,000 mg/kg/day for females based on clinical chemistry data (decreased T4 and FT4 levels in both sexes) and centrilobular hepatocytomegaly in females.

5.*Chronic toxicity*. i. A 1–year dog chronic feeding study with a NOAEL was 40 ppm (1.29 mg/kg/day in males and 1.14 mg/kg/day in females) and a LOAEL of 800 ppm (27.75 mg/kg/day in males and 26.82 mg/kg/day in females) based on increased alkaline phosphatase, kidney, and liver weight in both sexes, increased cholesterol in males, decreased T2, T4 and ALT values in both sexes, and increased incidences of microscopic lesions in the brain, eye, kidney, spinal cord, sciatic nerve and liver.

ii. A rat chronic feeding/carcinogenicity study with a NOAEL less than 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females) and a LOAEL of 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females) based on methemoglobinemia and multi-organ effects in blood, kidney, spleen, heart, and uterus. Under experimental conditions the treatment did not alter the spontaneous tumor profile.

iii. In a mouse carcinogenicity study the NOAEL was less than 50 ppm (7.4 mg/kg/day) for males and the NOAEL was 50 ppm (9.4 mg/kg/day) for females and the LOAEL was 50 ppm (7.4 mg/kg/day) for males and the LOAEL was 200 ppm (38.4 mg/kg/day) for females based on cataract incidence and severity. There was no evidence of carcinogenicity for flufenacet in this study.

6. *Animal metabolism*. A rat metabolism study showed thatradio-labeled flufenacet was rapidly absorbed and metabolized by both sexes. Urine was the major route of excretion at all dose levels and smaller amounts were excreted via the feces.

7. *Metabolite toxicology*. A 55–day dog study withsubcutaneous administration of thiadone (flufenacet metabolite) supports the hypothesis that limitations in glutathione interdependent pathways and antioxidant stress result in metabolic lesions in the brain and heart following flufenacet exposure.

8. *Endocrine disruption*. EPA is required to develop ascreening program to determine whether certain substances (including all pesticides and inerts) may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effect. The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the toxicological findings for flufenacet relating to endocrine disruption effects, flufenacet should be considered as a candidate for evaluation as an endocrine disrupter when the criteria are established.

9. *Other studies*. i. An acute rat neurotoxicity study with a NOAEL less than 75 mg/kg/day and a LOAEL of 75 mg/kg/day based on decreased motor activity in males.

ii. A rat subchronic neurotoxicity study with a NOAEL of 120 ppm (7.3 mg/kg/day in males and 8.4 mg/kg/day in females) and a LOAEL of 600 (38.1 mg/kg/day in males and 42.6 mg/kg/day in females) based on microscopic lesions in the cerebellum/medulla and spinal cords.

iii. A rat developmental neurotoxicity dietary study established an overall NOAEL for both dams and offspring of 17.5 ppm. A LOAEL of 80.8 ppm was established based on body weight and

feed consumption declines common to both dams and offspring as well as developmental delays which were noted in the offspring (eye opening, preputial separation). No evidence of specific neurobehavioral effects in the offspring were observed at dietaryconcentrations of up to 404 ppm.

C. Aggregate Exposure

1. *Dietary exposure*. Flufenacet is an herbicide withcurrently registered uses on corn and soybean. Section 18 emergency exemptions for use on wheat have been approved in several states. Also, time limited tolerances exist for inadvertent or indirect residues on alfalfa, clover, and crop groups 15, 16 and 17. Tolerances are proposed for use on Crop Group 1C, tuberous and corm vegetables, which includes potatoes and sweet potatoes. There are no residential uses for flufenacet, therefore aggregate exposure would consist of any potential exposure to flufenacet residues in the registered and proposed crops and in drinking water.

i. *Food*. Acute and Chronic dietary exposure assessments were conducted using the Dietary Exposure Evaluation Model (DEEM®, Version 7.76) from Exponent, Inc. and the 1994–1996, 1998 CSFII consumption database. Dietary exposure values were compared to the acute RfD of 0.083 milligrams/kilogram of body weight per day (mg/kg bw/day) based on a LOEL from an acute neurotoxicity study in rats and a 900–fold uncertainty factor. The chronic RfD of 0.004 mg/kg bw/day is based on a LOEL from a combined chronic toxicity/carcinogenicity study in the rat with a 300–fold uncertainty factor.

The refined acute and chronic dietary risk assessments were performed using anticipated residues for all registered and proposed crops and crop groups. Adjustments were made to account for percent of crop treated and processing factors where available. The Tier 2 acute analysis resulted in the U.S. population using 0.00437 mg/kg bw/day or 5.2% of the acute RfD. The highest exposed subpopulation was non-nursing infants at 0.00893 mg/kg bw/day utilized or 10.7% of the acute RfD.

For the Tier 3 chronic analysis the U.S. population utilized 0.000087 mg/kg bw/day or 2.2% of the chronic RfD. The highest exposed subpopulation was children 1–6 at 0.000179 mg/kg bw/day or 4.5% of the chronic RfD.

ii. *Drinking water*. The EPA has calculated drinking waterlevel of comparison (DWLOCs) for acute exposure to flufenacet in drinking water as 2.87 ppm for the U.S. population and 813 ppb for children (1–6 years old). The Agency's screening concentration in ground water (SCI-Grow) model estimates peak levels of flufenacet and its metabolite thiadone in groundwater to be 15.3 ppb. EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) estimates peak levels of flufenacet and its metabolite thiadone in surface water to be 17 ppb. EPA's acute drinking water levels of comparison are well above the estimated exposures for flufenacet in water for the U.S. population and the subgroup with highest estimated exposure.

The EPA has calculated the drinking water level of comparison for chronic exposure to flufenacet in drinking water as 136 ppb for the U.S. population assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day. For children (1–6 years old), the DWLOC was 37.7 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day. The drinking water estimated concentration (DWECs) for groundwater (parent flufenacet and degradate thiadone) calculated from modeling data is 0.03 ppb for chronic concentrations which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old). The DWEC for surface water based on the computer models PRZM 2.3 and EXAMS 2.97.5 was calculated to be 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone) which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old). The EPA has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to flufenacet residues.

2. *Non-dietary exposure*. There are no non-food uses of flufenacet currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

D. Cumulative Effects

Flufenacet is structurally a thiadiazole. EPA is not aware of any other pesticides with this structure. For flufenacet, EPA has not yet conducted a detailed review of common mechanisms to determine whether it is appropriate, or how to include this chemical in a cumulative risk assessment. After EPA develops a methodology to address common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as part of the periodic review of pesticides or otherwise) to reexamine these tolerance decisions. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flufenacet does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerance actions; therefore, EPA has not assumed that flufenacet has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*. Using the assumptions and data described above, it is concluded that chronic dietary exposure to all registered and proposed uses of flufenacet will utilize at most 2.2% of the chronic RfD for the U.S. population. The acute dietary exposure assessment results in the U.S. population utilizing 5.2% of the acute RfD. EPA generally has no concern for exposures below 100% of the acute or chronic reference dose. Drinking water levels of comparison based on the dietary exposure are greater than the highly conservative drinking water estimated concentrations as shown above. 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 flufenacet.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of flufenacet, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. 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 pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Although there is no indication of increased sensitivity to young rats or rabbits following pre- and/or post-natal exposure to flufenacet in the standard developmental and reproductive toxicity studies, an additional developmental neurotoxicity study, which is not normally required, is needed to access the susceptibility of the offspring in function/neurological development. Therefore, EPA has required that a developmental neurotoxicity study be conducted with flufenacet and a threefold safety factor for children and infants will be used in the aggregate dietary acute and chronic

risk assessment. Although there is no indication of additional sensitivity to young rats or rabbits following pre- and/or post-natal exposure to flufenacet in the developmental and reproductive toxicity studies; the Agency concluded that the FQPA safety factor should not be removed but instead reduced because:

i. There was no assessment of susceptibility of the offspring in functional/neurological developmental and reproductive studies.

ii. There is evidence of neurotoxicity in mice, rats, and dogs.

iii. There is concern for thyroid hormone disruption.

Using the assumptions and data described in the aggregate exposure section and the appropriate safety factors as discussed above it is concluded that the most sensitive subpopulations of infants and children have a reasonable certainty of no harm. For the chronic assessment, the most sensitive subpopulation, children 1–6, uses 4.5% of the chronic RfD. The acute assessment shows the most sensitive subpopulation to be non-nursing infants at 10.7% of the acute RfD. The calculated drinking water levels of comparison (DWLOCs) for children of 765 ppb (acute) and 38 ppb (chronic) are well above the conservative drinking water estimated concentrations. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to potential residues of flufenacet in food and drinking water.

F. International Tolerances

Maximum residue levels are established or proposed for countries of the European Communities in the following commodities: Cereals at 0.5 ppm; corn at 0.5 ppm; potato at 0.1 ppm; sunflower at 0.05 ppm; soybean at 0.05 ppm; animal meat at 0.05 ppm; animal edible offal's at 0.05 ppm; animal fat at 0.05 ppm; milk at 0.01 ppm; and eggs at 0.05 ppm.

[FR Doc. 03–6711 Filed 3–19–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

March 13, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via internet at *Kim_A._Johnson@omb.eop.gov,* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by March 19, 2003.*

OMB Control Number: 3060–0110.

Type of Review: Revision of a currently approved collection.

Title: Application for Renewal of Broadcast Station License, FCC Form 303–S.

Form Number: FCC 303–S.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 3,217.

Estimated Time per Response: 40 mins. to 9.75 hrs.

Frequency of Response: Eight-year reporting requirement; Third party disclosure.

Total Annual Burden: 5,271 hours.

Total Annual Cost: $1,567,401.

Needs and Uses: FCC Form 303–S is used in applying for renewal of a license for a commercial or non-commercial AM, FM, or TV broadcast station and FM translator, TV translator, or low power TV (LPTV), or low power FM broadcast station. It can also be used to seek the joint renewal of licenses for an FM or TV translator station and its co-owned primary FM, TV, or LPTV station. The FCC has recently made two new statutory changes—47 U.S.C. 312(g), which provides for automatic expiration of a license if the licensee does not broadcast (''goes silent'') for twelve months; and 47 U.S.C. 309(k), which affects renewal standards and FCC violations. The Commission is also revising Form 303–S to make it a simpler and clearer form that shifts to a convenient certification-based approach to applicants. Furthermore, the Commission is changing this form in line with the release on November 20, 2002 of the Second Report and Order and FNPRM, *Review of the Commission's Broadcast and Cable Equal Employment Opportunities Rules and Policies,* MM Docket No. 98–204, FCC 02–303.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–6514 Filed 3–19–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notices

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 20, 2003, 10 a.m., meeting open to the public. This meeting was cancelled.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 27, 2003, 10 a.m., meeting open to the public. This meeting was cancelled.

DATE AND TIME: Tuesday, March 25, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–6868 Filed 3–18–03; 3:15 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 3, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Leonard Miller Revocable Declaration of Trust, Stuart A. Miller, Jeffrey S. Miller, and Brian L. Bilzin, all of Miami Beach, Florida, and Leslie M. Saiontz, Miami, Florida, as Trustees; to retain voting shares of UB Financial Corporation, Sunrise, Florida, and thereby indirectly retain voting shares of Union Bank of Florida, Lauderhill, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Steven Earl Shock, Poplar Buff, Missouri, to become trustee and thereby gain control of Midwest Bancorporation, Inc., and Affiliates ESOP, Poplar Bluff, Missouri, and thereby indirectly gain control of First Midwest Bank of Carter County, Van Buren, Missouri; First Midwest Bank of Dexter, Dexter, Miissour, and First Midwest Bank of Piedmont, Piedmont, Missour.

2. R.W. Butler Irrevocable Family Trust Number 1, Little Rock, Arkansas; to acquire additional voting shares of First Paris Holding Company, Paris, Arkansas, and thereby indirectly acquire additional voting shares of The First National Bank at Paris, Paris, Arkansas.

In connection with this application, Beth Eaton, Little Rock, Arkansas, Patricia Butler, Little Rock, Arkansas, James T. Butler, Harrisburg, Arkansas, as trustees, have applied to increase their individual direct and indirect ownership, control or the power to vote of of First Paris Holding Company.

Board of Governors of the Federal Reserve System, March 14, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–6671 Filed 3–19–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winstom-Salem, North Carolina; to merge with First Virginia Banks, Inc., Falls Church, Virginia, and thereby indirectly acquire Atlantic Bank, Ocean City, Maryland; First Virginia Bank – Colonial, Richmond, Virginia; First Virginia Bank – Southwest, Roanoke, Virginia; First Virginia Bank – Blue Ridge, Staunton, Virginia; First Virginia Bank, Falls Church, Virginia; First Virginia Bank – Hampton Roads, Norfolk, Virginia; Farmers Bank of Maryland, Annapolis, Maryland; and First Vantage Bank/Tri–Cities, Bristol, Virginia.

In connection with this application, Applicant also has applied to acquire First Virginia Banks, Inc.; and thereby indirectly acquire First Virginia Life Insurance Company, and First General Leasing Company, all of Falls Church, Virginia, and thereby engage in community development activities, leasing activities, and credit related insurance activities, pursuant to sections 225.28(b)(3), (b)(11)(i) and (b)(12)(i), of Regulation Y respectively.

Board of Governors of the Federal Reserve System, March 14, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–6670 Filed 3–19–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Meeting

TIME AND DATE: 9 a.m. (e.s.t.), March 31, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of minutes of the February 20, 2003, Board member meeting.

2. Executive Director's report, including the following items:

a. Legislative report,

b. Investment, report,

c. Participation information,

d. Fiduciary insurance fund proposal; and

e. Hardship withdrawal policy changes.

3. Presentation by Barclays Global Investors.

4. Status of new record keeping system.

Parts Closed to the Public

5. Discussion of litigation matters.
6. Discussion of personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 18, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–6863 Filed 3–18–03; 2:55 pm]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 2003–B1]

eTravel Initiative

AGENCY: Office of Governmentwide Policy (MTT), GSA.

ACTION: Notice of bulletin.

SUMMARY: In accordance with GSA Bulletin FTR 26 issued July 25, 2002 (67 FR 48654), the attached bulletin is issued to inform agencies of FedTrip as the online booking service available governmentwide for arranging temporary duty travel. Agencies will benefit from direct cost savings and management efficiencies by adopting self-service travel capabilities. Each Executive agency will be required to adopt an online booking engine as part of their self-service travel process. Agencies are requested to immediately develop a plan(s) (*e.g.*, budget and personnel alignment) to achieve a high level of online booking by December 2003. Such plan(s) will prepare agencies for implementation of the eTravel service, which is expected to become available by December 2003. Upon implementation of the eTravel service, agencies will be required to measure the use of self-service travel planning and reservations functions of the eTravel service for arranging temporary duty travel.

EFFECTIVE DATE: This bulletin is effective March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Tim Burke, General Services Administration, Office of Governmentwide Policy (MTT), Washington, DC 20405; e-mail, *timothy.burke@gsa.gov;* telephone (703) 872–8611.

SUPPLEMENTARY INFORMATION: All Executive agencies will be required to adopt an online booking service to make travel reservations for temporary duty travel. FedTrip, provided by the U.S. Department of Transportation, is an online booking service that is available for use by Executive agencies and should be agencies' first choice for online booking. Of an online booking service is not currently deployed in an agency, officials responsible for managing the agency's travel program should take steps to implement an online booking service including coordination with their Travel Management Center (TMC) where applicable. Executive agency travel managers should contact Arnie Linares at (202) 366–0520 or e-mail *arnie.linares@ost.dot.gov* to make the necessary arrangements to obtain FedTrip. Executive agency employees should contact their agency's travel office for information on how to make travel arrangements online. Please note that this document implements a new numbering system for FTR bulletins.

Dated: March 14, 2003.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

Attachment

March 20, 2003.

[GSA Bulletin FTR 2003–B1]

To: Heads of Executive Agencies.
Subject: eTravel Online Booking Service Availability.

1. *Purpose.* This bulletin notifies executive agencies of the availability of FedTrip as the online booking service available governmentwide, which should be agencies' first choice for making temporary duty travel arrangements, unless you have another online booking service already deployed. Each executive agency will be required to adopt an online booking service as part of its self-service travel process. Agencies are requested to develop a plan(s) (e.g., budget and personnel alignment) to achieve a high level of online booking service use by December 31, 2003. Such plan(s) will prepare agencies for implementation of the eTravel service, which is part of the President's Management Agenda, and is expected to be available by December 2003.

2. *Background.* The eTravel initiative was born out of the governmentside task force known as Quick Silver that was established to address performance gaps in existing Government systems as they relate to E-Government, a key component of the President's Management Agenda. The use of an online booking service is an interim stage in the progress toward an integrated self-service travel environment.

3. *eTravel Online Booking Service Objective.* The objective of an eTravel online booking service is to provide agencies with a Web-based, online booking service that implements a self-service travel booking capability that will eventually become part of the governmentwide eTravel initiative. An online booking service will allow employees to arrange their own air, hotel, and car rental reservations. Providing an online booking service is the initial phase of reengineering the entire travel process to realize significant cost savings to the government, to improve employees' productivity, and to provide a unified, simplified official travel process.

4. *Government Interest.* The interim use of an outline booking service is in the best interest of the Federal government because:

a. It supports the President's Management Agenda for the expanded use of electronic government;

b. It will improve internal effectiveness and efficiency;

c. It will provide employees with greater flexibility in arranging official travel;

d. FedTrip works with all global distribution systems (GDS) that are currently in use by the government's contracted travel management centers (TMCs), and should be agencies' first choice for online booking;

e. Best practices have shown that significant benefits are optimized when 60% or greater use rates per agency of an online booking service are achieve; and

f. I will produce significant savings and reduce fees paid by the Government.

5. *Agency Planning.* Under the governmentwide eTravel initiative, agencies will be required to use the governmentwide end-to-end, Web-based travel management service for travel preparations, authorizations and reservations, and payment of vouchers. Agencies should adopt FedTrip as their first-choice interim online booking service (unless another online booking service has already been deployed) until the governmentwide, Web-based end-to-end travel management service is available. Agencies are cautioned against investment in new systems that will be agency-specific and non-transferable to the eTravel service. Additionally, the following measures should be taken to implement an online booking service;

a. Agencies should evaluate their current arrangements for obtaining travel services in order to determine how best to incorporate an online booking service.

b. Each agency is requested to submit a report by December 31, 2003 to the point of contact in paragraph 6 on actions it has taken as of that date to achieve high-level usage of an online booking service for travel. This report should also describe the agency's plans to expand its usage of an online booking service for all of the agency's travel within the subsequent 12 months.

c. Agencies are also requested to provide monthly reports on the number and dollar volume of tickets issued, as well as fees paid for online self-service bookings versus full service transaction. Agencies will benefit from this data enabling them to better manage cost/savings benefits and determining appropriate rate of transfer from a high cost full-service transaction to a lower cost self-service transaction. This information is customarily available from agency TMCs and online booking engine providers. Reports should be submitted within 10 working days after the end of each month to the point of contact in paragraph 6. Agencies are strongly encouraged to use these reports to manage internal savings and monitor their adoption rate of self-service bookings.

d. Agencies should appoint and empower a manager to ensure that desired use rates for an online booking system are achieved.

6. *Point of Contact.* Tim Burke, Director, Travel Management Policy Division (MTT), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405; telephone 703–872–8611; e-mail, *timothy.burke@gsa.gov.*

7. *Expiration Date.* This bulletin expires when the new eTravel services is fully implemented within your agency.

[FR Doc. 03–6662 Filed 3–19–03; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office for Civil Rights

Notice of Addresses for Submission of HIPAA Health Information Privacy Complaints

AGENCY: Office for Civil Rights, HHS.

ACTION: Notification of addresses for submission of HIPAA Health Information Privacy Complaints for violations occurring on or after April 14, 2003.

SUMMARY: This notice sets out the addresses for filing a complaint with the Secretary of the Department of Health and Human Services, for non-compliance by a covered entity with the standards for privacy of individually identifiable health information under 45 CFR parts 160 and 164 (the Privacy Rule). The Privacy Rule implements certain provisions of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191. Complaints must be submitted in writing to the Office for Civil Rights at the appropriate address, as described below.

EFFECTIVE DATE: April 14, 2003.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for the list of addresses for filing complaints.

SUPPLEMENTARY INFORMATION: 45 CFR section 160.306 establishes general provisions for submission of complaints against a covered entity for non-compliance with the HIPAA Privacy Rule. A person who believes a covered entity is not complying with these requirements may file a complaint with the Secretary. A covered entity is a health plan, health care clearinghouse, and any health care provider who conducts certain health care transactions electronically. Complaints to the Secretary must: (1) Be filed in writing, either on paper or electronically; (2) name the entity that is the subject of the complaint and describe the acts or omissions believed to be in violation of the applicable requirements of part 160 or the applicable standards, requirements, and implementation specifications of subpart E of part 164; and (3) be filed within 180 days of when the complainant knew or should have known that the act or omission complained of occurred, unless this time limit is waived by the Office for Civil Rights for good cause shown. Complaints to the Secretary may be filed only with respect to alleged violations occurring on or after April 14, 2003.

The Secretary has delegated to the Office for Civil Rights (OCR) the authority to receive and investigate complaints as they may relate to the Privacy Rule. *See* 65 FR 82381 (Dec. 28, 2000). Individuals may file written complaints with OCR by mail, fax or e-mail at the addresses listed below. Individuals may, but are not required to, use OCR's Health Information Privacy Complaint Form. To obtain a copy of this form, or for more information about the Privacy Rule or how to file a complaint with OCR, contact any OCR office or go to *www.hhs.gov/ocr/hipaa/.* For more information on what entities are covered by HIPAA, go to *www.cms/hipaa/hipaa2/support/tools/decisionsupport/default.asp.*

As listed below, health information privacy complaints to the Secretary should be addressed to the OCR regional office that is responsible for matters relating to the Privacy Rule arising in the State or jurisdiction where the covered entity is located. Complaints may also be filed via email at the address noted below.

Where To File Complaints Concerning Health Information Privacy

For complaints involving covered entities located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, or Vermont:

Region I, Office for Civil Rights, U.S. Department of Health and Human Services, Government Center, J.F. Kennedy Federal Building—Room 1875, Boston, Massachusetts 02203. Voice phone (617) 565–1340. FAX (617) 565–3809. TDD (617) 565–1343.

For complaints involving covered entities located in New Jersey, New York, Puerto Rico, or Virgin Islands:

Region II, Office for Civil Rights, U.S. Department of Health and Human Services, Jacob Javits Federal Building, 26 Federal Plaza—Suite 3312, New York, New York, 10278. Voice Phone (212) 264–3313. FAX (212) 264–3039. TDD (212) 264–2355.

For complaints involving covered entities located in Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, or West Virginia:

Region III, Office for Civil Rights, U.S. Department of Health and Human Services, 150 S. Independence Mall West, Suite 372, Public Ledger Building, Philadelphia, PA 19106–9111. Main Line (215) 861–4441. Hotline (800) 368–1019. FAX (215) 861–4431. TDD (215) 861–4440.

For complaints involving covered entities located in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, or Tennessee:

Region IV, Office for Civil Rights, U.S. Department of Health and Human Services, Atlanta Federal Center, Suite 3B70, 61 Forsyth Street, SW., Atlanta, GA 30303–8909. Voice Phone (404) 562–7886. FAX (404) 562–7881. TDD (404) 331–2867.

For complaints involving covered entities located in Illinois, Indiana, Michigan, Minnesota, Ohio, or Wisconsin:

Region V, Office for Civil Rights, U.S. Department of Health and Human Services, 233 N. Michigan Ave., Suite 240, Chicago, Ill. 60601. Voice Phone (312) 886–2359. FAX (312) 886–1807. TDD (312) 353–5693.

For complaints involving covered entities located in Arkansas, Louisiana, New Mexico, Oklahoma, or Texas:

Region VI, Office for Civil Rights, U.S. Department of Health and Human Services, 1301 Young Street, Suite 1169, Dallas, TX 75202. Voice Phone (214) 767–4056. FAX (214) 767–0432. TDD (214) 767–8940.

For complaints involving covered entities located in Iowa, Kansas, Missouri, or Nebraska:

Region VII, Office for Civil Rights, U.S. Department of Health and Human Services, 601 East 12th Street—Room 248, Kansas City, Missouri 64106. Voice Phone (816) 426–7278. FAX (816) 426–3686. TDD (816) 426–7065.

For complaints involving covered entities located in Colorado, Montana, North Dakota, South Dakota, Utah, or Wyoming:

Region VIII, Office for Civil Rights, U.S. Department of Health and Human Services, 1961 Stout Street—Room 1185 FOB, Denver, CO 80294–3538. Voice Phone (303) 844–2024. FAX (303) 844–2025. TDD (303) 844–3439.

For complaints involving covered entities located in American Samoa, Arizona, California, Guam, Hawaii, or Nevada:

Region IX, Office for Civil Rights, U.S. Department of Health and Human Services, 50 United Nations Plaza—

Room 322, San Francisco, CA 94102. Voice Phone (415) 437–8310. FAX (415) 437–8329. TDD (415) 437–8311.

For complaints involving covered entities located in Alaska, Idaho, Oregon, or Washington:

Region X, Office for Civil Rights, U.S. Department of Health and Human Services, 2201 Sixth Avenue—Suite 900, Seattle, Washington 98121–1831. Voice Phone (206) 615–2287. FAX (206) 615–2297. TDD (206) 615–2296.

For all complaints filed by e-mail send to: *OCRComplaint@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Lester Coffer, Office for Civil Rights, Department of Health and Human Services, Mail Stop Room 506F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Telephone number: (202) 205–8725.

Dated: March 12, 2003.

Richard M. Campanelli,

Director, Office for Civil Rights.

[FR Doc. 03–6651 Filed 3–19–03; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee Meeting.

Time and Date: 9 a.m.—4 p.m., April 3, 2003.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 2003 calendar year cycle on Thursday, April 3, 2003. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, and Clinical Modification.

Matters to be Discussed: Agenda items include: Hepatitis C, acute and unspecified; worn out joint prosthesis; deep vein thrombosis; aftercare following organ transplant; aftercare following abnormal pap smear; encounter for pregnancy test-negative result; allergic dermatitis due to animal dander; endometrial hyperplasia with and without atypia; mechanical complication of esophagostomy; and ICD–10 Procedure Classification System (PCS); Updates on: Bipolar Radiofrequency Ablation; and Blunt Micro-Dissection with Chronic Total Occlusion (CTO) Catheter Laparoscopic/Thorascopic approaches.

Contact Person for Additional Information: Amy Blum, Medical Classification Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone 301–458–4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Room C4–07–07, Baltimore, Maryland 21244, telephone 410–786–1542 (procedures).

Notice: In the interest of security, (CMS) has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 14, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–6681 Filed 3–19–03; 8:45 am]

BILLING CODE 4360–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

The National Institute for Occupational Safety and Health (NIOSH) at the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Continue Discussions on the Approval of Respiratory Devices Used to Protect Workers in Hazardous Environments.

Times and Dates: 8 a.m.–11:30 a.m., April 10, 2003. 8 a.m.–11:30 a.m., April 24, 2003.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, Virginia (April 10); Colorado School of Mines, 1500 Illinois Street, Golden, Colorado (April 24).

Status: These meetings are hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room at each location will accommodate approximately 75 people. Interested parties should make hotel reservations directly with the Marriott Key Bridge (703–524–6400/800–327–9789) in Arlington, Virginia, or the Golden Hotel (303–279–0100/800–233–7214) in Golden, Colorado, referencing the NIOSH/NPPTL Public Meeting. Interested parties should confirm their attendance to either meeting by completing a registration form and forwarding it by e-mail (*confserv@netl.doe.gov*) or fax (304–285–4459) to the Event Management Office. A registration form may be obtained from the NIOSH Homepage (*http://www.cdc.gov/niosh*) by selecting Conferences and then the event.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285, E-mail *niocindocket@cdc.gov.* All requests to present should contain the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentation, NIOSH will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given the opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meetings should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285. Comments may also be submitted by e-mail to

niocindocket@cdc.gov. E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted to NIOSH no later than June 1, 2003, and should reference docket number, NIOSH 05, in the subject heading.

Purpose: The National Institute for Occupational Safety and Health, in consultation with the Mine Safety and Health Administration (MSHA), is in the process of developing a proposed rule on the performance and reliability requirements of close-circuit self-contained escape breathing apparatus. Examples include self-contained self-rescuers (SCSRs) as used in the mining industry and emergency escape breathing apparatus (EEBD). The purpose of these meetings is to provide an opportunity for an exchange of information between NIOSH and respirator manufacturers, industry representatives, labor representatives, and others with an interest in respiratory protection. Attendees will be given an opportunity to ask questions; submit verbal and written comments they wish to have included in the regulatory record; and provide individual input into potential changes to the applicable regulations and policies.

NIOSH and MSHA have not determined the final content of its proposed rulemaking but is considering the regulatory actions listed below. NIOSH and MSHA are specifically asking for comments on these proposed actions, but would also welcome comments on additional areas that the commenters believe may need to be addressed.

NIOSH and MSHA are considering:

(1) Proposing to use Breathing and Metabolic Simulators (BMS) to uniformly evaluate the life support performance of these respirators. The intent is to uniformly classify protection according to the length of time that the apparatus provides a breathable gas supply, measuring that performance to depletion. It is further proposed to retain certain elements of human subject testing;

(2) Proposing new ruggedness and reliability requirements such as a minimum shock and vibration standards, and means for unambiguous determination of continued functionality at the approved level;

(3) Proposing new safety requirements such as fire and explosion risk assessments to assure that the units do not introduce any new hazards in the deployment environment;

(4) Proposing to require the inclusion of fog resistant eye protection from gas and vapor hazards;

(5) Proposing to require post-deployment audits of approved apparatus;

(6) Proposing to require unit registration as a condition of certification.

FOR ADDITIONAL INFORMATION CONTACT: Event Management, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507, Telephone 304–285–4750, Fax 304–285–4459, E-mail *confserv@netl.doe.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 14, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–6683 Filed 3–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

The National Institute for Occupational Safety and Health (NIOSH) at the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Discussions on Research for Comprehensive Test Standards of Respiratory Devices Used to Protect Workers in Hazardous Environments.

Time and Date: 12:30–5 p.m., April 10, 2003.

Place: Marriott Key Bridge, 1401 Lee Highway, Arlington, Virginia.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 75 people. Interested parties should make hotel reservations directly with the Marriott Key Bridge (703–524–6400/800–327–9789) in Arlington, Virginia, and reference the NIOSH/NPPTL Public Meeting. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*confserv@netl.doe.gov*) or fax (304–285–4459) to the Event Management Office. A registration form may be obtained from the NIOSH Homepage (*http://www.cdc.gov/niosh*) by selecting Conferences and then the event.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285, E-mail *niocindocket@cdc.gov.* All requests to present should contain the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentation, NIOSH will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given the opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

NIOSH is specifically asking for comments on the proposed actions listed, but would also welcome comments on additional areas that the commenter believe may need to be addressed. Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted to NIOSH no later than June 1, 2003, and should reference docket number, NIOSH–008 in the subject heading.

Purpose: The National Institute for Occupational Safety and Health is conducting research for new comprehensive standards for multifunction Powered Air Purifying Respirators (PAPRs). These respiratory protective devices may include protection against other types of threats or hazards. Some devices can include vision protection, hearing protection, or head protection as well as isolation from environmental contaminants, making them multifunctional. Such devices

could be very useful to emergency responders, miners, and construction workers, to name a few.

The purpose of this meeting is to provide an opportunity for an exchange of information between NIOSH and respirator manufacturers, industry representatives, labor representatives, and others with an interest in respiratory protection. Attendees will be given an opportunity to ask questions and submit verbal and written comments they wish to have included in the regulatory record.

Besides providing respiratory protection, multifunction PAPRs must allow wearers to perform their assigned duties without posing additional burdens. Vision, communications, heat exchange, and ability to fit into tight places must meet meaningful testing criteria to have reasonable assurance that they will be acceptable. In addition, loose-fitting PAPR equipment must be able to supply enough filtered air that the wearer does not breathe contaminated air during heavy exertion.

The problem is how to objectively evaluate candidate equipment. Multifunction PAPRs must be evaluated against objective, scientifically valid tests in order to be certified by the Government as reasonably meeting minimum standards. Currently, appropriate standards are not available. Such standards, which address all the elements that go into making the equipment multifunctional, must be developed and validated. The purpose of this meeting is to discuss comprehensive test standards for all elements of multifunction PAPRs.

NIOSH has not determined the final content of its research but is considering that test standards will be needed for:

(1) Respiration;

(2) Vision;

(3) Communications;

(4) Wear Ability;

(5) Hearing Protection.

FOR ADDITIONAL INFORMATION CONTACT: Event Management, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507, Telephone 304–285–4750, Fax 304–285–4459, E-mail *confserv@netl.doe.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 14, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–6687 Filed 3–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–301, CMS–10077, and CMS–10072]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired.

Title of Information Collection: Certification of Medicaid Eligibility Quality Control (MEQC) Payment Error Rates and Supporting Regulations in 42 CFR 431.800 through 431.865.

Form No.: CMS–301 (OMB# 0938–0246).

Use: MEQC is operated by the State title XIX agency to monitor and improve the administration of its Medicaid system. The MEQC system is based on State reviews of Medicaid beneficiaries from the eligibility files. The reviews are used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases.

Frequency: Semi-annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 51.

Total Annual Responses: 102.

Total Annual Hours: 22,515.

2. *Type of Information Collection Request:* New Collection.

Title of Information Collection: ''Medicare Decisions and Your Rights''.

Form No.: CMS–10077 (OMB# 0938–NEW).

Use: Purusant to 42 CFR 422.568 (c), M+C practitioners must deliver notices to enrollees informing them of their right to obtain a detailed notice regarding services from their M+C organizations. This notice fulfills the regulatory requirement.

Frequency: Other (distribution).

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government.

Number of Respondents: 155.

Total Annual Responses: 5,000,000.

Total Annual Hours: 83,333.

3. *Type of Information Collection Request:* New Collection.

Title of Information Collection: MSInteractive Survey Tool for *cms.hhs.gov.*

Form No.: CMS–10072 (OMB# 0938–NEW).

Use: CMS has developed a survey tool using MSInteractive to obtain feedback from users accessing *cms.hhs.gov* website to guide future improvements.

Frequency: on occasion.

Affected Public: Individuals or Households, Business or other for-profit.

Number of Respondents: 7000.

Total Annual Responses: 7000.

Total Annual Hours: 583.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 13, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–6648 Filed 3–19–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–72]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Information Collection Requirements in 42 CFR 478.18, 478.34, 478.36, and 478.42, QIO Reconsiderations and Appeals.

Form No.: CMS–R–72 (OMB# 0938–0443).

Use: These regulations contain procedures for QIOs (formerly known as PROs) to use in reconsideration of initial determinations. The information requirements contained in these regulations are on QIOs to provide information to parties requesting a reconsideration. These parties will use the information as guidelines for appeal rights in instances where issues are still in dispute.

Frequency: On occasion.

Affected Public: Individuals or households, and Business or other for-profit.

Number of Respondents: 2,509.

Total Annual Responses: 5,228.

Total Annual Hours: 2,822.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 13, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–6649 Filed 3–19–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10085]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) and Solicitation of Applications

Agency: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the Trade Act of 2002. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and public harm.

A part of the President's New Freedom Initiative and Executive Order 13217, the Demonstration to Improve the Direct Service Workforce presents an opportunity for States and community organizations to improve the recruitment and retention of direct service workers. The Centers for Medicare and Medicaid Services is the agency within the Department of Health and Human Services charged with developing and administering this program.

For FY 2003, $9 million dollars was budgeted to fund this demonstration program and an additional $3 million is expected to be budgeted for FY 2004. Because funding for this demonstration appears as part of the FY 2003 budget, it is necessary to award grants to States and community-based organizations before October 1, 2003.

We need to seek emergency approval because we need three months between the time that applicants must submit their proposals and the time of award. Overall we are expecting a large volume of grant applications. We will need the three months to sort, review and score the awards and prepare award packages.

CMS is requesting OMB review and approval of this collection by April 21, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by April 7, 2003.

During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection; *Type of Information Collection:* Medicaid Program: Demonstration To Improve the Direct Service Workforce; *CMS Form Number:* CMS–10085 (OMB# 0938–NEW); *Use:* Executive Order 13217, ''Community-Based Alternatives for Individuals with Disabilities'' provides for the establishment of grants for states and community groups that develop and implement demonstration programs designed to increase the pool of direct care service workers, who help support people with disabilities in the community, through recruitment and retention strategies. State agencies and community groups will be applying for these grants; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; Not-for-profit institutions; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Burden Hours:* 300. We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, in order to be considered in the OMB approval process, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by April 7, 2003.

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn: Reports Clearance Officer, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–3064. Attn: Julie Brown;

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, CMS Desk Officer.

Solicitation: This notice also serves as an announcement for solicitation of applications for the grants, as follows:

Title of Grant: The Demonstration to Improve the Direct Service Workforce

Authority: The Demonstration to Improve the Direct Services Workforce is authorized by the President's Executive Order 13217, ''Community-Based Alternatives for Individuals with Disabilities.'' The Demonstration is part of the President's New Freedom Initiative, which calls for the removal of barriers to community living for people with disabilities. CMS is the designated HHS agency with administrative responsibility for this program.

Who Is Eligible to Apply: Two types of State agencies in eligible States may apply: (a) The Single State Medicaid Agency or (b) any other agency or instrumentality of a State (as determined under State law). In addition, community-based organizations that provide some combination of direct services, education, training and/or outreach are eligible to apply.

By ''State'' we refer to the definition provided under 45 CFR 74.2 as ''any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.'' ''Territory or possession'' is defined as Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

For purposes of this grant program, community-based organizations must have a clearly defined mission of community service, be established under state law, and have a formalized financial structure with the capacity for tracking and reporting on grant funds. Examples of organizations that might want to consider applying include Independent Living Centers (ILCs), consumer associations, community-outreach programs, assertive-community treatment providers, workforce development programs and others. Community-based providers possess an often-underutilized source of knowledge, expertise and commitment for identifying and supporting direct service workers.

Amount and Timing of Awards: The demonstration projects may last for 36 months. CMS intends to offer $6 million in funding nationally in FY 2003 and an additional $3 million in funding in FY 2004. CMS will announce the first grant awards in October of 2003. The grant period for this solicitation will run 36 months from October 1, 2003 through September 30, 2006. The maximum grant award will be $1.5 million per state agency or $750,000 per coalition or non-governmental applicant.

Purpose: The purpose of this demonstration program is to develop and implement programs that will increase the pool of direct care service workers, who help support people with disabilities in the community, through recruitment and retention strategies. Examples of potentially fundable demonstration programs may focus on: wage or time-off incentives, continuing education, outreach to underserved populations, cultural or logistical barriers. This list is not meant to be comprehensive. Entities applying for the demonstration program are encouraged to submit their own ideas for recruitment and retention of direct care service workers.

For Additional Information: An application kit containing all instructions and forms needed to apply for The Demonstration to Improve the Direct Services Workforce can be downloaded from the New Freedom Initiative Web site at: *http://www.cms.hhs.gov/newfreedom/default.asp.* If an organization does not have access to the Internet, an application kit may be obtained by writing: Attn: Marian Webb, Centers for Medicare and Medicaid Services, OICS, AGG, Grants Management Staff, Mailstop C2–21–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. E-mail: *MWebb@cms.hhs.gov.*

Questions about CMS's announcement or application package can be directed to: Carey O'Connor Appold, Center for Medicare and Medicaid Services, Center for Medicaid and State Operations, Disabled and Elderly Health Programs Group, Room S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–2117, e-mail: *COconnor2@cms.hhs.gov.* Applications must be mailed or hand-delivered by Friday, June 20, 2003. Applications mailed through the U.S. Postal Service or a commercial delivery service will be considered on time if they are received in CMS's Grants Office or postmarked by this date. Submissions by facsimile (fax) transmission will not be accepted. An original proposal should be sent with seven copies to: Attn: Marian Webb, Centers for Medicare and Medicaid Services, OICS, AGG, Grants Management Staff, Mai 500

Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 13, 2003.

Julie Brown,

Acting CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–6650 Filed 3–19–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (Short Title: TCE/HIV).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Request for Applications (RFA), including Part I, *Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TI 03–008) (Short Title: TCE/HIV),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. No. of awards	Project period
Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services.	May 23, 2003	$16 million	32	5 years.

The actual amount available for the award may vary depending on unanticipated program requirements and the number and quantity of applications received. FY 2003 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 108–7 This program is authorized under Section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: The National Clearinghouse for Alcohol and Drug Information (NCADI): (800) 789–2647 or (800–487–4889 TDD).

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment is accepting applications for Fiscal Year 2003 funds for grants to enhance and expand substance abuse treatment and/or outreach and pretreatment services in conjunction with HIV/AIDS services in African American, Latino/Hispanic, and/or other racial or ethnic communities highly affected by the twin epidemics of substance abuse and HIV/AIDS.

Eligibility: Funding will be directed to activities designed to deliver services specifically targeting racial and ethnic minority populations impacted by HIV/AIDS. Eligible entities may include: not-for-profit community-based organizations, national organizations, colleges and universities, clinics and hospitals, research institutions, State and local government agencies and tribal government and tribal/urban Indian entities and organizations. Faith-based organizations are eligible to apply.

There are three additional requirements:

1. The applicant agency and all direct providers of substance abuse treatment and HIV/AIDS services with linkages to the applicant agency must be in compliance with all local, city, county and State licensing and accreditation/certification requirements. The application must include licensure/accreditation/certification documentation (or a statement as to why the local/State government does not require licensure/accreditation/certification).

2. The applicant agency, if a direct provider of substance abuse treatment and HIV/AIDS services, and all direct providers of substance abuse treatment and HIV/AIDS services involved in the project must have been providing those services for a minimum of 2 years prior to the date of this application. The application must include a list of all substance abuse treatment and HIV/AIDS service providers and 2-year experience documentation.

This requirement is imposed because SAMHSA believes that adequate infrastructure and expertise are vital to effectively provide services and address emerging and unmet needs as quickly as possible.

3. Only applicants located in, or in close proximity to, and proposing to provide services in, one of the following are eligible to apply:

(a) Geographic areas within States with an annual AIDS case rate of, or greater than, 10 out of 100,000 people.

(b) MSAs with an annual AIDS case rate of, or greater than, 20 out of 100,000 among minority populations. (The rate of AIDS per 100,000 among minority populations was lowered to 20/100,000 from 25/100,000 based on falling AIDS rates due to improvements in treatment.) (See Appendix B of the full grant announcement for CDC annual case rates in States and MSAs.) Only applicants serving geographic areas within States and MSAs listed in the Appendix B of the full grant announcement can apply.

Applicants must specify the MSA or geographic area within a State where services are proposed.

SAMHSA/CSAT is limiting eligibility to applicants serving MSAs and States listed in Appendix B because in the absence of consistent reporting of HIV data by all jurisdictions, the best indicator of the magnitude of the epidemic is AIDS case rates derived from the CDC HIV/AIDS surveillance reports.

Availability of Funds: It is expected that approximately $16 million will be available for thirty-two (32) awards in FY 2003. Applicants proposing to enhance and/or expand substance abuse treatment may request not more than $500,000 in total costs (direct and indirect) per year. Applicants proposing only to enhance and/or expand outreach and pretreatment services may request not more than $400,000 in total costs (direct and indirect) per year. Applications with proposed budgets that exceed these amounts per year will be returned without review.

Period of Support: Awards may be requested for up to 5 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions on program issues, contact: David C. Thompson, Division of Services Improvement, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6523, (e-mail) *dthompso@samhsa.gov.*

For questions on grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, e-mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 13, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–6647 Filed 3–19–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Smoot) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Ralph Smoot (Applicant) has applied for an incidental take permit (TE–068275–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would exempt the applicant from Section 9 prohibitions. The proposed take would occur as a result of the construction and occupation of Earth-sheltered condominiums on a 2.5-acre property on Highway 71, Bastrop County, Texas.

DATES: Written comments on the application should be received within 60 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only,

during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 Austin, Texas. Please refer to permit number TE–068275–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy or non-jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Applicant: Ralph Smoot plans to construct Earth-sheltered condominiums, within 5 years, on a 2.5-acre property on Highway 71, Bastrop County, Texas. This action will eliminate 2.5 acres or less of Houston toad habitat and result in indirect impacts to the toad within the property. The Applicant proposes to compensate for the loss of Houston toad habitat by providing $5,000.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Susan MacMullin,

Acting Regional Director, Region 2.

[FR Doc. 03–6675 Filed 3–19–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Second Revision of the Recovery Plan for the Red-cockaded Woodpecker (*Picoides borealis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the second revision of the recovery plan for the red-cockaded woodpecker (*Picoides borealis*). The original plan was approved in 1979 and the first revision was approved in 1985. The endangered red-cockaded woodpecker is endemic to mature pine woodlands of the Southeastern United States and currently occurs in 11 States (Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Oklahoma, and Arkansas). Intensive research has greatly increased our understanding of the ecology of red-cockaded woodpeckers and has provided powerful management tools that have been highly successful in reversing the widespread declines of past decades. With appropriate management, the species can achieve full recovery. This second revision of the recovery plan describes in detail the ecology and management of red-cockaded woodpeckers, and outlines a mechanism to recover the species based on new insight into population and species viability.

ADDRESSES: Recovery plans that have been approved by the Fish and Wildlife Service are available on the Internet at *http://endangered.fws.gov/recovery/index.html.* Recovery plans may also be obtained from the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, telephone 301/429–6403 or 800/582–3421. The fee for the plan varies depending on the number of pages of the plan. A limited supply of this revision to the red-cockaded woodpecker recovery plan is also available from Ralph Costa, U.S. Fish and Wildlife Service, Department of Forest Resources, 261 Lehotsky Hall, Clemson University, Clemson, South Carolina 29634 (telephone 864/656–2432). Additionally, the plan is available on the Clemson Field Office Web site at *http://rcwrecovery.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Costa at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), 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 requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. This revision to the recovery plan was released for public comment on September 13, 2000 (65 FR 55269), and the comment period was reopened on November 21, 2002 (67 FR 70237). Information presented during the comment periods has been considered in the preparation of this revision.

The red-cockaded woodpecker was listed as an endangered species in 1970 (35 FR 16047). This taxon is endemic to open, mature and old-growth pine ecosystems in the Southeastern United States. Currently, there are an estimated 14,068 red-cockaded woodpeckers living in 5,627 known active clusters across 11 States. It is estimated that pre-European settlement there were 1 to 1.5 million groups of red-cockaded woodpeckers. Limiting factors for the red-cockaded woodpecker are those that directly affect the number of potential breeding groups, because this is the primary determinant of population size and trend. Multiple factors currently impact the persistence of breeding groups and, therefore, population and species viability. Foremost among these are the factors that limit suitable nesting habitat, namely fire suppression and lack of cavity trees. Another factor directly limiting the number of potential breeding groups is habitat fragmentation and consequent isolation of groups, which results in disrupted dispersal of helpers and failure to replace breeders. There are several other threats to the existence and recovery of the species, not limiting most populations currently, but which will become more important as the current limitations are addressed. Chief among these are the degradation

of foraging habitat through fire suppression and loss of mature trees, and the loss of valuable genetic resources because of small population size and isolation of populations.

The objective of this revision is to provide a framework for the recovery of the red-cockaded woodpecker so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the List of Endangered and Threatened Wildlife (50 CFR part 17). The red-cockaded woodpecker will be considered for delisting when (1) there are 10 populations that each contain at least 350 potential breeding groups (400 to 500 active clusters), and 1 population that contains at least 1,000 potential breeding groups (1,100 to 1,400 active clusters) from among 13 designated primary core populations (see recovery plan for the list of primary core populations and the recovery units in which they are located); (2) there are 9 populations that each contain at least 250 potential breeding groups (275 to 350 active clusters), from among 10 designated secondary core populations (see recovery plan for the list of secondary core populations and the recovery units in which they are located); (3) there are at least 250 potential breeding groups (275 to 350 active clusters) distributed among designated essential support populations in the South/Central Florida Recovery Unit, and six of these populations (including at least two of the following—Avon Park Air Force Range, Big Cypress National Preserve, and Ocala National Forest) exhibit a minimum population size of 40 potential breeding groups; (4) the following populations are stable or increasing and each contain at least 100 potential breeding groups (110 to 140 active clusters)—(a) Northeast North Carolina/Southeast Virginia Essential Support Population of the Mid-Atlantic Coastal Plain Recovery Unit, (b) Talladega/Shoal Creek Essential Support Population of the Cumberlands/Ridge and Valley Recovery Unit, and (c) North Carolina Sandhills West Essential Support Population of the Sandhills Recovery Unit; and (5) for each of the populations meeting the above size criteria, responsible management agencies shall provide (a) a habitat management plan that is adequate to sustain the population and emphasizes frequent prescribed burning, and (b) a plan for continued population monitoring.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: March 5, 2003.

Sam D. Hamilton,

Regional Director.

[FR Doc. 03–6680 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Public Scoping and Prepare an Environmental Impact Statement Regarding the Development of a Habitat Conservation Plan for the Pacific Coast Population of the Western Snowy Plover in Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service are advising the public that we intend to gather information necessary to prepare an Environmental Impact Statement (EIS) and conduct public scoping regarding the potential issuance of an incidental take permit under the Endangered Species Act of 1973 (Act), as amended, for the threatened Pacific coast population of the western snowy plover *(Charadrius alexandrinus nivosus)* within Oregon. We anticipate that the Oregon Department of Parks and Recreation (OPRD) will develop a habitat conservation plan (HCP) and apply for an incidental take permit for this species covering beach management activities. Incidental take permits are authorized under section 10(a) of the Act. We are providing this notice to advise other agencies and the public of our intent to prepare an EIS and to obtain suggestions and information on the scope of issues to include in the EIS. This EIS will provide a comprehensive analysis of the direct, indirect, and cumulative effects of beach management alternatives. It will also analyze proposed mitigation and minimization measures for anticipated incidental take from the implementation of an HCP for the western snowy plover resulting from the HCP..

DATES: Written comments for this initial scoping phase will be accepted until April 28, 2003.

ADDRESSES: Send written comments to State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266. Comments may also be submitted by electronic mail (e-mail) to *orp&r_hcp@r1.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, Fish and Wildlife Service; telephone 503–231–6179; or Michelle Michaud, Project Manager, OPRD, telephone 503–378–4168, ext. 288.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act, and its implementing Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, capture or collect listed wildlife, or attempt to engage in such conduct. Harm includes habitat degradation or modification that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under section 10(a) of the Act, we may issue permits for take of listed species that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32 and 50 CFR 17.22.

The OPRD has management responsibility on all Oregon coastal beaches (approximately 260 miles) for such activities as recreation, ocean shore alterations (riprap, seawalls, etc.), natural product removal (sand), and non-traditional activities (e.g., weddings, commercial filming, fireworks displays). Such activities may result in take of the threatened Pacific coast population of the western snowy plover.

In accordance with section 10(a) of the Act, OPRD will prepare an HCP which will address conservation of western snowy plovers and their habitat, while providing for recreational use, non-traditional uses, and for ocean shore alteration activities on the entire length of Oregon's beaches. The proposed HCP will consider all uses on ocean beaches from low mean tide to the actual or statutory vegetation line, whichever is furthest inland, as well as all OPRD owned and managed coastal park units.

Availability of Comments

Comments will be available for public inspection at OPRD, 1115 Commercial Street, NE, Salem, Oregon. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be

available for public inspection in their entirety.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments.

Dated: March 14, 2003.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 03–6677 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–03–1010–BN–241A]

Notice of Public Meetings, Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

The Northwest Colorado RAC meetings will be held May 8, 2003 at the Colorado North Western Community College—Johnson Bldg. Banquet Room, located at 500 Kennedy Drive in Rangely, Colorado; August 14, 2003 at the Parachute Community Center located at 222 Grand Valley Way in Parachute, Colorado; and November 13, 2003 at the Holiday Inn located at 755 Horizon Drive in Grand Junction, Colorado.

The Northwest Colorado RAC meetings will begin at 9 a.m. and adjourn at approximately 4 p.m. Public comment periods at the meetings will be in the morning at 9:30 a.m. and in the afternoon, to start no later than 3 p.m.

DATES: Northwest Colorado RAC meetings are May 8, 2003, August 14, 2003, and November 13, 2003.

FOR FURTHER INFORMATION CONTACT: Larry J. Porter, RAC Coordinator, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3012.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Colorado.

Purpose of the Northwest Colorado RAC May 8, 2003 meeting is to consider several resource management related topics including; RAC goals and priorities, coal bed methane development update, North Fruita Desert Plan update, fire program update, Committee reports, RAC Chairman/BLM Director Washington Office meeting report, Roan Plateau Plan update, and Northwest Colorado Stewardship update. Topics of discussion for the following Northwest Colorado RAC meetings scheduled for August 14, 2003 and November 13, 2003 will include fire management, land use planning, weeds management, travel management, wilderness, wild horse program update, land exchange proposals, cultural resources, and other issues as appropriate.

These RAC meetings are open to the public. The public may present written comments to the RAC. Each RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals planning to attend the meetings who need special assistance should contact the RAC Coordinator listed above.

Dated: March 13, 2003.

Larry Porter,

Acting Western Slope Center Manager.

[FR Doc. 03–6682 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the South Bay Salt Ponds Initial Stewardship Project

AGENCY: Fish and Wildlife Service, Interior (Lead Agency).

ACTION: Notice of intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report for the South Bay Initial Stewardship Project.

SUMMARY: The U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) are preparing a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to address the potential impacts of the Initial Stewardship Project for the South Bay Salt Ponds (ISP) in south San Francisco Bay, California. The joint EIS/EIR will address the design, implementation, and maintenance of the proposed ISP to comply with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), and all necessary permits and approvals from other local, state, and federal agencies.

This notice describes the proposed action and possible alternatives; notifies that an EIS/EIR will be prepared and considered; invites the participation of other Federal, State and local agencies, affected Tribes, and the public in the process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action (the scoping process); and describes the proposed scoping process, including the scoping meeting to be held.

DATES: A public scoping meeting to solicit comment on the environmental effects of the ISP and the scope and significant issues to be analyzed in the EIS/EIR will be held on March 27, 2003 from 7 p.m. to 9 p.m. at the Visitor Center, Don Edwards San Francisco Bay NWR, #1 Marshlands Road, Fremont, California. Call (510) 792–0222 if directions are needed. Persons needing reasonable accommodations in order to attend and participate in the public scoping meeting should contact the Refuge Manager at (510) 792–0222 sufficiently in advance of the meeting to allow time to process the request. Written comments are encouraged and should be received on or before April 21, 2003.

ADDRESSES: Information or comments related to the NEPA process should be submitted to Refuge Manager, San Francisco Bay NWR Complex, P.O. Box 524, Newark, CA 94560. Written comments may also be sent by facsimile to (510) 792–5828. All comments received, including names and addresses will become part of the administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Questions regarding the NEPA process, including scoping may be directed to Margaret Kolar, Refuge Manager, U.S. Fish and Wildlife Service, San Francisco Bay NWR Complex, P.O. Box 524, Newark, California 94560 (telephone (510) 792–0222). For questions concerning the CEQA process, please contact Carl Wilcox, Habitat Conservation Manager, California

Department of Fish and Game, Region 3 Headquarters, P.O. Box 47, Yountville, CA 94599 (telephone (707) 944–5525).

SUPPLEMENTARY INFORMATION:

Project Location

The USFWS and CDFG will acquire from Cargill Salt, 15,100 acres of industrial solar salt ponds and/or associated salt-making rights in south San Francisco Bay, California. Under terms of the acquisition, the USFWS will own and manage 8,000 acres of ''Alviso Ponds,'' the 1,600 acres of ''West Bay Ponds.'' The CDFG own and will manage 5,500 acres of ''Baumberg Ponds.'' The Alviso Ponds consist of an 8,000-acre complex of 25 ponds on the shores of the South Bay in Fremont, San Jose, Sunnyvale and Mountain View, in Santa Clara and Alameda Counties. Palo Alto Baylands Nature Preserve and Charleston Slough border the acquisition area on the west, on the south by Moffet Naval Air Station, Sunnyvale Baylands Park and to the east by Coyote Creek and Cushing Parkway in Fremont. Major drainages which discharge into San Francisco Bay within the complex area include Charleston Slough, Mountain View Slough, Stevens Creek, Guadalupe Slough, Alviso Slough (Guadalupe River), Artesian Slough, Mud Slough, and Coyote Creek. The complex includes three ''Island Ponds'' surrounded by Coyote Creek and Mud Slough.

The West Bay Ponds consist of a 1,600-acre complex of 7 ponds on the bay side of the Peninsula, on both sides of Highway 84 west of the Dumbarton Bridge, bayward of the developed areas of the City of Menlo Park in San Mateo County. Bayfront Park is located to the west, and the Dumbarton Bridge approach and the UPRR are located at its southern border. Ravenswood Slough discharges to the Bay through the complex.

The Baumberg Ponds consist of a 5,500-acre complex of 23 ponds on the shores East Bay, west of Hayward and Union City in Alameda County. The approach to the San Mateo Bridge and the CDFG Eden Landing Ecological Reserve, form the northern boundary of the acquisition area. Alameda Creek Flood Control Channel and the Coyote Hills form the southern boundary. Major drainages that discharge into the San Francisco Bay within the complex include Old Alameda Creek and Alameda Creek Flood Control Channel.

Project Description

The proposed South Bay Salt Ponds Initial Stewardship Project is intended to provide for management of the ponds from the time management responsibility is transferred by Cargill to the USFWS and CDFG until a long-term restoration and management plan for the South Bay is completed. It is anticipated that the planning and design process for long-term restoration, and thus the duration of the ISP, will require at least five years.

The objectives of the proposed South Bay Salt Ponds Initial Stewardship Project include:

1. Cease salt production;
2. Circulate bay water through the ponds and introduce tidal hydrology to ponds where feasible;
3. Maintain existing open water and wetland habitat for the benefit of wildlife, including habitat for migratory shorebirds and waterfowl and resident breeding species;
4. Maintain ponds in a restorable condition to facilitate future long term restoration;
5. Meet all regulatory requirements, including discharge requirements to maintain water quality standards in the South Bay.

Proposed changes to existing operations include:

1. Circulating bay waters through reconfigured pond systems and releasing pond contents into the Bay. The plan will require installing new water control features, consisting of intake structures, outlet structures and additional pumps to maintain existing shallow open water habitat.
2. Managing a limited number of ponds as seasonal wetlands, to reduce management costs and optimize habitat for migratory shorebirds and waterfowl.
3. Managing different summer and winter water levels in a limited number of ponds to reduce management costs and optimize habitat for migratory shorebirds and waterfowl.
4. Restoration of three ponds to muted tidal or full tidal influence.
5. Managing several ponds in the Alviso system as ''batch ponds'', where salinity levels would be allowed to rise in order to support specific wildlife populations.

Installation of all proposed water control structures is anticipated to require several years to complete. After water control structures are installed for individual pond systems, intake of bay water into ponds and initial release of pond contents into the Bay will generally begin the following March to May time period when salinities within ponds and in the Bay are at their lowest. During the initial release period, the discharge salinity from the pond system may be significantly higher than normal Bay salinity. Three levels of maximum initial release salinity conditions are proposed in Table 1. Ponds were designated for a particular salinity group based on the historic operation of the salt operations and system constraints on changes to the existing salinities. Salinity group 1 ponds would have a maximum initial discharge salinity of 65 parts per thousand (ppt). (Seawater is approximately 32 ppt.) These ponds are generally intake ponds or ponds near intakes with the lowest existing and historic salinities. Salinity group 2 ponds would have a maximum initial discharge salinity of 100 ppt. These ponds are in the middle range of the ponds in the acquisition. Salinity group 3 ponds would have a maximum initial discharge salinity of 135 ppt.

TABLE 1.—SALINITY GROUPS

Salinity group	Maximum initial discharge salinity	Alviso complex ponds	Baumberg complex ponds	West Bay complex ponds
Group 1	65 ppt	1A1, A2W, A2E, B1, B2, A3W, A3N.	1, 2, 4, 7 10, 11	
Group 2	100 ppt	A5*, A7*, A8* A9, A10, A11, A14.	5, 6, 1C, 2C, 3C, 4C, 5C, 6C.	
Group 3	135 ppt	A12, A13, A15, A16, A17, A19, A20, A21.	6A, 6B, 9, 8A, 8, 12, 13, 14.	1, 2, 3, 4, 5, 5S, SF2

*These ponds would have a maximum initial discharge salinity level of 110 ppt.

For Alviso systems expected water depths in most of the ponds will be 1 to 2 feet on average, similar to their existing condition. Average water depths in the Baumberg systems will range from zero to about 2.5 feet in

summer, and about 1 to 2.5 feet in winter. To save on pumping costs, water surface levels in the Baumberg systems will be operated at levels lower than existing conditions. Eliminating pumping in winter will result in different operating water levels between summer and winter. The West Bay Ponds will be managed in a similar manner to current salt making operations for at least three years. During this period, high salinity brines will be moved to the Cargill Newark Plant Site. Intake structures needed for the ISP may also be used during this period. Management plans and hydrologic modeling for Initial Stewardship will be completed during that time.

Preliminary Alternatives Identified to Date

The EIS/EIR will consider a range of actions, alternatives and impacts, including the no action alternative. Scoping is an early and open process designed to determine the issues and alternatives to be addressed in the EIS/EIR. To date, the following alternatives have been identified.

No Action

Under the No Action alternative, there would be no flow circulation through the pond systems. No additional water control structures would be installed, no release of pond contents or management of water and salinity levels would occur, and the existing infrastructure would not be maintained. The contents of the ponds would be allowed to evaporate leaving behind salt-crusted flats and in deeper areas, residual pools of concentrated brine. Ponds would take 1 to 2 years to dry. The deepest portions of the ponds will be seasonally wet during winter, filling with water after rain events. Under the No Action alternative, most of the existing open water habitats currently used by wildlife would be eliminated. Without maintenance pond levees and control structures would be prone to failure, increasing risk of uncontrolled intake and release of flows from/to the Bay. Although this alternative minimizes additional inputs of salinity, long-term pond drying may result in hyper-saline soil conditions. This may cause the chemistry of the soil to be affected in a manner that would likely increase the cost and level of effort of future restoration.

Maintain Infrastructure Only

This alternative is the same as the No Action alternative except that the levees and water control structures would be maintained and repaired as needed. The ponds would be managed as seasonal ponds until the final restoration plan has been completed. Under this scenario the pond contents would be removed or allowed to evaporate. During the summer, they would be maintained as dry to minimize construction and management costs. During winter they would fill during precipitation events but contents would not be discharged. Maintenance of the levees and water control structures would prevent their deterioration that could cause the accidental breaching of the ponds and release of pond contents to the Bay. Under this alternative, most of the existing open water habitats currently used by wildlife would be eliminated, significantly changing the character of the South Bay salt ponds. This alternative minimizes additional inputs of salinity and does not require a permit to discharge pond contents into the Bay. As with the No Action alternative, long-term pond drying may result in hyper-saline soil conditions. This may cause the chemistry of the soil to be affected in a manner that would likely increase the cost and level of effort of future restoration.

Breach Levees of Island Ponds A19, A20 and A21

Under the proposed action, the Island Ponds would be retrofitted with new intake and outlet structures, and managed under a muted tidal condition. Breaching of the levees of each pond would allow the three ponds to return to a more natural tidal regime. Due to their location between Lower Coyote Creek and Mud Slough, the Island Ponds are fairly inaccessible, and therefore, difficult to actively manage. They would be inundated during the high tides but would be above water at other times resulting in 474 acres of intertidal marsh and mudflat habitat. Concerns regarding the breach alternative include increasing the tidal prism of Coyote Creek as well as altering the existing deposition and scour regime of Coyote Creek. Specifically, there is a concern that increased velocities in Coyote Creek could cause scour at the railroad crossing of Coyote Creek.

Seasonal Pond Operations

Under the proposed action, pond systems consisting of numerous ponds generally have one or more pond(s) serving as batch ponds. Due to their location and, in some cases, relatively high bottom elevations, batch ponds do not have continuous water circulation. They do not have a direct hydrologic connection to the bay or tidal sloughs and creeks, but rely on a neighboring pond for delivery of inflows and release of outflows. The volume and frequency of the intake and release from/to a neighboring pond are used to control the batch pond salinity and water levels. Batch ponds can easily be managed for high salinity in the range of 80–120 ppt to favor brine shrimp and brine fly production, an important food source to certain waterfowl.

As an alternative to a batch pond, certain ponds could be operated as a seasonal pond to eliminate costly pumping during summer to maintain water levels. Seasonal ponds differ from batch ponds in that their contents would be drained prior to summer. Seasonal ponds will fill from rain during winter and be allowed to dry-down through the summer. The pond salinity would not be controlled, but would fluctuate due to residual salt in the pond, rainwater inflows, and seasonal evaporation.

Flexibility in Time Period of Initial Release

Under the proposed action, initial discharge of pond contents would begin in March/April when salinities within the ponds and receiving waters are the lowest. Allowing initial release of pond contents into the Bay at other times during the year would be desirable as a contingency since all necessary water control structures cannot be installed prior to the initial March/April release date. In addition, for certain Alviso ponds, discharge at other time periods would avoid entrainment of juvenile salmonids during downstream migration periods. Concerns regarding this alternative include the ability to meet regulatory requirements for the initial discharge of pond contents and effects of elevated salinity at discharge locations to upstream migrating adult salmonids and bay shrimp.

Content of the EIS/EIR

The EIS/EIR will analyze, describe, and evaluate direct, indirect and cumulative potential environmental impacts of alternatives, including the no project/no action alternative in accordance with NEPA and CEQA. The range of alternatives being considered may be refined, expanded, or revised as a result of the scoping process. Impact analysis will include a discussion of direct and indirect impacts, short- and long-term impacts, cumulative impacts, and unavoidable impacts. For each issue listed below, the EIS/EIR will include a discussion of the parameters used in evaluating the impacts; recommended mitigation, indicating the effectiveness of mitigation measures proposed to be implemented and what, if any, additional measures would be required

to reduce the impacts to below a level of significance. Direct and indirect impacts that will be analyzed include disturbance during construction of water control structures, changes in pond water depth and salinity, changes to water quality in the receiving Bay, creeks and sloughs, and effects caused by operation and maintenance.

The list of issues presented below is preliminary both in scope and number. These issues are presented to facilitate public comment on the scope of the EIS/EIR, and are not intended to be all-inclusive or to be a predetermination of impacts to be considered.

Water Quality

The EIS/EIR will describe existing water quality conditions in the salt ponds within the project area and the receiving waters; characterize effects of discharges including changes in salinity, turbidity, dissolved oxygen, BOD, and metals; and consider potential effect of the timing of discharges as well as the specific location of discharges.

Contaminants

The EIS/EIR will describe existing contaminant levels in sediments of the salt ponds and adjacent Bay, creek and sloughs including chromium, copper, lead, nickel, silver, zinc, arsenic, cadmium and mercury; and consider potential effects of water level management in remobilization of buried contaminants.

Biological Resources

The EIS/EIR will describe existing habitat and characterize changes in wildlife habitat and wildlife use in ponds and receiving waters. The EIS/EIR will also identify potential sensitive species and habitats in or near the project area and determine their abundance and extent of sensitive habitats that may be impacted by project implementation. Specific species to be addressed include California clapper rail, snowy plover, California least tern, salt marsh harvest mouse, Chinook salmon and steelhead trout.

Air Quality

The EIS/EIR will evaluate effects of changes in water quality and water elevations that may cause the release of hydrogen sulfide and other odorous organic gases.

Flood Protection

The EIS/EIR will evaluate effects of introduction of water circulation into ponds to changes in flood protection to neighboring developments.

Economics

The EIS/EIR will evaluate effects of the project to commercial fishing of Bay shrimp, including the initial release of pond contents to sloughs and creeks where juveniles are found.

Cumulative Impacts

The EIS/EIR will examine the cumulative impacts of past, ongoing, and probable future projects affecting tidal marsh and estuarine habitats in the South Bay. Projects will include other salt pond restoration projects and wetland habitat improvement project.

Scoping Process

The EIS/EIR will be prepared in compliance with NEPA and Council on Environmental Council Regulations, contained in 40 CFR parts 1500–1508; and with CEQA, Public Resources Code Sec 21000 *et seq.*, and the CEQA Guidelines as amended. Because requirements for NEPA and CEQA are somewhat different, the document must be prepared to comply with whichever requirements are more stringent. The Service will be the lead agency for the NEPA process and the Department of Fish and Game will be the lead agency for the CEQA process. In accordance with both CEQA and NEPA, these lead agencies have the responsibility for the scope, content, and legal adequacy of the document. Therefore, all aspects of the EIS/EIR scope and process will be fully coordinated between these two agencies.

The draft EIS/EIR will incorporate public concerns associated with the project alternatives identified in the scoping process and will be distributed for at least 45-day public review and comment period. During this time, both written and verbal comments will be solicited on the adequacy of the document. The final EIS/EIR will address the comments received on the draft during public review and will be made available to all commenters on the draft EIS/EIR and anyone requesting a copy during the 45-day public review period. The final EIS/EIR shall (1) provide a full and fair discussion of the proposed action's significant environmental impacts, and (2) inform the decision-makers and the public of reasonable measures and alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment.

The final step in the Federal EIS process is the preparation of a Record of Decision (ROD), a concise summary of the decision(s) made by the USFWS. The ROD can be published immediately after the final EIS comment period has ended. The final step in the State EIR process is certification of the EIR, which includes preparation of a Mitigation Monitoring and Reporting Plan and adoption of its findings, should the project be approved. A certified EIR indicates the following: (1) The document complies with CEQA; (2) the decision-making body of the lead agency reviewed and considered the final EIR prior to approving the project; and (3) the final EIR reflects the lead agency's independent judgment and analysis.

This notice is provided pursuant to regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: March 13, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office.

[FR Doc. 03–6661 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petitions for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) notice is hereby given that the following groups have each filed a letter of intent to petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. Each letter of intent was received by the Bureau of Indian Affairs (BIA) on the date indicated, and was signed by members of the group's governing body.

Western Cherokee of Arkansas/Louisiana Territories, c/o Mr. Floyd H. Masterson, Sr., PO Box 700, Ellington, Missouri 63638. October 5, 2001.

Barbareno/Ventureno Band of Mission Indians, c/o Ms. Beverly Folkes, 1931 Shady Brook Drive, Thousand Oaks, California 91362. January 17, 2002.

Dumna Tribal Council, c/o Ms. Karin Kirkendall, 1003 South Ninth Street, Fresno, California 93702. January 22, 2002.

The Golden Hill Paugussett Tribal Nation, c/o Mr. Samuel E. Dixon, Jr., 205 Ivy Street, New Haven, Connecticut 06511. February 8, 2002.

Qutekcak Native Tribe, c/o Mr. Arne Hatch, PO Box 1467, Seward, Alaska 99664. February 13, 2002.

Hudson River Band, c/o Mr. Edward VanGuilder, PO Box 18, North Granville, New York 12854. April 19, 2002.

Pamaque Clan of Coahuila Y Tejas Spanish Indian Colonial Missions, Inc., c/o Mr. Joe Rick Mendoza, 4510 Chedder Drive, San Antonio, Texas 78227. April 23, 2002.

Arista Indian Village, c/o Sonia Marie McMorris, PO Box 61841, Houston, Texas 77208. May 21, 2002.

Wesget Sipu, Inc., c/o Mr. Carrol Theriault, 50 Blaine School Road, Fort Kent, Maine 04743. June 4, 2002.

Paugussett Tribal Nation of Waterbury, Connecticut, c/o Mr. Richard John Cam, 199 Easton Avenue, Waterbury, Connecticut 06704. July 3, 2002.

Muskegon River Band of Ottawa Indians, c/o Gerald L. Olman, 1235 Sherwood Drive, North Muskegon, Michigan 49445. July 26, 2002.

Tsalagi Nation Early Emigrants 1817, c/o Ms. Nancy Long Walker, 1454 Stoney Mountain Road, Rougemont, North Carolina 27572. July 30, 2002.

Chaloklowa Chickasaw Indian People, c/o Mr. Vernon M. Tanner, 501 Tanner Lane, Hemingway, South Carolina 29554. August 14, 2002.

Native American Mohegans, Inc., c/o Ms. Eleanor Fortin, PO Box 1066, Norwich, Connecticut 06360. September 19, 2002.

Ohatchee Cherokee Tribe Nation of New York and Alabama, c/o Mr. Chief Sitting Sun, PO Box 21–1018, Brooklyn, New York 11221. December 16, 2002.

Piro/Manso/Tiwa Tribe of Guadalupe Pueblo, c/o Ms. Natalia Melon, PO Box 16181, Las Cruces, New Mexico 88004. December 17, 2002.

Cheroenhaka (Nottoway) Indian Tribe, c/o Mr. Walter D. Brown, III, 33334 Sandy Ridge Road, Franklin, Virginia 23851. December 30, 2002.

United Mascogo Seminole Tribe of Texas, c/o Mr. William Warrior, 228 Linda Vista, Del Rio, Texas 78840. December 31, 2002.

Avoyel-Taensa Tribe/Nation of Louisiana, Inc., c/o Mr. Romes Antoine, 177 Green Acres, Simmesport, Louisiana 71369. January 9, 2003.

Wyandot of Anderdon Nation, c/o Mr. Steve Gronda, 2674 West Jefferson, Trenton, Michigan 48183. January 21, 2003.

Central Tribal Council, c/o Mr. James W. Shepherd, Sr., PO Box 460, Mammoth Spring, Arkansas 72554. January 21, 2003.

This notice acknowledges receipt of these letters of intent to petition and does not constitute notice that the petitions are under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Third parties may submit factual and/or legal arguments in support of or in opposition to each group's petition and may request to be kept informed of all general actions affecting the petition. Third parties should provide copies of their submissions to the petitioner. Any information submitted will be made available on the same basis as other information in the BIA's files.

The petitions may be examined, by appointment, in the Department of the Interior, BIA, Branch of Acknowledgment and Research, MS: 4660-MIB, 1849 C Street, NW., Washington, DC 20240; Telephone: (202) 208–3592.

Dated: February 26, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–6659 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920; COC–28650]

Public Land Order No. 7558; Opening of National Forest System Land Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 54.88 acres of National Forest System land withdrawn by a Secretarial Order which established Bureau of Land Management Power Site Classification No. 372. This action will permit consummation of pending land disposal and retain the power rights to the United States. The land has been and will remain open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, (303) 239–3706.

Order

By virtue of the authority vested in the Secretary of the Interior by section 24 of the Act of June 10, 1920, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–560–000, it is ordered as follows:

At 9 a.m. on April 21, 2003, the following described National Forest System land withdrawn by the Secretarial Order dated October 31, 1944, which established Power Site Classification No. 372, will be opened to disposal, subject to the provisions of section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–560–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Roosevelt National Forest

Sixth Principal Meridian

T. 1 S., R. 73 W.,
sec. 35, lots 21, 22, and 23.

The area described contains 54.88 acres in Gilpin County.

Dated: March 5, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–6672 Filed 3–19–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–1430–ET; COC 28629]

Public Land Order No. 7557; Opening of Public Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 419.65 acres of public lands withdrawn by a Secretarial Order which established Bureau of Land Management Power Site Classification No. 93. This action will permit consummation of a pending land disposal action with retention of the power rights to the United States. The lands have been and will remain open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: June 19, 2003.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, (303) 239–3706.

Order

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–559–000, it is ordered as follows:

1. At 9 a.m. on June 19, 2003, the following described public lands withdrawn by the Secretarial Order dated April 16, 1925, which established Power Site Classification No. 93, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–559–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian,

T. 9 N., R. 102 W.,
Sec. 2, lots 7, 8, 16, 17, 20, 31, 32, 33, 34, 35, and 36;
Sec. 3, lots 5, 6, 7, 8, 14, 17, 18, 21, 24, 25, and NE¼NW¼SE¼;
Sec. 11, lot 5.

The areas described aggregate approximately 419.65 acres in Moffat County.

2. The State of Colorado has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order, and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: March 5, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–6674 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–03–0054; OR–55753]

Public Land Order No. 7556; Withdrawal of Public Lands for the North Fork Smith River, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 960 acres of National Forest System lands from location and entry under the United States mining laws for 20 years to protect the outstanding recreational, scenic, fisheries, and water quality values of the Scenic section of the North Fork Smith Wild and Scenic River. The lands have been and will remain open to such other forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, OR 97208–2965, 503–952–6189.

SUPPLEMENTARY INFORMATION: The withdrawal includes all lands open to mining on the Scenic section, including the river bed, extending ¼ mile from the centerline.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from the mineral leasing laws, to protect the North Fork Smith River:

Willamette Meridian

Siskiyou National Forest

All lands lying on the right (west) bank of the river corridor, including the river bed, and extending ¼ mile from the centerline of the North Fork Smith River, from confluence of Horse Creek (boundary of upstream wild segment of the North Fork Smith River) downstream 4.5 miles to the confluence of Baldface Creek (boundary of the downstream wild segment of the North Fork Smith River). These lands are located approximately in but not limited to the following:

T. 40 S., R. 11 W., unsurveyed
Sec. 9, S½SE¼;
Sec. 15, NW¼NW¼ and SW¼SW¼;
Sec. 16, E½;
Sec. 21, E½;
Sec. 22, W½W½;
Sec. 27, W½ and W½E½;
Sec. 28, NE¼NE¼;
Protraction Block 41 (formerly sec. 34).
T. 41 S., R. 11 W.,
Sec. 2, W½;
Sec. 3, NE¼ and NE¼NW¼;
Sec. 11, N½NW¼.

All lands lying on the left (east) bank of the river corridor, including the river bed, and extending ¼ mile from the centerline of the North Fork Smith River starting at the Kalmiopsis Wilderness Area Boundary and extending south to the wild segment of the North Fork Smith River. These lands are located approximately in but not limited to the following:

T. 41 S., R. 11 W.,
Sec. 2, those portions lying outside the boundaries of the Kalmiopsis Wilderness Area;
Sec. 11, those portions lying outside the boundaries of the Wild segment of the North Fork Smith Wild and Scenic River.

The areas described aggregate approximately 960 acres in Curry County and include all lands not previously withdrawn from mining in the Scenic segment of the North Fork Smith Wild and Scenic River in Oregon.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 5, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–6673 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP03–0107]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Oregon State

Office, Portland, Oregon, on October 25, 2002.

Willamette Meridian

Oregon

T. 15 S., R. 1 W., accepted September 30, 2002.
T. 27 S., R. 11 W., accepted September 30, 2002.

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, December 9, 2002.

Oregon

T. 39 S., R. 11 E., accepted November 19, 2002.
T. 34 S., R. 1 E., accepted November 29, 2002.
T. 14 S., R. 1 E., accepted December 5, 2002.

Washington

T. 20 N., R. 15 E., accepted December 3, 2002.

A copy of the plats may be obtained from the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

For further information contact: Bureau of Land Management, (333 SW. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: March 12, 2003.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 03–6684 Filed 3–19–03; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–010]

Sunshine Act Meeting Notice

AGENCY: International Trade Commission.

TIME AND DATE: April 3, 2003 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification list.
4. Inv. No. 731–TA–989 (Final)(Ball Bearings from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 14, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 18, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–6869 Filed 3–18–03; 3:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[EOIR No. 135]

Notice of Class Action Judgment in Barahona-Gomez v. Ashcroft

AGENCY: Executive Office for Immigration Review (''EOIR''), Justice.

ACTION: Notice.

SUMMARY: This notice presents the Advisory Statement of the class action settlement in *Barahona-Gomez* v. *Ashcroft*, No. Civ 97–0895 CW (ND.Cal.). The Advisory Statement sets forth the rights of class members who had applied for suspension of deportation under section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254. This notice is published because while the Executive Office for Immigration Review has the names and addresses of class members and counsels of record for the class member aliens, all parties recognize that some class members have failed to inform EOIR of address changes and the notice is necessary to inform those persons.

DATES: This notice is effective March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Chuck Adkins-Blanch, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470.

SUMMARY: 1. *Why is EOIR publishing this notice?*

EOIR is publishing this notice to comply with the settlement order entered on December 18, 2002, in the class action entitled *Barahone-Gomez* v. *Ashcroft*, No. Civ 97–0895CW (ND.Cal).

2. *Who should read the Advisory Statement?*

The Advisory Statement specifies which individuals who meet all of the following threshold requirements are given relief pursuant to the settlement. Persons are advised to read the Advisory Statement to determine whether they are entitled to relief under the settlement. The requirements are:

(a) The alien applied for suspension of deportation;

(b) The case hearing took place within the jurisdiction of the United States Court of Appeals for the Ninth Circuit;

(c) The case was scheduled for an individual hearing on the merits before an Immigration Judge (Judge) between February 13, 1997 and April 1, 1997, or was pending at the Board of Immigration Appeals (''Board'') between February 13, 1997 and April 1, 1997, and the Notice of Appeal had been filed with the Board on or before October 1, 1996;

(d) The basis for the Judge or the Board denying or not adjudicating the application for suspension of deportation was section 309(c)(5) of the illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104–208, 110 Stat. 3546 (Sept. 30, 1996), amended Pub. L. 104–302, 110 stat. 3656 (Oct. 11, 1996) (''IIRIRA'') also known as the ''stop-time rule;''

(e) For cases before an Immigration Judge, the Judge reserved a decision or continued the hearing until after April 1, 1997, the Judge issued a decision denying or not adjudicating the application for suspension of deportation, no decision has yet been issued, or the Judge granted suspension of deportation and the Immigration and Naturalization Service (INS) appealed the decision based upon IIRIRA section 309(c)(5).

3. *Does an alien have to take any action under the settlement?*

EOIR will reopen the cases of aliens who qualify for relief under the terms of this settlement. A class member who meets the threshold requirements to qualify for relief under the settlement and whose case was not reopened by EOIR, may file a motion to reopen their case to apply for renewed suspension of deportation. This motion to reopen is not subject to the normal time and number limitations on motions to reopen, and this motion does not require a filing fee.

4. *Does the motion to reopen have to be filed by a deadline date?*

Yes. The motion to reopen must be filed within 18 months of the date that this Advisory Statement is published in the **Federal Register**.

5. *Does an alien definitely receive the benefits of the settlement if all of the threshold requirements are met?*

No. Not all individuals who meet the threshold requirements listed above will qualify for relief under the settlement. The Advisory Statement explains the factual situations which determine if an individual will qualify for relief under

the settlement. The full settlement agreement and Advisory Statement is reproduced at the EOIR Web site, at *www.usdoj.gov/eoir.*

Dated: March 13, 2003.

Kevin D. Rooney,

Director, Executive Office for Immigration Review.

Note: The appendix to this notice contains the Advisory Statement, Exhibit 1 in the settlement agreement.

Appendix

The following is the advisory statement in the *Barahona-Gomez* v. *Ashcroft* settlement agreement. This advisory statement is referenced as Exhibit 1 in the settlement agreement.

Advisory Statement

Class Action Settlement to Benefit Certain Persons Who Applied For Suspension of Deportation Before April 1, 1997

The Executive Office for Immigration Review (EOIR)—the federal agency that includes the Immigration Courts and the Board of Immigration Appeals—is issuing this Advisory Statement to inform the public about the settlement agreement in the *Barahona-Gomez* V. *Ashcroft* class action litigation.

This class action lawsuit challenged EOIR directives which prohibited immigration judges and the Board of Immigration Appeals from granting suspension of deportation during the period between February 13 and April 1, 1997. On April 1, 1997, a new law (Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA'') section 309(c)(5)) took effect that made people ineligible for suspension if they had not been continuously physically present in the United States for a period of seven years at the time that they were served with an Order to Show Cause (the document that begins deportation proceedings). Under the settlement, eligible class members who could have been granted suspension during the period between February 13 and April 1, 1997, before this new restriction took effect, will be given the opportunity to apply for suspension under the standards that existed prior to April 1, 1997.

I. Class Members Eligible for Relief

The class in this case is limited to individuals who applied for suspension of deportation and whose hearings took place within the jurisdiction of the U.S., Court of Appeals for the Ninth Circuit, encompassing the states of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, and Washington. The following categories of persons are eligible for relief under the settlement:

(1) individuals for whom an Immigration Judge (IJ) either reserved a decision, or scheduled a merits hearing on an application for suspension of deportation between February 13, 1997 and April 1, 1997, and the hearing was continued until April 1, 1997 (except, as described below, in certain cases where the individual requested the continuance), and for which either:

(a) no IJ decision has been issued; or

(b) an IJ decision was issued denying or pretermitting suspension based on IIRIRA § 309(c)(5), and either (i) no appeal was filed; (ii) an appeal was filed and the case is pending with the BIA, or (iii) an appeal was filed, and the BIA denied the appeal based on IIRIRA § 309(c)(5); or

(c) the Immigration Judge granted suspension after April 1, 1997, and the INS filed a notice of appeal, motion to reconsider, or motion to reopen challenging the individual's eligibility for suspension based on IIRIRA § 309(c)(5).

Individuals in the categories listed above do *not* qualify for relief under the settlement if: (1) the continuance of the hearing was at the request of the individual; (2) the individual was represented by an attorney; and (3) the transcript of the hearing was prepared following an appeal and makes clear that the continuance was at the request of the respondent. In any case where EOIR determines that an individual is not eligible for relief under the settlement because of this restriction, EOIR will send written notice of this determination to the individual, and counsel. The class member will then have 30 days to file a claim disputing this determination. The settlement provides for a dispute resolution mechanism which must be used before the federal court can hear the issue. A stay of deportation will be a place if the dispute resolution mechanism is timely invoked.

(2) individuals whose cases were pending at the Board of Immigration Appeals (''BIA'') (either on direct appeal from the Immigration Judge decision, or on a motion to reopen) between February 13, 1997 and April 1, 1997, where the notice of appeal (or the motion to reopen) was filed on or before October 1, 1995, and which were, or would be (but for the settlement agreement), denied on the basis of IIRIRA § 309(c)(5), whether or not the decision of the BIA denying suspension solely on the basis of IIRIRA § 309(c)(5) has already been issued or not;

(3) individuals whose cases were taken under submission by an Immigration Judge following a merits hearing before February 13, 1997, where no decision issued until after April 1, 1997;

(4) individuals for whom the Immigration Judge denied or pretermitted suspension between October 1, 1996 and March 31, 1997, on the basis of IIRIRA § 309(c)(5), and the individual filed a notice of appeal with the BIA; and

(5) individuals for whom the Immigration Judge granted suspension of deportation before April 1, 1997 and the INS appealed based only on IIRIRA § 309(c)(5) or IIRIRA § 309(c)(7).

Even if they otherwise qualify under one of the above categories, class members are not eligible for benefits under the Settlement if they have already become lawful permanent residents (LPRs), or if they already have had or will have their cases reopened for adjudication or re-adjudication of their claims for suspension of deportation without regard to Section 309(c)(5) of IIRIRA, following a remand from the United States Court of Appeals for the Ninth Circuit or the BIA or following an order by the BIA or an immigration judge reopening their cases.

II. Procedures for Obtaining Relief Under the Settlement

Under the settlement, eligible class members (as defined above) will be eligible to apply for and be granted renewed suspension'' which means the relief of suspension of deportation, as it existed on September 29, 1996, before amendment by IIRIRA or any subsequent statute. As part of the process of applying for renewed suspension, class members will have the opportunity to present new evidence of the hardship they would face were they to be deported.

The procedures by which such eligible class members may apply for and be granted such relief depend upon the status of the case. In cases currently pending before an Immigration Judge, the EOIR will send written notice to eligible class members of the opportunity to apply for relief under the settlement. In cases of eligible class members currently pending before the Board of Immigration Appeals, the Board will remand the case of the Immigration Judge to schedule a hearing for renewed suspension. In those cases where an Immigration Judge previously granted suspension to a class member, and the INS appealed based only on IIRIRA § 309(c)(5) or (c)(7), the Board will dismiss the appeal and thereby reinstate the Immigration Judge's decision granting suspension.

In cases of eligible class members where the Board or an Immigration Judge denied suspension and no appeal was filed, EOIR will on its own motion reopen the case to allow the class member to apply for suspension. In such cases EOIR will send written notice to the class member's last known address. If the class member subsequently fails to appear for a notice hearing, the case will be administratively closed for a period of time after which the case could be recalendared and an appropriate order issued, including *in absentia* order of deportation which could, in turn, be subject to reopening for lack of notice.

Class members who are subject to final deportation orders but are eligible to apply for renewed suspension under the settlement may file a motion to reopen their case to apply for renewed suspension. This will be necessary in cases where the Board or Immigration Judge will not, on their own, be reopening the case.

A stay of deportation will be in effect for class members who are eligible for relief under the settlement who are subject to final orders of deportation. The stay will expire upon the reopening of a class member's case under the terms of the settlement agreement. The stay is also dissolved 30 days after any individual receives written notice that EOIR has determined that he or she is not eligible for relief under the settlement, unless the individual notifies EOIR within the 30-day period that he/she is invoking the settlement's dispute resolution procedure.

An eligible class member who files a motion to reopen under the settlement may also request a stay of deportation from EOIR, and the filing of such a stay request will cause such individual to be presumed to be an eligible class member for purposes of the

stay of deportation; however such presumption and stay can be dissolved by order of the EOIR is not less than seven (7) days if the individual has not filed prima facie evidence of eligibility for relief under the settlement by that time.

This notice is only a summary of the provisions of the settlement agreement. The full agreement can be found at __ F.Supp.2d __, and is also reproduced on the EOIR Web site, at *www.usdoj.gov/eoir.*

[FR Doc. 03–6691 Filed 3–19–03; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 11, 2003, the United States lodged a proposed Consent Decree between the United States, the State of Arkansas and Lion Oil Company (''Lion Oil'') with the United States District Court for the Western District of Arkansas, El Dorado Division, in the case of *United States, et. al* v. *Lion Oil Company,* Civil Action Case No. 03–1028.

In a complaint that was filed simultaneously with the Consent Decree, the United States sought injunctive relief and penalties against Lion Oil pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged Clean Air Act violations at Lion Oil's refinery located in El Dorado, Arkansas.

Under the settlement, Lion Oil will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''NO_2''), sulfur dioxide (''SO_2''), particulate matter ''PM''), carbon monoxide (''CO''), and benzene from refinery process units and will adopt facility-wide enhanced monitoring and fugitive emission control programs. Lion Oil has estimated that this injunctive relief will cost the company approximately $17 million. In addition, Lion Oil will pay a civil penalty of $348,000, which the State of Arkansas will share, and spend more than $450,000 on supplemental environmental projects designed to reduce emissions from the refinery for settlement of the claims in the United States' complaint. Lion Oil also will perform additional injunctive relief totaling approximately $4.5 million. The State of Arkansas will join in this settlement as a signatory to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.,* v. *Lion Oil Company,* D.J. Ref. 90–5–2–1–06064/1.

The Consent Decree may be examined at the Office of the United States Attorney, 6th and Rogers, Room 216, Federal Building, Fort Smith, Arkansas 72901, and at U.S. EPA Region 6, Fountain Place, 1445 Ross Avenue, Dallas, TX 75202. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *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@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $39.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 03–6645 Filed 3–19–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed Consent Decree with Vulcan International Corporation (''Vulcan''), one of the defendants in an action filed by the United States in March 1990 entitled *United States* v. *Re-Solve, Inc.,* Civil Action No. 90–10490K (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on March 10, 2003. In the action, the United States brought a claim pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C 9607(A), against Vulcan, as well as a number of other parties, seeking to recover past costs with respect to the Re-Solve, Inc. Superfund Site located in North Dartmouth, Massachusetts (the ''Site''), as well as a declaratory judgment of liability with respect to future costs to be incurred by the United States at the Site. Pursuant to the terms of the proposed Consent Decree, Vulcan has agreed to pay the United States $3.8 million within 30 days of the Court's entry of the Consent Decree, plus interests on this amount accruing from November 1, 2002 at the CERCLA rate of interest. The United States will provide Vulcan with a covenant not to sue, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed Consent Decree. 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. *Re-Solve, Inc.*, Civil Action 90–10490K (D. Mass.), DOJ No. 90–11–2–58A. A copy of the comments should also be sent to Donald G. Frankel, Trial Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, One Gateway Center, Suite 616, Newton, Massachusetts 02458.

The proposed Consent Decree may also be examined at the Office of the United States Attorney, U.S. Courthouse, One Courthouse Way, Suite 9200, Boston, MA 02210 (contact Bunker Henderson at 617–748–3100) or at EPA Region 1, One Congress Street, Suite 1100, Boston, MA 02114–2023 (contact Jill Metcalf at 617–918–1088). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *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@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547, referencing the Vulcan International Corporation consent decree in *United States* v. *Re-Solve, Inc.*, DOJ No. 90–11–2–58A. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–6644 Filed 3–19–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Aerospace Vehicle Systems Institute (''AVSI'') Cooperative

Notice is hereby given that, on February 4, 2003, pursuant to section 6 (a) of the National Cooperative Research and Production ACt of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Aerospace Vehicle Systems Institute (''AVSI'') Cooperative has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its nature and objectives and membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the AVSI Cooperative intends to undertake the following joint research projects:

''Automated Inspection of Aircraft Structures''—To determine the fundamental issues, requirements, processes and systems for automated inspection of aircraft structures. This includes assessing various sensors, addressing certification issues and developing a roadman for various candidate architectures.

''Structural Loans & Environmental Monitoring (Usage & Exceedances)''—To determine the requirements for aircraft onboard structural load and environmental monitoring. Develop conceptual candidates for load & exceedance monitoring concepts and a prototype plan for such systems.

''Secure-Proprietary Collaboration in an Integrated Digital Environment''—To develop requirements for and demonstration of electronically shared secure/classified engineering information, maintenance upgrades for software, remote operation of systems, logistics data bases, and program management documents between all elements of either a commercial or military airplane project.

''Qualified Development Environment (QDE)''—To demonstrate the process by which correct operation of the complier and linker is validated within the subset of the language using requirements modeling with software code generation and verification. Produce the qualification planning artifacts and exercise the qualification process within a FAA certification program via DO–178B.

''Redesign Existing Hardware Due to Obsolete Parts''—To develop requirements and recommended process (sequence of events) for the redesign of avionics equipment due to electronic and hardware component obsolesce.

''Improved Software Verification Methods and Support Tools''—To develop cost effective software verification and methods and analytic tools for supporting these methods so the software verification process can shift from ''people-intensive'' and ''Test-Centric'' top more of a ''model-based'' approach that can be supported using automated tools.

''Plastic Ball Grid Design of Experiment; Combined Low/High Cycle Fatigue Test/Analysis''—To provide design and process guidelines for the key parameters affecting the ball interface in plastic Ball Girds that can improve reliability & durability. Experimentally gather stress and failure data, compare results with analysis, and include data into analytic simulation of BGA assemblies.

''Quantum Leap Reliability Improvement''—To develop and implement a multi-dimensional approach to leverage information from all relevant sources, to achieve quantum leap improvements in reliability of aerospace products. This approach will include customer expectations at the highest level of airframe integration, and proceed through the functional, system, equipment, and component levels.

''Business Processes Improvement''—To identify the most effective technical and logistics ''best practices'' currently used in each sector of the avionic industry. Identify business-related barriers to adoption of these practices in other sectors and recommend changes in the supply chain of each avionics industry sector for existing and future programs.

''Avionics Technology Roadmap''—To develop and maintain an avionics technology roadmap that identified the intersection between avionics product plans and roadmap information from other supply chains, with concentration on the semiconductor device industry. To roadmap will be used to discover and develop proper responses to future trends in non-aerospace industries which impact out ability to design, produce, maintain, and support future avionics systems.

Furthermore, Rockwell Collins acting through its Air Transport systems Division, Cedar Rapids, IA has withdrawn as party to this venture. In addition, the TRW Aeronautical Systems division, Solihull, West Midlands, UNITED KINGDOM of TRW, LTD., Shirley, West Midlands, UNITED KINGDOM, has been acquired by Goodrich Control Systems Limited, a wholly owned subsidiary of Goodrich Corporation, Charlotte, NC.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and the Aerospace Vehicle Systems Institute (''AVSI'') Cooperative intends to file additional written notification disclosing all changes in membership.

On November 18, 2998, the AVSI Cooperative filed its original notification pursuant to section 6(a) of the Act. the Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8123).

The last notification was filed with the Department on July 8, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56586).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–6689 Filed 3–19–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: *Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificate of Registration (WH–530).* A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 19, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *hbell@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION

I. Background

Section 101(a) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that no person shall engage in any farm labor contracting activity unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities such person is authorized to perform. Further, section 101(b) of MSPA provides that a farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration as a farm labor contractor. Form WH–530, Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificate of Registration is used by the applicant to obtain authorization to engage in farm labor contracting activities under MSPA or to obtain authorization to be hired, employed or used by a currently registered farm labor contractor to perform named activities under MSPA. This information collection is currently approved for use through August 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to issue, after appropriate investigation and review, a farm labor certificate of registration, including a certificate of registration as an employee of a farm labor contractor, to any person who has filed with the Secretary a written application for a certificate.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application for Farm Labor Contractor and Farm Labor Contractor Employee Certificate of Registration.

OMB Number: 1215–0037.

Agency Number: WH–530.

Affected Public: Business of other for-profit; Farms.

Total Respondents: 9,200.

Total Responses: 9,200.

Time per Response: 30 minutes.

Frequency: On Occasion (initial application); biennially (renewal).

Estimated Total Burden Hours: 4,600.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $2,392.

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: March 14, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–6692 Filed 3–19–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the revision of the ''Labor Market Information (LMI) Cooperative Agreement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before May 19, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–7628. (*See* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The BLS enters into Cooperative Agreements with State Employment Security Agencies (SESAs) annually to provide financial assistance to the SESAs for the production and operation of the following LMI statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, Covered Employment and Wages Report, and Mass Layoff Statistics. The Cooperative Agreement provides the basis for managing the administrative and financial aspects of these programs.

II. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget (OMB) clearance is being sought for the LMI Cooperative Agreement. The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the SESAs and monitor their financial and programmatic performance and adherence to administrative requirements imposed by common regulations implementing OMB Circular A–102 and other grant-related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Labor Market Information (LMI) Cooperative Agreement.

OMB Number: 1220–0079.

Affected Public: State, Local or Tribal Governments.

Frequency: Monthly, quarterly, annually.

Information collection	Respondents	Frequency	Responses	Time	Total hours
Work Statements	55	1	55	1–2 hr	55–110
BIF (LMI 1A, 1B)	55	1	55	1–6 hr	55–330
Quarterly Automated Financial Reports	48	4	192	10–50 min	32–160
Monthly Automated Financial Reports	48	8*	384	5–25 min	32–160
BLS Cooperative Statistics Financial Report (LMI 2A)	7	12	84	1–5 hr	84–420
Quarterly Status Report (LMI 2B)	1–30	4	4–120	1 hr	4–120
Budget Variance Request Form	1–55	1	1–55	5–25 min	0–23
Total	1–55		775–945		262–1323
Average Totals	55		860		793

*Reports are not received for end-of-quarter months, *i.e.*, December, March, June, September.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 11th day of March, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–6693 Filed 3–19–03; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0129(2003)]

Standard on Benzene; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information-collection requirements contained in its Benzene Standard (29 CFR 1910.1028). The standard protects employees from adverse health effects from occupational exposure to Benzene.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 19, 2003.

Facsimile and electronic transmission: Your comments must be received by May 19, 2003.

ADDRESSES:

1. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0129(2003), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. ICR 1218–0129(2003), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

II. Obtaining Copies of Supporting Statement for the Information Collection

The Supporting Statement for the Information Collection is available for downloading from OSHA's Web site at *www.osha.gov.* The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW. Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to

your comments. Because of security-related problem there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Depart of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). In this regard, the information collection requirements in the Benzene Standard provide protection for employees from the adverse health effects associated with exposure to Benzene.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) for the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information-collection requirements specified in the Benzene Standard. The information-collection requirements specified in the Benzene Standard protect employees from the adverse health effects that may result from occupational exposure to benzene. The major information-collection requirements in the Standard include conducting employee exposure monitoring, notifying employees of their benzene exposures, implementing a written compliance program, implementing medical surveillance of employees, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-surveillance results, maintaining employees' exposure-monitoring and medical-surveillance records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the employee who is the subject of the records, the employee's representative, and other designated parties.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements in the Benzene Standard (29 CFR 1910.1028).

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Benzene Standard (29 CFR 1910.1028).

OMB Number: 1218–0129.

Affected Public: Business or other for-profit.

Number of Respondents: 13,498.

Frequency: On occasion.

Total Responses: 265,428.

Average Time Per Response: Time per response ranges from 5 minutes to maintain records to 2 hours to complete a referral medical examination.

Estimated Total Burden Hours: 125,195.

Estimated Cost (Operation and Maintenance): $8,179,933.

III. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC on March 14, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–6712 Filed 3–19–03; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–146]

Saxton Nuclear Experimental Corporation and GPU Nuclear, Inc. Saxton Nuclear Experimental Facility; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Amended Facility License No. DPR–4, issued to the Saxton Nuclear Experimental Corporation (SNEC) and GPU Nuclear, Inc. (the licensees), for the Saxton Nuclear Experimental Facility. The proposed action would approve the SNEC Facility License Termination Plan (LTP).

Description of Proposed Action

The proposed action is NRC approval of the SNEC's LTP, which contains the radiation release criteria [*i.e.*, derived concentration guideline levels (DCGLs)], and the description of the final status survey plan required by the NRC. NRC review and approval of the LTP will verify that the remainder of the decommissioning activities will be performed in accordance with NRC regulations.

The SNEC Facility is a deactivated pressurized-water nuclear reactor located on about 5,300 square meters (1.148 acres) less than a mile north of the Borough of Saxton in Liberty Township, Bedford County, Pennsylvania. The reactor was licensed to operate at 23.5 megawatt thermal (MWT).

The SNEC Facility was built from 1960 to 1962 and operated from 1962 to 1972. The Facility was placed in a SAFSTOR-equivalent status after its shutdown in 1972 when all the nuclear fuel was removed from the reactor and returned to the owner of the fuel, the Atomic Energy Commission. The control rod blades and superheated steam test loop were also shipped offsite. Following fuel removal, some equipment, tanks, and piping located outside of the reactor containment vessel (CV) were removed. From 1972 to 1974, the buildings and structures that supported reactor operations were partially decontaminated.

Radiological decontamination of reactor support structures and buildings was performed between 1987–1989 in preparation for demolition of these structures. This work included decontamination of the Control and Auxiliary Building, the Radioactive Waste Disposal Facility, the Yard Pipe

Tunnel, and the Filled Drum Storage Bunker, and removal of the Refueling Water Storage Tank. After the NRC accepted the final release radiological survey for this work, these structures were demolished in 1992.

In April of 1998, the NRC approved the final stage of decommissioning. In 1998, the large component structures: pressurizer, steam generator, and reactor vessel were removed and shipped to the Chem-Nuclear low-level waste disposal facility in Barnwell, South Carolina. The only remaining structure of the original facility is the CV. The Saxton Steam Generating Station basement and adjoining Intake/Discharge Tunnels and associated underground discharge piping have also been involved in decommissioning activities. This decommissioning is in preparation for release of the site for unrestricted use.

The licensees are proposing to decontaminate the site to meet the unrestricted release criteria [0.25 Sieverts per year (Sv/yr) (25 milliroentgen-equivalent-man per year (25 mrem/yr)) and residual radioactivity as low as reasonably achievable] per 10 CFR 20.1402.

Summary of the Environmental Assessment

The NRC staff reviewed the licensees' application which included a Decommissioning Environmental Report. To document its review, the NRC staff has prepared an environmental assessment (EA) which discusses the SNEC Facility background; site description; current environmental conditions including land use, geology, water resources (surface water and groundwater) and waste management; examines the no action alternative to the proposed action; and presents the environmental impact of the proposed action including radiological, non-radiological and cumulative environmental impacts. The radiological and non-radiological impacts of the proposed action are reproduced from the EA below.

Radiological Impacts

At the time of license termination, the only source of exposure to members of the public would be any residual radioactivity within remaining buildings or within the site soils.

The derived concentration guideline levels (DCGLs) are concentration limits on the residual radioactivity that can be left in buildings and in soils, and still be in compliance with the dose limit of 0.25 Sv/yr (25 mrem/yr) as specified in 10 CFR part 20, subpart E. The manner in which the DCGLs are derived for the SNEC is documented in the LTP.

NRC would evaluate the adequacy of the DCGLs in providing protection for members of the public as the site is released for unrestricted use based on the approved LTP. The LTP would be bounded by the dose limit of 0.25 Sv/yr (25 mrem/yr) as specified in 10 CFR part 20, subpart E.

In deriving the soil DCGLs, a resident-farmer would be considered as the average member of the critical population group. The hypothetical resident farmer is assumed to build a house, draw water from a well, grow plant food and fodder, raise livestock, and catch fish from a pond all within or affected by residual radioactivity in the soil. The resident farmer scenario is considered to embody the greatest number of exposure pathways of any scenario envisioned.

The DCGLs for buildings assumes a light industrial worker as the average member of the critical group. The worker is assumed to be exposed to residual radioactivity remaining on the walls and floor of a remaining structure at the site as he goes about light industrial activities.

NRC would evaluate the appropriateness of the exposure scenarios postulated and the methodology used for deriving the DCGLs. NRC would only approve the LTP if the evaluation concluded that the potential radiation exposures caused by residual radionuclide concentrations have not been underestimated by the licensees and are protective of the general public.

The licensees would use a series of surveys and a final status survey to demonstrate compliance with 10 CFR part 20, subpart E, consistent with the Radiation Survey and Site Investigation process and the Data Quality Objectives (DQO) process. Planning for the final status survey involves an iterative process that requires appropriate site classification (on the basis of the potential residual radionuclide concentration levels relative to the DCGLs) and formal planning using the DQO process. The licensees have committed to an integrated design that would address the selection of appropriate survey and laboratory instrumentation and procedures, and that includes a statistically based measurement and sampling plan for collecting and evaluating the data needed for the final status survey. The staff has determined that the sampling strategy and survey data evaluation methodology presented in the LTP are adequate.

Based on the discussion above, there are no significant radiological environmental impacts associated with the proposed action.

Non-Radiological Impacts

The scope of the EA is limited to the adequacy of the DCGLs and the adequacy of the final status survey described in the LTP. The purposed action does not involve any historic sites. Therefore, there are no significant non-radiological impacts on the environmental resources.

Finding of No Significant Impact

On the basis of the EA, NRC concludes that the approval of the LTP will not cause any significant impacts on the human environment and is protective of human health. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensees' letter dated February 2, 2000, as supplemented on June 23, August 11, September 18 and December 4, 2000, January 30, February 14, March 15 and 19, June 20, July 2 and September 4, 2001, and January 11 and 24, February 4, May 22 and 28, July 11, August 20, September 17, 23, 24, and 26, October 10, and December 16, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The EA can be found in ADAMS under accession number ML030350564. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.* Single copies of the EA may be obtained from Alexander Adams, Jr., Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, M.S. O–12–G–13, Washington, DC 20555.

Dated at Rockville, Maryland, this 13th day of March, 2003.

For the Nuclear Regulatory Commission.

Patrick M. Madden,

Chief, Research and Test Reactors Section, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–6731 Filed 3–19–03; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold a meeting to discuss the development of recommendations for a coordinated national ocean policy. This will be the fifteenth public Commission meeting.

DATES: The public meeting will be held Wednesday, April 2, 2003 from 1 p.m. to 6 p.m. and Thursday, April 3, 2003 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting location is the Cafritz Conference Center, George Washington University, 800 21st Street, NW., Suite 204, Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC 20036, 202–418–3442, *schaff@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Pub. L. 106–256, Section 3(e)(1)(E)). The agenda will include discussions of policy options, a public comment session, and any required administrative discussions and executive sessions. Members of the public are requested to submit their statements for the record electronically by Friday, March 28, 2003 to the meeting Point of Contact. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's Web site at *http://www.oceancommission.gov* prior to the meeting.

Dated: March 14, 2003.

Thomas R. Kitsos,

Executive Director, U.S. Commission on Ocean Policy.

[FR Doc. 03–6679 Filed 3–19–03; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27658]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 14, 2003.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 8, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 8, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power Company (70–10094)

Mississippi Power Company (''Mississippi''), 2992 West Beach, Gulfport, Mississippi 39501, a wholly owned electric utility subsidiary of the Southern Company (''Southern''), a registered holding company under the Act, has filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and rule 54 under the Act.

Mississippi proposes to incur, from time to time or at any time on or before March 31, 2006 (''Authorization Period''), obligations in connection with the issuance and sale by public instrumentalities of one or more series of pollution control revenue bonds (''Revenue Bonds'') in an aggregate principal amount of up to $75,000,000. Mississippi further proposes to issue and sell, from time to time or at any time on or before the Authorization Period, one or more series of its senior debentures, senior promissory notes or other senior debt instruments (individually, ''Senior Note'' and collectively, ''Senior Notes''), one or more series of its first mortgage bonds and one or more series of its preferred stock in an aggregate amount of up to $475,000,000 in any combination of issuance.

The Revenue Bonds will be issued for the benefit of Mississippi to finance or refinance the costs of certain air and water pollution control facilities and sewage and solid waste disposal facilities at one or more of Mississippi's electric generating plants or other facilities located in various counties. It is proposed that each such county or the otherwise appropriate public body or instrumentality (''County'') will issue Revenue Bonds to finance or refinance the costs of the acquisition, construction, installation and equipping of said facilities at the plant or other facility located in its jurisdiction (''Project''). It is proposed that the Revenue Bonds will mature not more than 40 years from the first day of the month in which they are initially issued and may, if it is deemed advisable for purposes of the marketability of the Revenue Bonds, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

Mississippi proposes to enter into a Loan or Installment Sale Agreement with each County (''Agreement''), issuing such Revenue Bonds. Under the Agreement, the issuing County will loan to Mississippi the proceeds of the sale of the County's Revenue Bonds, and Mississippi may issue a non-negotiable promissory note (''Note''), or the County will undertake to purchase and sell the related Project to Mississippi. The proceeds from the sale of the Revenue Bonds will be deposited with a Trustee (''Trustee'') under an indenture to be entered into between the County and the Trustee (''Trust Indenture''), under which the Revenue Bonds are to be issued and secured, and will be applied by Mississippi to payment of the cost of construction of the Project or to refund outstanding pollution control revenue obligations.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate or otherwise, to require Mississippi to purchase the Revenue Bonds from time to time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent.

Mississippi also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Mississippi also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Mississippi's first mortgage bonds outstanding under the indenture dated as of September 1, 1941 between Mississippi and Deutsche Bank Trust Company Americas, as successor trustee, as supplemented and amended (''Mortgage''), Mississippi may determine to secure its obligations under the Note and/or the Agreement by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds (''Collateral Bonds''). The aggregate principal amount of the Collateral Bonds would be equal to either: (i) The principal amount of the Revenue Bonds or (ii) the sum of such principal amount of the Revenue Bonds plus interest payments thereon for a specified period.

As a further alternative to, or in conjunction with, securing its obligations through the issuance of the Collateral Bonds, Mississippi may: (i) Cause an irrevocable Letter of Credit or other credit facility (''Letter of Credit'') of a bank or other financial institution to be delivered to the Trustee; and/or (ii) cause an insurance company to issue a policy (''Policy'') guaranteeing the payment of the Revenue Bonds. In the event that the Letter of Credit is delivered to the Trustee as an alternative to the issuance of the Collateral Bonds, Mississippi may also convey to the County a subordinated security interest in the Project or other property of Mississippi as further security for Mississippi's obligations under the Agreement and the Note.

The effective cost to Mississippi of any series of the Revenue Bonds will not exceed the greater of (i) 200 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities. Such effective cost will reflect the applicable interest rate or rates and any underwriters' discount or commission.

Mississippi also proposes to issue and sell, at any time during the Authorization Period: One or more series of its (a) Senior Notes; (b) first mortgage bonds (''First Mortgage Bonds''); and (c) preferred stock in an aggregate amount of up to $475 million, in any combination of issuance. The Senior Notes will have a maturity that will not exceed approximately 50 years. The interest rate on each issue of Senior Notes may be either a fixed rate or an adjustable rate to be determined on a periodic basis by auction or remarketing procedures, in accordance with formula or formulae based upon certain reference rates, or by other predetermined methods. The Senior Notes will be direct, unsecured and unsubordinated obligations of Mississippi ranking *pari passu* with all other unsecured and unsubordinated obligations of Mississippi. The Senior Notes will be effectively subordinated to all secured debt of Mississippi, including its First Mortgage Bonds. The Senior Notes will be governed by an indenture or other document. The effective cost of money to Mississippi on the Senior Notes will not exceed the greater of (i) 300 basis points over comparable term U.S. Treasury securities, or (ii) a gross spread over such Treasury securities which is consistent with comparable securities.

The First Mortgage Bonds will have a term of not more than 40 years and will be sold for the best price obtainable, but not less than 98% or more than 101¾% of the principal amount, plus any accrued interest. Mississippi may enhance the marketability of the First Mortgage Bonds by purchasing an insurance policy to guarantee the payment when due of the First Mortgage Bonds.

Mississippi proposes that each issuance of Mississippi's preferred stock, par or stated value of up to $100 per share (''new Preferred Stock''), will be sold for the best price obtainable (after giving effect to the purchasers' compensation) but for a price to Mississippi (before giving effect to such purchasers' compensation) of not less than 100% of the par or stated value per share.

Mississippi states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the First Mortgage Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock. Mississippi also proposes that it may use the proceeds from the sale of the Senior Notes, the First Mortgage Bonds and new Preferred Stock, along with other funds, to pay a portion of its cash requirements to carry on its electric utility business. Mississippi further states that it may determine to use the proceeds from the sale of the Revenue Bonds, the Senior Notes, the new Bonds and the new Preferred Stock to redeem or otherwise retire its outstanding senior notes, first mortgage bonds, pollution control bonds and/or preferred stock if such use is considered advisable. To the extent that the redemption or other retirement of outstanding preferred stock uses the proceeds from security sales as proposed in the Application, Mississippi requests this authorization under 12 (c) of the Act.

Mississippi represents that it will maintain its common equity as a percentage of its capitalization (inclusive of short-term debt) at no less than 30 percent. Mississippi further represents that no guarantees or other securities may be issued unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of Mississippi that are rated are rated investment grade; and (iii) all outstanding securities of Southern that are rated are rated investment grade. For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one ''nationally recognized statistical rating organization,'' as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Mississippi requests that the Commission reserve jurisdiction over the issuance by Mississippi of any securities that are rated below investment grade. Mississippi further requests that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6656 Filed 3–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25962; File No. 812–11474]

The Timothy Plan, et al.; Notice of Application

March 14, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemptions from the provisions of sections 9(a), 13(a), 15(a)

and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: The Timothy Plan (''Trust'') and Timothy Partners, Ltd. (''TPL'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust's series that are designed to fund insurance products (''Variable Series'') and the series of any other investment company that is designed to fund insurance products and for which TPL or its affiliates may serve as investment adviser, investment sub-adviser, administrator, principal underwriter or sponsor (''Future Variable Series'') to be sold to and held by variable annuity and variable life insurance separate accounts when the following other types of investors also hold shares of the Variable Series or a Future Variable Series: (1) A variable life insurance account (''VLI Account'') of a life insurance company that is not an affiliated person of the insurance company depositor of any VLI Account, (2) TPL (representing seed money investments in the Variable Series or Future Variable Series), (3) a life insurance company separate account (''VA Account'') supporting variable annuity contracts (''VA Contracts''), whether or not the insurance company depositor of any such VA Account is an affiliated person of the insurance company depositor of any VLI Account, and/or (4) a qualified pension or retirement plan.

FILING DATE: The application was filed on January 11, 1999, and amended and restated on December 18, 2001, November 14, 2002 and March 7, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 8, 2003, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Arthur D. Ally, Timothy Partners, Ltd., 1304 West Fairbanks Avenue, Winter Park, FL 32789.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end, management investment company (File Nos. 811–08228 and 33–73248). The Trust currently consists of eleven investment portfolios, which include six traditional funds (''Traditional Funds''), two asset allocation funds (''Asset Allocation Funds'') and three Timothy Plan Variable Series that are designed to fund insurance products.

2. TPL serves as the investment manager to the Trust. TPL is registered with the Commission as an investment adviser pursuant to the Investment Advisers Act of 1940.

3. According to the application, the Variable Series will invest their assets in the Traditional Funds, which sell shares to the general public. A fund that so invests is called a ''fund of funds.'' Applicants state that this fund of funds arrangement involving the Variable Series is consistent with the diversification requirements of section 817(h) of the Code and Regulation 1.817–5 thereunder based on recent decisions by the IRS that have ruled favorably on fund of funds situations involving first-tier series that sell exclusively to separate accounts. In addition, each Variable Series discloses in its prospectus that no more than 55% of its assets will be invested in one of the Traditional Funds, no more than 70% will be invested in two of the Traditional Funds, no more than 80% will be invested in three of the Traditional Funds and no more than 90% will be invested in four of the Traditional Funds.

4. The Trust proposes to offer and sell shares of the Variable Series to insurance companies (''Participating Insurance Companies'') as an investment vehicle for their VLI Accounts and VA Accounts (collectively, ''Variable Accounts''). Each Variable Account will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance laws of such insurance company's state of domicile. As such, the assets of each will be the property of the Participating Insurance Company, and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account will not be chargeable with liabilities arising out of any other business that the insurance company may conduct. The income, gains and losses, realized and unrealized, from such an account's assets will be credited to or charged against the account without regard to other income, gains or losses of the insurance company. If a VA Account is registered as an investment company, it will be a ''separate account'' as defined by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust (''UIT''). If a VLI Account is registered as an investment company, it will be a separate account as described in Rule 6e–2(a) or Rule 6e–3(T)(a) and will be registered as a UIT. For purposes of the Act, the life insurance company that establishes such a registered Variable Account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

5. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company will enter into a participation agreement with the Trust on behalf of its Participating Separate Account. The role of the Trust under this agreement, insofar as the federal securities laws are applicable, will consist of offering shares of the Variable Series to the Participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested in the application.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same insurance company, or of two or more affiliated insurance companies, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of two or more unaffiliated insurance companies is referred to herein as ''shared funding.''

7. The Trust also proposes to sell shares of the Variable Series directly to pension or retirement plans (''Qualified Plans'') intended to qualify under sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended (the ''Code''). Many of the Qualified Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The Qualified Plans also will be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). The Qualified Plans therefore will be subject to regulatory provisions under the Code and ERISA including, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement provisions.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 6(c) of the Act exempting them from sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Variable Series to be offered and sold to, and held by: (a) VA Accounts and VLI Accounts of the same insurance company or of two or more affiliated insurance companies (''mixed funding''); (b) VA Accounts and VLI Accounts of two or more unaffiliated insurance companies (''shared funding''); and (c) Qualified Plans.

2. Rule 6e–2(b)(15) under the Act provides partial exemptions from: (a) Section 9(a) of the Act, which makes it unlawful for certain individuals and companies to act in certain capacities with respect to registered investment companies; and (b) sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to the shares of a registered management investment company underlying a UIT (an ''underlying fund'') to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors, investment advisers, and principal underwriters. The exemptions granted by the Rule are available, however, only if an underlying fund offers its shares exclusively to VLI Accounts of a single Participating Insurance Company or an affiliated insurance company, and then, only if scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI Account that owns shares of an underlying fund that engages in mixed funding by also offering its shares to a VA Account or to a flexible premium VLI Account of the same company or of any affiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the underlying fund engages in shared funding by offering its shares to VA Accounts or VLI Accounts of unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

3. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors, investment advisers and principal underwriters. The exemptions granted by the Rule are available, however, only where shares of the Variable Series are offered exclusively to separate accounts of the Participating Insurance Company, or of any affiliated insurance company, offering either scheduled premium contracts or flexible premium contracts, or both, or which also offer their shares to VA Accounts of the Participating Insurance Company or of an affiliated life insurance company. Therefore Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium VLI Account, subject to certain conditions. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted is not available with respect to a VLI Account that owns shares of an underlying fund that also offers its shares to separate accounts (including VA Accounts and flexible premium and scheduled premium VLI Accounts) of unaffiliated Participating Insurance Companies. Also, Rule 6e–3(T)(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. Applicants state that current tax law permits shares of the Variable Series to be sold directly to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Variable Series. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets fail to be adequately diversified in accordance with regulations issued by the Treasury Department. On March 1, 1989, the Treasury Department adopted regulations (Treas. Reg. 1.817–5) (the ''Regulations'') that established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. As a result, Qualified Plans may select the Variable Series as an investment option without endangering the tax status of Variable Contracts issued through Participating Separate Accounts as life insurance annuities. Variable Series shares sold to the Qualified Plans would be held by the Trustees of such Plans as required by section 403(a) of ERISA. The Trustees or other fiduciaries of the Qualified Plans may vote Variable Series shares held by the Qualified Plans in their own discretion or, if the applicable Qualified Plan so provides, vote such shares in accordance with instructions from participants in such Plans. The use of a common management investment company (or investment portfolio thereof) as an investment medium for Variable Accounts and Qualified Plans is referred to herein as ''extended mixed funding.''

6. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act preceded the issuance of the Regulations. Thus, the sale of shares of the same investment company to both Participating Separate Accounts and Qualified Plans was not contemplated at the time of the adoption of rules 6e–2(b)(15) and 6e–3(T)(b)(15), and, therefore, Applicants assert that the restrictions of such Rules do not evidence an intent of the Commission to prevent extended mixed funding.

7. Section 9(a)(3) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rule 6e–2(b)(15) and Rule

6e–3(T)(b)(15) limit the application of the eligibility restrictions of section 9(a) to affiliated persons of a life insurance company that directly participate in the management of the underlying registered management investment company under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rule 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits persons who are affiliated persons of a life insurance company or its affiliates who otherwise would be disqualified under section 9(a) to serve as an officer, director or employee of an underlying fund, so long as any such person does not participate directly in the management or administration of such underlying fund. In addition, Rule 6e–2(b)(15)(ii) and Rule 6e–3(T)(b)(15)(ii) permit a Participating Insurance Company to serve as the underlying fund's investment adviser or principal underwriter, provided that none of that insurance company's personnel who are ineligible pursuant to section 9(a) of the Act participate in the management or administration of the underlying fund.

8. Applicants assert that the partial relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act from the requirements of section 9 of the Act limits the amount of monitoring of a Participating Insurance Company's personnel that is necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that applying the provisions of section 9 to the many individuals in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act. Moreover, Applicants assert that disallowing the relief permitted by Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) because shares of the Variable Series are sold to Qualified Plans would serve no regulatory purpose. Applicants assert that the sale of shares of an underlying fund to Qualified Plans does not change the fact that the purposes of the Act are not advanced by applying the prohibitions of section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.

9. Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15)(iii) under the Act provide partial exemptions from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require ''pass-through'' voting with respect to the shares of an underlying fund, by allowing an insurance company to disregard the voting instructions of contract owners with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) permit a Participating Insurance Company to disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an investment adviser when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) permit a Participating Insurance Company to disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules). Applicants assert that these rights do not raise any issues different from those raised by the authority of state insurance administrators over separate accounts.

10. Applicants submit that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) under the Act is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that the Commission's concern is not warranted in the context of permitting shared funding or permitting Qualified Plans to invest in the Variable Series and that the addition of owners of Variable Contracts supported by separate accounts of unaffiliated life insurance companies and Qualified Plans as eligible shareholders will not increase the risk of material irreconcilable conflicts amongst shareholders.

11. Voting rights of shares sold to Qualified Plans are expressly reserved to certain specified persons and are not required to be passed through to Qualified Plan participants. Under section 403(a) of ERISA, shares of an underlying fund sold to a Qualified Plan must be held by the trustee(s) of the Qualified Plan, and such trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, the exclusive authority and responsibility for voting shares of an underlying fund is vested in the plan trustees. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

12. If a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

13. If a Qualified Plan does not provide participants with the right to give voting instructions, the Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among owners of Variable Contracts and participants in Qualified Plans with respect to voting of an underlying fund's shares. Accordingly, unlike the case with Participating Separate Accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans because the Qualified Plans are not entitled to pass-through voting privileges.

14. Applicants further note that there is no reason to believe that participants in Qualified Plans which provide participants with the right to give voting instructions generally, or those in a particular Plan, either as a single group

or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. Applicants, therefore, submit that the purchase of shares of the Variable Series by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that the presence of both VLI Accounts and VA Accounts as shareowners of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. Similarly, shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which sells contracts in several states. A state insurance regulatory body in one state could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that unaffiliated insurers may be domiciled in different states does not create a significantly different or enlarged problem.

16. Applicants assert that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential for differences in state regulatory requirements. Applicants state that the conditions summarized below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer may be required to withdraw its Participating Separate Account's investment in the Variable Series. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the Variable Series.

17. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants assert that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(B)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items and under certain specified conditions. Requiring that only affiliated insurance companies invest in the Variable Series does not eliminate the potential, if any exists, for divergent judgements as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Moreover, the potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's voting instructions be reasonable and based on specific good faith determinations.

18. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The insurer's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurers) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgement represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Variable Series, to withdraw its Participating Separate Account's investment in such Variable Series, and no change or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in the Variable Series.

19. Furthermore, Applicants assert that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of VA and VLI Contract owners is composed of individuals of diverse financial status, age, insurance, and investment goals. Variable Series supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Permitting mixed and shared funding as well as permitting sales to Qualified Plans will provide benefits to the Variable Series shareholders. Among other things, Participating Insurance Companies and Variable Contract owners will benefit from a greater variety of investment options with lower costs.

20. Applicants do not believe that the sale of the shares of the Variable Series to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants assert that there are either no conflicts of interest or that there exists the ability by the affected parties to resolve the issues without harm to the contract owners in the Participating Separate Accounts or to the participants under the Qualified Plans.

21. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with the Regulations, adequately diversified.

22. The Regulations provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The Regulations, however, contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a Qualified Plan without adversely affecting the ability of shares in the underlying fund also to be held by separate accounts of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit Qualified Plans and separate accounts to invest in the same portfolio of an underlying fund. For this reason, Applicants assert that neither the Code, nor the Regulations, nor the Revenue Rulings thereunder, present any inherent conflicts of interest.

23. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the different tax consequences do not raise any conflicts of interest. If the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Variable Series at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, distributions and dividends

will be declared and paid by the Variable Series without regard to the character of the shareholder.

24. Applicants state that it is possible to provide an equitable means of giving voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Variable Series will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T) under the Act, as applicable, and its participation agreement with the Trust. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Variable Series will be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

25. Applicants submit that the ability of the Variable Series to sell shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under section 18(g) of the Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. Regardless of the rights and benefits of Variable Contract owners or participants under the Qualified Plans, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the Variable Series. They can redeem such shares at their net asset value. No shareholder of the Variable Series will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. Applicants also assert that the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all the shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers.

27. In contrast, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Variable Series and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

28. Applicants state that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. The use of a Variable Series as a common investment medium for variable contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to Variable Contract owners by eliminating a significant portion of these costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of TPL, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Variable Series, thereby promoting economics of scale, by permitting increased safety through greater diversification, or by making the addition of new Variable Series more feasible. Applicants assert that the sale of shares of the Variable Series to Qualified Plans in addition to the Separate Accounts will result in an increased amount of assets available for investment by such Variable Series. This may benefit variable contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Variable Series more feasible.

29. Applicants also submit that the investment of seed capital in the Variable Series presents no potential for irreconcilable conflicts of interest. Seed capital for the Variable Series will be provided by TPL. Applicants note that Rule 14a–2(b) under the Act provides an exemption from the seed capital requirement for investment companies that are sponsored by an insurance company. The Commission has granted this exemption to mutual funds organized by insurance companies, but because TPL is not an insurance company, the exemption is not available to the Variable Series.

30. Applicants assert that granting the exemptions requested by Applicants will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a) and 15(b) of the Act or Rules 6e–2(b)(15) or 6e–3(T)(b)(15) thereunder.

Applicants' Conditions for Relief

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Trustees of the Trust (''Board'') will consist of persons who are not ''interested persons'' of the Trust, as defined by section 2(a)(19) of the Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification, or bona-fide resignation of any Trustee, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy may be filled by the Board; (b) for a period of 150 days if a vote of the shareholders is required to fill the vacancy; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. The Board will monitor each Variable Series for the existence of any material irreconcilable conflict between and among the interests of contract holders of all Participating Separate Accounts and participants of Qualified Plans investing in any such Variable Series and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Variable Series are being managed; (e) a difference in voting instructions given by VA Contract owners, VLI Contract owners, and the trustees of Qualified Plans; (f) a decision by a Participating Insurance Company to

disregard the voting instructions of contract owners; or (g) if applicable a decision by a Qualified Plan to disregard voting instructions of its participants.

3. TPL (or any investment adviser to a Variable Series), and any Participating Insurance Company and Qualified Plan that executes a participation agreement, upon becoming an owner of 10 percent or more of the assets of any Variable Series (collectively, ''Participants'') will report any potential or existing conflicts to the Board. Such Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of the Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested Trustees, that a material irreconcilable conflict exists, then the relevant Participating Insurance Company or Qualified Plan will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Variable Series and reinvesting such assets in a different investment medium, which may include another such Variable Series, (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, VA Contract owners or VLI Contract holders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the Trust, to withdraw such Participating Insurance Company's separate account's investment in the relevant Variable Series, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Trust, to withdraw its investment in the relevant Variable Series, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Variable Series and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interests of contract owners and in the case of Qualified Plans, will be carried out with a view only to the interests of Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested Trustees will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Trust or TPL be required to establish a new funding medium for any VA Contract or VLI Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any VA Contract or VLI Contract if an offer to do so has been declined by the vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Qualified Plan if (a) a majority of the Qualified Plan's participants materially and adversely affected by the irreconcilable conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes each decision without a participant vote.

5. A Board's determination of the existence of material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all VA Contract and VLI Contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the applicable Variable Series held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each Participating Separate Account investing in a Variable Series calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to vote a Variable Series' shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts in a Variable Series will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in such Variable Series. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and its governing documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to VA Contract and VLI Contract owners, TPL and any of its affiliates will vote its shares of any Variable Series in the same proportion as all VA Contract and VLI Contract owners having voting rights with respect to the relevant Variable Series.

8. The Trust will comply with all provisions of the Act requiring voting by shareholders (including persons who have a voting interest in shares of the Variable Series), and, in particular, each such Variable Series will either provide

for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Trust is not, or will not be, the type of Trust described therein), as well as, with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participating Insurance Companies and all Qualified Plans that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed funding may be appropriate. Each Variable Series will disclose in its prospectus that: (a) Shares of such Variable Series may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in such Variable Series and the interests of Qualified Plans investing in such Variable Series may conflict, and (c) the Trust's Board of Trustees will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any conflict.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the Act is amended or proposed Rule 6e–3 under the Act is adopted to provide exemptive relief from any provision of the Act, or rules promulgated thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this amended and restated Application, then the Trust and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as the Board may reasonably request so that the Trustees of the Trust may fully carry out the obligations imposed upon them by the conditions contained in this amended and restated Application, and said reports, materials and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests will be a contractual obligation of all Participants under their agreements governing participation in each Variable Series.

12. All reports of potential or existing conflicts received by the Board of Trustees of the Trust, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of the existence of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the board meeting minutes of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. A Variable Series will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Variable Series unless the Qualified Plan executes an agreement with the Trust governing participation in such Variable Series that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Variable Series.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consist with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47493; File No. SR–Amex–2002–108]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Amex Rule 152 To Provide That a Member That Fails To Execute an Order May Be Compelled To Take or Supply the Securities Named in the Order

March 13, 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 December 18, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 152 to provide that a member that fails to execute an order may be compelled to take or supply the securities named in the order. The text of the proposed rule change is below. Text in brackets indicates material to be deleted, and text in italics indicates material to be added.

* * * * *

Taking or Supplying Stock to Fill Customer's Order

Rule 152. (a) No member or member organization shall take or supply for any account in which the member, member organization or any other member, officer or approved person therein has any direct or indirect interest, of which the member knows or should have known, the securities named in a sell or buy order accepted for execution by the member or member organization except as follows:

Error

(1) *A member who neglects to execute an order may be compelled to take or supply for his own account or that of his member organization the securities named in the order.* [A member or member organization which through

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

error or neglect has failed to execute an order may, with the consent of the customer, take or supply for the account of the member or member organization the securities named in the order.]

Filling Customer's Order

(2) A member or member organization may take or supply the securities for the purpose of filling a customer's order only if:

(i) In connection with taking the securities named in a sell order, the member or member organization shall have offered the securities in the open market at a price which is higher than the bid of such member or member organization by the minimum fraction of trading permitted in such securities;

(ii) In connection with supplying the securities named in a buy order, the member or member organization shall have bid for the securities in the open market at a price which is lower than the offer of such member or member organization by the minimum fraction of trading permitted in such securities;

(iii) The price in each case is justified by the condition of the market;

(iv) In the case of an order received from a non-member customer of the member or member organization, the member or member organization either (A) prior to effecting the transaction shall have obtained from the customer the customer's consent or, except as otherwise provided by law, (B) as promptly as possible following execution of the order shall have disclosed to the customer that the securities have been taken or supplied for an account in which the member, member organization, or any member, officer or approved person therein has an interest, and the customer accepts the trade;

(v) In the case of an order received from another member or member organization, the member or member organization receiving the order, promptly after effecting the transaction notifies such other member or member organization that the member or member organization receiving the order took or supplied the securities named in the order for the account of the member, member organization or a member, officer or approved person therein and such other member or member organization accepts the trade; and

(vi) Such transaction is made in accordance with any other applicable rules of the Exchange.

(b) In the event that a member or member organization having executed a sell or buy order accepted for execution as a broker finds that inadvertently the securities sold or purchased in such execution were taken or supplied for an account in which the member, member organization or any member, officer or approved person therein has a direct or indirect interest, such member or member organization shall report that fact to his or its principal who may accept or reject the trade.

(c) A specialist acting as principal in the course of his specializing function is prohibited from charging a commission for the execution of an order entrusted to him, as agent, by a member.

Commentary

01. When in the ordinary course of business, priority of bids and offers has established the market in a security and the specialist in the security has publicized the full size of his bids and offers, the provisions of clauses (i) and (ii) of Rule 152(a)(2) do not apply to his transactions as principal in the proper performance of his function to assist in the maintenance of a fair and orderly market and he may as principal take or supply the securities named in an order on his book provided he complies with the other requirements of Rule 152.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 152 currently provides that a member that has failed to execute an order may, with the consent of the customer, take or supply for the account of the member or member organization, the securities named in the order. The Exchange believes that the current rule does not clearly state that the member may be compelled to take or supply the security in issue. The Exchange also believes that the rule is unclear whether ''customer'' refers to the ultimate buyer or seller or whether it refers to the person that placed the order with the member. To eliminate possible ambiguity, the Exchange is proposing to amend Amex Rule 152 to provide that a member that fails to execute an order may be compelled to take or supply the securities named in the order.[3] The Exchange believes that this rewording protects the order by clearly stating that a member may be compelled to take or supply the securities in issue if the member fails to execute an order.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[4] in general, and furthers the objectives of section 6(b)(5) of the Act[5] in particular, in that it is 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

[3] The Exchange notes that the consent provisions in Amex Rule 152(a)(2) would continue to apply to the error transactions conducted under Amex Rule 152(a)(1). Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Terri Evans, Assistant Director, and Cyndi Rodriguez, Special Counsel, Division of Market Regulation, Commission, on March 4, 2003.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–108 and should be submitted by April 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6698 Filed 3–19–03; 8:45 am]

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[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47471; File No. SR–CSE–2003–01]

Self-Regulatory Organizations; The Cincinnati Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend the CSE's Market Data Revenue Sharing Program for Tape B Securities

March 7, 2003.

On January 6, 2003, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] a proposed rule change to modify the Exchange's schedule of transaction fees to amend its market data revenue sharing program for Type B securities traded on the Exchange. On January 24, 2003, the CSE amended the proposal.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 3, 2003.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act[7] because it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members by crediting members on a pro-rata basis. However, as set forth in its July 2, 2002, Order of Summary Abrogation (''Abrogation Order''),[8] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. The decision to allow the CSE to establish the market data revenue sharing program described in this proposed rule change is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change, as amended, (SR–CSE–2003–01) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6658 Filed 3–19–03; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* January 23, 2003, letter from Jennifer M. Lamie, Esquire, CSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the CSE changed the text of the proposed rule to address omissions that were made in the original rule filing.

[4] *See* Securities Exchange Act Release No. 47258 (January 27, 2003), 68 FR 5316.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47503; File No. SR–NASD–2003–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend for One Month the Pilot Period for Nasdaq PostData and the Associated Fees Assessed Under NASD Rule 7010(s)

March 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II and III below, which items have been prepared by Nasdaq. Nasdaq filed the proposal 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.[5] 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

NASD proposes to reestablish and extend through March 31, 2003, the pilot period for Nasdaq PostData and the associated fees assessed under NASD rule 7010(s). Nasdaq also proposes to make this proposed rule change effective retroactive to March 1, 2003, to avoid a lapse of the previous pilot due to Nasdaq's failure to file for an

[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] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b–4(f)(6).

extension before the previous pilot program expired. Nasdaq is making no substantive changes to the pilot program, other than to reestablish and extend its operation through March 31, 2003. The text of the proposed rule change is available at Nasdaq 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, Nasdaq 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. Nasdaq 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

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions, and market data vendors through the *NasdaqTrader.com* Web site.[6] On January 17, 2003, Nasdaq extended that pilot through February 28, 2003.[7] Nasdaq hereby proposes to reestablish the pilot, and extend its operation through March 31, 2003. Nasdaq proposes to make the proposed rule change effective retroactive to March 1, 2003, to avoid a lapse of the previous pilot due to Nasdaq's failure to file for an extension before the pilot expired.

Background. PostData consists of three reports provided in a single package: (1) Daily Share Volume Report, which provide subscribers with T+1 daily share volume in each Nasdaq security, listing the volume by any NASD member firm that voluntarily permits the dissemination of this information; (2) Daily Issue Data, which contains a summary of the previous day's activity for every Nasdaq issue; and (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants sorted by industry sector, security, or type of trading (*e.g.* block or total). PostData was launched on March 18, 2002.

On August 5, 2002, Nasdaq expanded the information made available to PostData subscribers to include four additional reports: Buy Volume Report, Sell Volume Report, Crossed Volume Report, and Consolidated Activity Volume Report.[8] Each report offers information regarding total Nasdaq reported buy (or sell, or cross, or consolidated) volume in the security, as well as rankings of registered market maker based upon various aspects of their activity in Nasdaq. The reports also provide recipients with information about the number and character of each market maker's trades. Finally, the reports provide the information described above with respect to block volume, be it buy, sell, cross or consolidated interest.

Extension of the Pilot. Nasdaq proposes to extend the PostData pilot through March 31, 2003. The pilot has been effective but adoption was slower than expected. For a variety of reasons, more time was required than originally anticipated to recruit sell-side firms to sign on to PostData to provide the critical mass of data necessary to have a product to sell to those subscribers (buy-side firms or institutional investors) interested in viewing the data. Nasdaq believes that adoption was slow because:

- Volume is attributed to the firm that has the reporting obligation based on ACT rules. This is also the methodology for the monthly share volume reports offered on Nasdaq Web sites (*NasdaqTrader.com* and *NasdaqOn-Line.com*). Sell-side firms wanted to get credit for volume regardless whether they were the reporting party or not in a trade.
- In the time since PostData was initially developed, the industry has moved to more commission-based or agency (riskless principal) trading. Firms that conduct predominantly more riskless principal trading with other sell-side firms are not well represented in PostData because in riskless principal trading only one leg of the transaction (the transaction with sell-side firm or market maker) is reported in ACT and in many cases these firms are not the reporting party.
- PostData's value and benefits were not well understood by firms, especially with firms' attention directed on other Nasdaq initiatives.

Nasdaq addressed the first two issues by enhancing PostData in August of 2002 to include volume attributed to both parties of a trade (reporting and the contra-party) and identification of the volume as being buy, sell or cross. These additional data sets addressed the issue of which party gets the volume credit and display some volume for firms that primarily engage in ''riskless principal'' trading. These enhancements resulted in seven additional sell-side firms participating in PostData by the end of August.

Therefore, at this time, Nasdaq is unable to effectively study the fees assessed for PostData, as initially requested in the order approving PostData.[9] Growth in the PostData subscriber base was initially slower than anticipated. It was not until September 2002 that the number of subscribing firms first exceeded 25. Currently, there are 33 subscribing firms paying for PostData, and of those, most are also firms that post their data. This sample is too small to draw any meaningful conclusions about the price of the product. In addition, there is no data with respect to indirect subscribers because to date there are no vendors purchasing PostData for redistribution to their subscribers.

Nasdaq was able to start marketing PostData to potential subscribers such as buy-side firms and data vendors this past fall. It is from these marketing efforts that additional feedback was received such as whether more data can be provided. Nasdaq believes that these actions will increase the likelihood of attracting a meaningful number of subscribers sooner rather than later. It is difficult to predict when that will occur, but Nasdaq represents that it will update the staff regularly, and it will provide a full analysis of the fees as quickly as possible.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[10] and 15A(b)(6)[11] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are

[6] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR–NASD–99–12).

[7] *See* Securities Exchange Act Release No. 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003)(SR–NASD–2003–02).

[8] *See* Securities Exchange Act Release No. 46316 (August 6, 2002), 67 FR 52504 (August 12, 2002)(SR–NASD–2002–90).

[9] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002)(SR–NASD–99–12).

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received 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 change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [12] and rule 19b–4(f)(6) thereunder.[13] 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.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the pilot to operate without interruption through March 31, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–35 and should be submitted by April 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6657 Filed 3–19–03; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47477; File No. SR–NASD–2003–27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Two Enterprise License Pilot Programs Regarding the Fees Assessed Upon Distributors of Nasdaq View Suite Data Products

March 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish two alternative voluntary, nine-month pilot programs regarding the fees assessed for distributors of Nasdaq DepthView, PowerView, and TotalView. These data products, known collectively as the Nasdaq ViewSuite products, provide subscribers with quotation information generated by Nasdaq's SuperMontage quotation and execution system. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 7010. Charges for Services and Equipment.

(a)–(p) No Change

(q) Nasdaq Data Entitlement Packages

(1) No Change

(2) No Change

(3) Enterprise License Pilot. For a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more enterprise licenses that entitle it to distribute the licensed product to its entitled Level 1 or NQDS subscribers [3] *for a fixed monthly fee based on the formulae set forth in subparagraphs (A)–(F) below. A distributor must purchase an enterprise license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the nine-month period. The distributor must also pay applicable distributor fees set forth in subparagraph (1) or (2) above.*

(A) DepthView Non-Professional Enterprise License:

(i) The DepthView Non-Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 non-professional subscribers.

(ii) The formula for the DepthView Non-Professional Enterprise License fee is 0.25 × number of entitled Level 1 non-

[3] *The Enterprise License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.*

professional subscribers in the Predicate Month[4] *× $25.*

(B) DepthView Professional Enterprise License:

(i) The DepthView Professional Enterprise License permits a distributor to provide DepthView to all of its entitled Level 1 professional subscribers.

(ii) The formula for the DepthView Professional Enterprise License fee is 0.25 × number of Level 1 professional subscribers in the Predicate Month × $50.

(C) PowerView Non-Professional Enterprise License:

(i) The PowerView Non-Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the PowerView Non-Professional Enterprise License fee is 0.35 × number of NQDS non-professional subscribers in the Predicate Month × $20.

(D) PowerView Professional Enterprise License:

(i) The PowerView Professional Enterprise License permits a distributor to provide PowerView to all of its entitled NQDS professional subscribers.

(ii) The formula for the PowerView Professional Enterprise License fee is 0.35 × number of NQDS professional subscribers in the Predicate Month × $45.

(E) TotalView Non-Professional Enterprise License:

(i) The TotalView Non-Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS non-professional subscribers.

(ii) The formula for the TotalView Non-Professional Enterprise License fee is 0.25 × number of NQDS non-professional subscribers in the Predicate Month × $141.

(F) TotalView Professional Enterprise License:

(i) The TotalView Professional Enterprise License permits a distributor to provide TotalView to all of its entitled NQDS professional subscribers.

(ii) The formula for the TotalView Professional Enterprise License fee is 0.25 × number of NQDS professional subscribers in the Predicate Month × $120.

(4) Non-Display Enterprise License Pilot. In addition or as an alternative to the Enterprise License Pilot, for a nine-month period commencing on April 1, 2003, each distributor of DepthView, PowerView, and/or TotalView may purchase one or more non-display licenses that entitle it to provide non-display benefits of the product to users of controlled devices who do not display the data for an additional fee calculated based on the formulae set forth in subparagraphs (A)–(C) below.[5] *A distributor must purchase a non-display license(s) within two months following the beginning of this program and must agree by contract to pay the fixed monthly fee for the remaining length of the period. The distributor must also pay applicable distributor fees set forth in subparagraph (1) or (2) above.*

(A) Depth View Non-Display License. A distributor may provide non-display benefits of Depth View to users of controlled devices who do not display the data for an additional fee calculated as 0.25 × the population of non-display controlled devices in March 2003 × $50 for professional users or $25 for non-professional users.

(B) Power View Non-Display License. A distributor may provide non-display benefits of PowerView to users of controlled devices who do not display the data for an additional fee calculated as 0.35 × the population of non-display controlled devices in March 2003 × $45 for professional users or $20 for non-professional users.

(C) TotalView Non-Display License. A distributor may provide non-display benefits of TotalView to users of controlled devices who do not display the data for an additional fee calculated as 0.25 × the population of non-display controlled devices in March 2003 × $120 for professional users or $141 for non-professional users.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, 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 launch of SuperMontage, Nasdaq's integrated quotation and execution system, vastly expanded Nasdaq's ability to offer market data to market participants that choose to display trading interest on Nasdaq that goes beyond the best bid and offer: Nasdaq DepthView, PowerView, and TotalView, collectively referred to as the ''ViewSuite'' products, offer a wide array of quotation information to market data vendors and broker/dealer distributors. DepthView shows the aggregate size, by price level, of all Nasdaq market participants' attributed and unattributed quotations/orders that are in the top five price levels in SuperMontage. PowerView bundles the Nasdaq Quotation Dissemination Service or ''NQDS'' and DepthView. TotalView offers the PowerView services plus all Nasdaq market participants' attributed quotations/orders that are in the top five price levels in SuperMontage, in addition to the aggregate size of all unattributed quotes/orders at each of the top five price levels.

On November 18, 2002, the Securities and Exchange Commission approved a rule proposal that established fees assessed for the ViewSuite products, which are offered exclusively through distributors.[6] DepthView is offered through distributors to professional subscribers for $50 per month per controlled device[7] and to non-professional subscribers for $25 per month per controlled device, plus $1,000 per distributor per month (a single DepthView/PowerView distributor payment covers distribution of both products to professional and non-professional subscribers).[8] PowerView is offered through distributors to professional subscribers for $75 per month per controlled device

[4] *''Predicate Month''* shall mean December of 2002 or, if a distributor reported no Level 1 or NQDS subscribers in December of 2002, the most recent month after December of 2002 in which the distributor did report Level 1 or NQDS subscribers.

[5] The Non-Display License Pilot does not apply to the Level 1 and NQDS data services. All distributors continue to be obligated to report and pay for all entitled Level 1 and NQDS subscribers throughout the pilot period.

[6] *See* Securities Exchange Act Release No. 46843 (Nov. 18, 2002), 67 FR 70471 (Nov. 22, 2002). The term ''distributor'' is defined in footnote six of NASD Rule 7010(q).

[7] A ''controlled device'' is defined, in footnote one of Rule 7010(q), as any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) access the information in the Nasdaq Data Entitlement Package(s); or (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s).

[8] To comply with the SEC Vendor Display Rule, distributors must also provide their controlled devices with the Level 1 service, separately priced at $20 per professional user and capped at $1 per non-professional user. The Level 1 charges are not included in the fees discussed in this filing.

and to non-professional subscribers for $29 per month per controlled device, plus $1,000 per month per distributor. TotalView is offered through distributors to professional subscribers for $150 per month per controlled device and to non-professional subscribers for $150 per month per controlled device, plus $7,500 per month per distributor (a single TotalView distributor payment covers distribution of DepthView, PowerView, and TotalView to professional and non-professional subscribers).

It is important to note, however, that the incremental costs to a user of the PowerView and TotalView services are lower than the total approved fees because the total fees, described above, include fees for NQDS. The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional users and $9 for non-professional users. There is no distributor fee for the NQDS service. Therefore, the incremental cost of PowerView is $45 per professional subscriber and $20 per non-professional subscriber. The incremental cost for TotalView is $120 per professional subscriber and $141 per non-professional subscriber. The DepthView prices cited above do not include any NQDS charges, because DepthView is treated as an upgrade from the Level 1 service. In other words, the approved fees for DepthView of $50 for professionals and $25 for non-professionals are also the incremental cost of DepthView. The incremental fees over and above the fees for NQDS form the basis of Nasdaq's proposed Enterprise License Pilot.

Enterprise License Pilot. To encourage the broadest possible display of the SuperMontage data contained in the ViewSuite products, Nasdaq is proposing an optional pilot program to offer an enterprise-wide license to distributors. This pilot would enable each distributor to provide a ViewSuite product to large numbers of subscribers for a fixed rate based upon a multiple of (1) the incremental cost of the ViewSuite product [9] and (2) the size of that distributor's reported subscriber base for NQDS (in the case of PowerView and TotalView) or for Level 1 (in the case of DepthView) for the Predicate Month—December 2002, unless a distributor had no NQDS or Level 1 subscribers in December 2002, in which case the license fee will be based upon the most recent reported month thereafter in which the distributor reported subscribers. The fee for an Enterprise License will remain the same throughout the pilot, even if its NQDS subscriber base increases or decreases. This Enterprise License Pilot does not apply to the Level 1 or NQDS data services. Therefore, all distributors will continue to be obligated to report and assess monthly fees separately for all entitled Level 1 and NQDS subscribers throughout the pilot period. In order to apply the Enterprise License equally across all distributors, the Enterprise License program will have a specific multiple that applies equally to all distributors; distributors with large reported subscriber bases will pay proportionately more than those with smaller subscriber bases.

More specifically, the price of an Enterprise License for TotalView will equal the incremental cost of providing TotalView to 25% of each distributor's Predicate Month NQDS professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of $7,500. For example, if a distributor had 8,000 NQDS professional displays and 2,000 non-professional displays in December 2002, it could purchase a TotalView professional and non-professional Enterprise License for a monthly charge of (25% of 8,000) times $120 (the incremental cost of Total View for professional subscribers) plus (25% of 2,000) times $141 (the incremental cost of TotalView for non-professionals subscribers), plus the distributor fee of $7,500, for a total of $318,000 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the distributor chooses to expand its TotalView user base.

The price of an Enterprise License for PowerView will equal the incremental cost of providing PowerView to 35% of each distributor's Predicate Month NQDS professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of $1,000. For example, if a distributor had 8,000 NQDS professional displays and 2,000 non-professional displays in December 2002, it could purchase a PowerView Enterprise License for a monthly charge of (35% of 8,000) times $45 (the incremental cost of PowerView for professional subscribers) plus (35% of 2,000) times $20 (the incremental cost of PowerView for non-professionals subscribers), plus the $1,000 distributor fee, for a total of $141,000 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the distributor chooses to expand its PowerView user base.

The price of an Enterprise License for DepthView will equal the incremental cost of providing DepthView to 25% of each distributor's Predicate Month 2002 Level 1 professional and/or non-professional subscriber base. In addition the distributor would have to pay the approved monthly distributor fee of $1,000. For example, if a distributor had 8,000 Level 1 professional displays and 2,000 non-professional displays in December 2002, it could purchase a DepthView Enterprise License for a monthly charge of (25% of 8,000) times $50 (the incremental cost of DepthView for professional subscribers) plus (25% of 2,000) times $25 (the incremental cost of DepthView for non-professionals subscribers), plus the $1,000 distributor fee, for a total of $113,500 per month. That monthly cost would apply throughout the nine-month pilot program regardless of how the distributor chooses to expand its DepthView user base.

Non-Display Enterprise License Pilot. Distributors that offer non-display uses of the ViewSuite data packages can also benefit from the non-display enterprise license pilot. Since such distributors may have no NQDS subscribers at present, we will assess the fee based on a percentage (using the same percentages described above for the Enterprise License) of the non-display controlled devices they serve from a predicate month. The predicate month to determine the base for the license is the most recent month prior to the launch of the pilot program.[10] This is consistent with the definition of controlled device in our original rule filing on these products and allows non-display end users to benefit from this pilot period.

The pilots will begin on April 1, 2003, and will run for nine months, but will only be available to distributors that enroll during the first two months of the pilot.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

[9] Nasdaq must utilize the incremental cost of the ViewSuite products, rather than the total cost, because the NQDS and Level 1 data feeds are subject to the Nasdaq UTP Plan and may not be discounted.

[10] To calculate the fee for the non-display license Nasdaq will use the non-display ViewSuite population in the most recent month prior to the launch of the pilot program: *i.e.* March 2003. That population (and the resulting monthly fee) would then be fixed for the term of the enterprise license (although the vendor would be entitled to extend the benefits to as many additional customers as they liked). Telephone Conversation between Eleni Constantine, Associate General Counsel, Office of General Counsel, Nasdaq, and Susie Cho, Special Counsel, Division of Market Regulation (''Division''), Commission, on March 6, 2003.

provisions of section 15A of the Act,[11] in general, and with section 15A(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq represents that the proposed pilot programs are available to all distributors of the ViewSuite products, and are designed to apply to all such distributors, large and small. At the same time, heavy users of the data will pay more than light users and, with the exception of TotalView (as described above), professional users will pay more than non-professional users.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[13] and rule 19b–4(f)(6)[14] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq gave the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. At any time within 60 days of the filing of such 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.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the rule filing will establish a voluntary program available to all Nasdaq distributors that may increase the availability and distribution of market data. The voluntary program applies to market data that Nasdaq offers exclusively to distributors and not directly to individual investors. In addition, acceleration of the operative date will permit Nasdaq to establish the two enterprise license pilot programs expeditiously. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–27 and should be submitted by April 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–6697 Filed 3–19–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4317]

Bureau of Educational and Cultural Affairs; Request for Grant Proposals: English Language Fellow Program for Academic Year 2004–2005

SUMMARY: The Office of English Language Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the 2004–2005 English Language Fellow Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer and manage the 2004–2005 English Language Fellow Program. The English Language Fellow Program is a worldwide program designed to provide American professional expertise in the field of English as a Foreign Language to foreign educational institutions and other relevant organizations.

Program Information

Overview

The English Language Fellow Program is a ten-month program designed to permit U.S. English language professional assistance in the improvement of English teaching capability around the world. The Program has placed over 350 English language professionals worldwide in the past five years, enhancing foreign governments' efforts to respond to the dramatic increase in the demand for English among their populations. The goals of the program are to enhance English teaching capacity overseas in order to provide foreign teachers and students with communication skills they will need to participate in the global economy, to improve their access to diverse perspectives on a broad variety of issues, and to give them information that will better enable them to understand and convey concepts about American values, democratic representative government, free enterprise, and the rule of law.

The program is open to U.S. English language professionals at two different levels:

A. Senior English Language Fellows are experienced teacher trainers who have a M.A. or higher degree in TEFL/TESL or a closely related field and who have significant overseas teaching experience. These Fellows serve as full-time teacher trainers and participate in the following program-related activities: Teaching English for Specific Purposes (ESP) in a variety of professional fields, designing English as a Foreign Language (EFL) curricula and materials, conducting program evaluations, testing, organizing workshops and conferences, etc.

B. Junior English Language Fellows are recent (within the past five years) TEFL/TESL M.A. graduates who may or may not have prior overseas teaching experience. These Fellows serve as full-time EFL teachers. Normal teaching duties are 20 hours per week, with additional work in teacher training, curriculum development, and testing. Taken together, these duties should not exceed 40 hours per week and should not include administrative work.

Objectives

1. With the guidance of U.S. Embassies overseas, to place 70 English Language Fellows (approximately 70% senior, 30% junior) in ten-month assignments at universities, teacher-training institutions, ministries of education, bi-national centers and other related language education institutions throughout the world.

2. To use the presence of the Fellows as a means to encourage mutual understanding and to share U.S. culture and values with host country nationals.

Guidelines

The organization selected under this competition will be responsible for the following:

(1) Extensive/comprehensive promotion, publicity, advertisement for the program among potential U.S. applicants.

(2) Selection and placement of up to 70 English Language

Fellows (approximately 70% senior, 30% junior), including recruitment, interviews by experienced TEFL/TESL-qualified staff, and matching of Fellows to specific projects.

(3) Pre-departure conference in the U.S.

(4) Fiscal management.

(5) Travel and logistics management.

(6) Enrollment of Fellows in the Bureau's Health and Accident

Insurance Program (ASPE), including submission of Fellows' medical/health records to Bureau for clearance.

(7) Monitoring of program and participants, including a regional site visit.

(8) Design and implementation of an evaluation strategy designed to measure impact and outcome of the program and the individual participants.

(9) Organization and implementation of an overseas, regional Fellow mid-year conference.

(10) Implementation of information-maintenance and sharing activities (Web site, listserv, database).

Pending the availability of funds, the grant period shall begin on/about October 1, 2004 through September 30, 2005. The English Language Fellow Program is for academic year 2004/2005. Fellow assignments are for ten months beginning on/about September 1, 2004 through June 30, 2005.

Budget Guidelines

The Bureau anticipates awarding one grant of approximately $4,000,000 under this grant competition. (Bureau grant guidelines require that organizations with fewer than four years experience in conducting international exchanges is limited to $60,000 in Bureau funding. Therefore, organizations that cannot demonstrate at least four years' experience in conducting international exchanges are ineligible to apply under this competition.) This amount will support the program and administrative costs required to implement the program. Benefits for the Fellows include the following: a fixed stipend, living allowance supplement, round trip travel, pre-departure conference travel, pre-departure conference allowance, fixed allowance for one dependent (seniors only), mid-year conference travel, miscellaneous allowance, shipping allowance, educational materials allowance, in-country arrival orientation allowance, and in-country program activities allowance (seniors only). The Bureau encourages applicants to provide the highest level of cost sharing possible in support of this program.

A comprehensive program budget is required, with a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/L–04–01.*

FOR FURTHER INFORMATION CONTACT: The Office of English Language Programs, ECA/A/L, Room 304, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Phone: 619–5878; FAX: (202) 401–1250, Internet address: *http://exchanges.state.gov/education/RFGPs* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Catherine Williamson, on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation package Via Internet: The entire Solicitation Package may be downloaded from the Bureau Web site, *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on May 16, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure that the proposals are received by the above deadline. Applicants must follow all instructions in the Solicitation Package.

The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/L–04–01,* Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review

criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Diplomacy section overseas, where appropriate will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grant resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. Because publicity and recruitment are essential components of the Program, an aggressive publicity/recruitment plan is required.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activities' success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or on a quarterly basis, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposals should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country (ies).

13. *TEFL/TESL Background:* Proposals should demonstrate a networking plan that allows for significant dissemination of information to English as a Second or Foreign Language Teaching professionals. The grantee must be able to provide knowledgeable, TEFL/TESL-qualified, experienced staff capable of interviewing candidates and evaluating their qualifications in accordance with the criteria established by the Bureau.

Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' Subject to Congressional action, funding for this program will be provided from ECA's Exchanges Appropriation and interagency transfers to the Bureau authorized by the FREEDOM Support Act (FSA) and the Support for East European Democracy Act (SEED), among others.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 13, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–6729 Filed 3–19–03; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 4318]

Bureau of Educational and Cultural Affairs; South Pacific Scholarship Program

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the *South Pacific Scholarship Program.* Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to organize and carry out an academic exchange program for students from the sovereign nations of the South Pacific. The grantee will be responsible for all aspects of the program, including publicity and recruitment of applicants; merit-based competitive selection; placement of students at an accredited U.S. academic institution; student travel to the U.S.; orientation; up to four years of U.S. degree study at the bachelor's or master's level; enrichment programming; advising, monitoring and support; pre-return activities; evaluation; and follow-up. The duration of the grant will be up to five years, beginning in summer 2003. The FY 2003 funding level is approximately $500,000.

Program Information

Overview: The South Pacific Scholarship Program was established by the United States Congress to provide opportunities for U.S. study to students from South Pacific nations in fields important for the region's future development. Public Law 103–236 enacted on April 30, 1994 authorized academic scholarships to qualified students from the sovereign nations of the South Pacific region to pursue undergraduate and postgraduate study at institutions of higher education in the United States.

This program supports increased mutual understanding between the people of the U.S. and those of the South Pacific Islands. Students from the following nations are eligible to apply for these scholarships: Cook Islands, Fiji, Kiribati, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

Requirements and Implementation

The requirements for administration of this program are outlined in further detail in this document and in the Program Objectives, Goals and Implementation (POGI) document. The proposal should respond to each item in the POGI.

Fields of study under the program are based on recommendations from Department of State regional bureau representatives and U.S. embassies abroad and have included public administration, journalism, education, environmental studies, agriculture, political science, business and other fields. The grantee should arrange for the students' enrollment at accredited U.S. institutions of higher education where a full liberal arts curriculum (including social sciences, humanities and sciences) is available. Students selected for these scholarships enroll in four year undergraduate degree programs, or in master's degree programs. The latter have generally involved one year of preparatory U.S. study followed by up to two years of formal master's degree study. This grant award will cover the entire program in the U.S. for the students selected. Students are expected to return home following the completion of their U.S. programs.

Program Components

1. Planning, implementation and monitoring of entire exchange program, based on guidance from the Bureau of Educational and Cultural Affairs. The proposal must demonstrate an understanding of the South Pacific region and culture and close attention to the needs of students coming to the U.S. from the region.

2. Publicity, recruitment and application process for the program. The proposal should indicate specifically what methods will be used to carry out this process for the South Pacific Islands. Recruitment should particularly emphasize outreach beyond capital cities. Bureau sponsorship should be clearly indicated in all materials.

3. Merit-based selection of principals and alternates. The proposal should explain how the recruitment, application and selection processes will ensure that all qualified individuals are encouraged to apply and that candidates are selected solely on the basis of merit. A pool of qualified alternates should be established that may be drawn on in subsequent years, should an additional place in the program become available.

4. Placement and enrollment of students at an accredited U.S. college/university appropriate to their academic and future professional goals. Students may be placed together at the same institution or at different institutions that offer programs that correspond to their academic and professional goals. The proposal should explain how identification with the South Pacific Scholarship program will be established and maintained among students.

5. Pre-arrival information for students, assistance with the visa application process, travel to the U.S., arrival.

6. Orientation and settling in at U.S. institution. The proposal should indicate how the applicant will prepare the students for their exchange experience.

7. Provision of stipends and coverage of other appropriate living/study/enrichment expenses for participants throughout their program. Provision of tax withholding and health insurance.

8. On-going monitoring, academic advising, and general support for students throughout the program. The proposal should indicate what support services will be provided.

9. Management of cross-cultural issues, special situations and emergencies.

10. Opportunities for transfers and exchanges to other U.S. universities during the program to diversify the students' experience and fulfill academic goals.

11. Obtaining of tuition waivers, reduced fees, and other forms of cost-sharing.

12. Cultural/community enrichment for students about U.S. society and culture.

13. Internships and professional development.

14. Pre-return and reentry activities.

15. Evaluation and follow-on including alumni activities.

16. Fiscal Management of any sub-contractors.

17. Compliance with J–1 visa requirements regarding health insurance for participants.

Guidelines

The amount of the grant award in FY 2003 is expected to be approximately $500,000. The award will be made in Summer 2003. The grantee should begin planning immediately for recruitment at that time. Participants are expected to begin their U.S. study programs between January 2004 and Fall 2004. Proposal budgets should include all costs for students to complete the entire program of degree study in the U.S. The proposal should indicate the number of students who will be supported for degree

programs with this funding. At this level of funds, applicants are encouraged to budget for at least four students for degree study. The grant will remain open for approximately five years.

If performance under this grant is satisfactory, the award may be renewed each year for approximately two additional years at the Bureau's discretion, assuming that the program continues to receive federal funding.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Budget Guidelines

The Bureau anticipates awarding one grant of approximately $500,000 under this competition. Bureau grant guidelines require that organizations with less than four years of experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations that cannot demonstrate at least four years' experience in conducting international exchanges are ineligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program may include the following:

(1) Publicity, recruitment, selection, placement and communication with applicants and participants.

(2) Travel for student participants between home and program location.

(3) Tuition and fees, stipends for living costs, book allowances, and other necessary maintenance costs and expenses for the students.

(4) Advising and monitoring of students; academic and cultural support and enrichment activities. This is expected to include some U.S. travel for enrichment purposes. Purchase of individual computers is permitted; please see the POGI for further details.

(5) Pre-return activities and evaluation.

(6) Staff and administrative expenses to carry out the program activities. Administrative and overhead costs should be as low as possible.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A–SP–03–01.*

FOR FURTHER INFORMATION CONTACT: Marianne Craven, Managing Director of Academic Programs, ECA/A, Room 202, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 619–6409, fax. (202) 205–2452, e-mail: *mcraven@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please direct all other inquiries and correspondence to Marianne Craven.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 2, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *10* copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A–SP–03–01,* Program Management, ECA/EX/PM, Room 534, SA–44, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content.

Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Adherence to all Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, Fax: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals

will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the program goals and mission. The proposal should demonstrate understanding of the South Pacific nations and of the needs of students from the region as related to the program goals.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Each component of the program should be addressed.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should explain how objectives will be met through specific activities to be carried out in the U.S. and in the South Pacific.

4. *Multiplier effect/impact:* Programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Anticipated results of the program in the South Pacific region as well as in the U.S. should be addressed.

5. *Diversity in the South Pacific Scholarship Program:*

Proposals should demonstrate substantive support for the Bureau's policy on diversity. To the full extent possible, scholarship recipients for this program should be representative of diversity in the following categories: Country of origin/residence within the South Pacific; gender; ethnic community of origin within countries, where relevant; urban and rural regions (with emphasis on outreach beyond capital cities); and proposed fields of study within the general parameters outlined in this solicitation. The proposal should explain what efforts will be undertaken to achieve these goals. The U.S. study and enrichment programs should also incorporate and demonstrate the diversity of the American people, regions and culture.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should explain how the grantee organization will meet the requirements of students on this specific program. The proposal should describe the applicant's knowledge of, or prior experience with, students from the South Pacific nations, and/or other developing countries.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* The proposal should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau-supported programs are not isolated events.

9. *Project Evaluation:* The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus a description of a methodology that will link outcomes to original project objectives is recommended. The grantee will be expected to submit regular written reports (approximately three times each year.)

10. *Cost-effectiveness and cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Budget estimates should be as accurate as possible over the full period of the grant.

11. *Value to U.S.-Partner Country Relations:* Proposed programs should receive positive assessments by U.S. Department of State's geographic area desk of potential impact and significance in the partner countries.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 13, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–6730 Filed 3–19–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2003–14708]

Sargeant Marine, Inc.; Notice of Application for Written Permission for Temporary Transfer to the Domestic Trade

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of application.

SUMMARY: Pursuant to section 506 of the Merchant Marine Act, 1936, as amended (Act), Sargeant Marine, Inc. (Sargeant),

by letter dated March 11, 2003, as amended, requests approval for the temporary transfer of the ASPHALT COMMANDER (O.N. 663105) to the domestic trade for a period up to six months commencing on April 1, 2003. Sargeant advises that the ASPHALT COMMANDER would load asphalt and #6 fuel oil in Texas and discharge at any combination of ports from Tampa, Florida, then south to the southern tip of Florida, plus any port on the East Coat of the United States from Florida to Maine, plus Puerto Rico, during the requested six month period in the domestic trade in order to alleviate the shortage of these products on the East Coast, Florida and Puerto Rico. The ASPHALT COMMANDER (ex FALCON CHAMPION) was built with the aid of construction-differential subsidy (CDS) and is prohibited from operation in the exclusive domestic trade without the prior written permission of the Maritime Administration (MARAD).

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than closes of business March 27, 2003.

ADDRESSES: Your comments should refer to docket number MARAD 2003–14708. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW., Washington, DC 20590. You may also submit them electronically via the Internet at *http://dmses.dot.gov/submit.* You may call Docket Management at (202) 366–9324 and visit the Docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: You may call Gregory V. Sparkman, Chief, Division of Shipping Analysis, (202) 366–2400. You may send mail to Gregory V. Sparkman, Chief, Division of Shipping Analysis, Room 8117, Maritime Administration, 400 Seventh St, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark ''CONFIDENTIAL'' on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation *http://dms.dot.gov.* On that page, click on ''search.'' On the next page *http://dms.dot.gov/search/* type in the four-digit docket number shown at the beginning of this document. The docket number for this document is MARAD 2203–14708. After typing the docket number, click on ''search.'' On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Application Request

Pursuant to section 506 of the Merchant Marine Act, 1936, as amended (Act), Sargeant Marine, Inc. (Sargeant), by letter dated March 11, 2003, requests approval for the temporary transfer of the ASPHALT COMMANDER (O.N. 663105) to the domestic trade for a period up to six months commencing on April 1, 2003. Sargeant advises that the ASPHALT COMMANDER would load asphalt and #6 fuel oil in Texas and discharge at any combination of ports from Tampa, Florida, then south to the southern tip of Florida, plus any port on the East Coast of the United States from Florida to Maine, plus Puerto Rico, during the requested six month period in the domestic trade in order to alleviate the shortage of these products on the East Coast, Florida and Puerto Rico. The ASPHALT COMMANDER (the ex FALCON CHAMPION) was built with construction-differential subsidy (CDS) and is prohibited from operating in the exclusive domestic trade without the prior written permission of the Maritime Administration (MARAD).

Sargeant provides the following information in support of its section 506 waiver request for the ASPHALT COMMANDER to operate in the domestic trade for up to six months commencing April 1, 2003:

Sargeant states that there are fundamental problems of product imbalance and a lack of adequate ocean-going transportation for the distribution of asphalt and #6 fuel oil in the United States in 2003. The events that have caused this imbalance are unique in 2003 and are not expected to recur in future years.

Sargeant advises that generally, the United States imports approximately four million tons of asphalt, of which 60 percent, or 2.4 million tons, comes into Petroleum Administration for Defense District (PADD) I, which is the U.S. East Coast. About 60 percent of PADD I imports come from Venezuela. Since December 2, 2002, Venezuela has not exported asphalt due to disruptions in its oil industry. It is not known when Venezuela will resume normal asphalt production. Other sources of imported asphalt from Mexico and Spain are not sufficient to handle the loss of product from Venezuela. As a result, the current inventory levels of PADD I are extremely low.

Sargeant states that usually at this time of year PADD I asphalt inventory

levels are full in anticipation of the usual demand beginning in spring. Average usage during the spring and summer months exceed the volume of asphalt that can be produced and imported into the region during those months. The vessels utilized to import asphalt from Venezuela, Mexico and Spain do not traditionally trade domestically.

Sargeant states that unless other PADDs, namely PADD III—the Gulf Coast region—can fill the product void, the East Coast will experience product outages this summer. Florida has already begun to experience outages. Such outages will cause the delay of road and housing construction, which have been critical to the Administration's plan for economic recovery. Sargeant refers to the two attached letters to the application, which emphasize these conditions. Although this discussion has been limited to asphalt, the same issues are true for #6 fuel oil.

Sargeant advises that the current inventory of high-heat, ocean-going domestic transportation vessels is not adequate to handle this one-time ''bubble'' of tonnage needed to move asphalt from PADD III to PADD I. Sargeant's proposal to allow the ASPHALT COMMANDER to trade asphalt and #6 fuel oil domestically for six months will provide alternate tonnage to allow the East Coast to avoid product outages.

According to Sargeant, the current asphalt shortage situation is exactly what the waiver provisions were designed for as shown by the following facts:

- There is an acute shortage of product in one section of the United States—the East Coast.
- The shortage is a direct result of product disturbances in a foreign country—Venezuela.
- The shortage is temporary and of a fixed duration—the asphalt season will end in the fall of 2003.
- The shortage is causing economic difficulties in the United States—the lack of product has already caused the price of asphalt to increase significantly in Florida. This is causing the Florida DOT to consider decreasing the project lettings, thereby decreasing road construction projects and corresponding economic activity. Lack of flux material will cause a shortage of housing construction materials this summer.
- There is product available in another area of the United States—the Gulf Coast.
- There is insufficient domestic transportation equipment to handle this temporary need.
- The ASPHALT COMMANDER is capable of filling the temporary gap in transportation.

As indicated above, Sargeant refers to two letters it has received emphasizing the deteriorating situation with respect to asphalt supplies in Florida and the U.S. East Coat. One of the letters is from the Asphalt Contractors Association of Florida, Inc. and the other from Owens Corning. The Florida group advises that they are facing a serious shortage of asphalt products across the state and major supply problems in South Florida, as a result of the Venezuela oil strike. The group anticipates a growing shortage and any relief that could be provided by Sargeant's ASPHALT COMMANDER would be of great help. Owens Corning is concerned about the present and future shortages of asphalt on the East Coast as a result of the Venezuelan situation and fully supports the use of the ASPHALT COMMANDER to bring flux from the U.S. Gulf to the U.S. East Coast.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider all comments submitted in a timely fashion, and will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidy)

By Order of the Maritime Administrator.

Dated: March 17, 2003.

Joel C. Richard,

Secretary.

[FR Doc. 03–6761 Filed 3–19–03; 8:45 am]

BILLING CODE 4910–89–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Application of Undertaker for Payment of Funeral Expenses from Funds to the Credit of a Deceased Depositor

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the POD Form 1672 ''Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor.''

DATES: Written comments should be received on or before May 19, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rose Brewer, Manager, Judgment Fund Branch, Room 630F, 3700 East-West Highway, Hyattsville, MD 20782, (202) 874–6664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Application of Undertaker for Payment of Funeral Expenses from Funds to the Credit of a Deceased Depositor.

OMB Number: 1510–0033.

Form Number: POD 1672.

Abstract: This form is used by the undertaker to apply for payment of a postal savings account of a deceased depositor to apply for funeral expenses. This form is supported by a certificate from a relative (POD 1690) and an itemized funeral bill. Payment is made to the funeral home.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 15.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 8.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Dated: March 14, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 03–6654 Filed 3–19–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request-Thrift Financial Report: Schedule CMR

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of Thrift Supervision (OTS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act.

Further, OTS requests comments on the replacement of Schedule Consolidated Maturity/Rate (CMR) of the Thrift Financial Report (TFR) with a new schedule to be known as Risk Exposure Data (RED). Schedule RED will reduce the data collection burden on institutions while at the same time increase the flexibility and granularity of the data collected. The proposed Schedule RED will also increase the flexibility of the agency's Net Portfolio Value (NPV) model and assist the agency in better monitoring individual institution and system-wide credit risk.

DATES: Submit written comments on or before May 19, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Send a facsimile transmission to (202) 906–6518. Or send e-mail to: *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: Mark Flood, Senior Financial Economist, (202) 906–6254, Economic Analysis Division, or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Title of Proposal: Thrift Financial Report: Schedule CMR.

OMB Number: 1550–0023.

Form Number: Schedule RED of the Thrift Financial Report.

Abstract: Currently, Schedule CMR provides all the institution-level inputs to OTS's NPV model, the agency's key resource for measuring interest-rate risk. The NPV model: (1) Complements and supplements on-site exams with quarterly off-site monitoring; (2) helps identify aggregate patterns unapparent at the level of the individual institution; and (3) by employing scenario analysis, draws attention to thrifts with unusually large risk exposures. Further, the NPV model effectively offers thrifts a quarterly risk-management consultancy function. It is therefore centrally important to the agency and the thrift industry that the NPV model operates reliably, is understandable, and adapts itself regularly to advances in the analytical state of the art, as well as to changes in market conditions, including new financial instruments and other innovations.

A. Why Replace Schedule CMR?

Future improvements on the NPV model should focus both on its benefiting savings associations and improving OTS's oversight responsibility. Both of these objectives can be met by replacing Schedule CMR with Schedule RED.

Proposed Schedule RED reduces the data collection burden by changing the manner in which data is collected while at the same time increasing the flexibility of the NPV model. Further, Schedule RED addresses concerns raised by some institutions about shortcomings in the NPV model that are caused by the nature of data collected in the current CMR format. Lastly, Schedule RED permits OTS to collect certain new data to aid in calibrating the NPV model and measuring credit quality.

1. Simplification and Burden Reduction

Schedule RED will simplify, and thereby reduce the burden of, the reporting process for both OTS and reporting thrifts. Switching to the proposed new schedule will result in a substantial net reduction in the number of field definitions. Indeed, Schedule RED has roughly half the number of fields as the current CMR (and therefore half the field definitions to implement, and field instructions to understand). Since the data burden falls both upon OTS and the submitting institutions, both parties benefit from this reduction. To see better how this will work, interested parties can find the full details of the proposed new form and its instructions on the OTS Web site at: *http://www.ots.treas.gov/docs/r.cfm?84259.html.*

The current CMR collects data in 535 individual CMR cells (numbered between 001 and 903) plus 26 additional fields in the supplemental tables, for a total of 561 fields. Each of these fields potentially has a separate, idiosyncratic definition in the CMR instructions, although there are currently some shared definitions.[1] Each separate definition must be implemented by programming logic and/or data-entry training. In contrast, the number of position attributes defined by the proposed RED is 262 '' less than half that of the CMR. Among these, there are considerable overlaps in definitions (*e.g.*, position balance is defined identically for most positions), so that the total number of distinct instructions for RED fields is currently 84 (with 116 instructions overall '' including those not attached to specific input fields).

Another example of Schedule RED's simplification is reflected in the collection of fixed-rate mortgage (FRM) data. Schedule CMR collects FRM data in three sections on two pages of the schedule: balances, coupons, and maturities (CMR 001–125); miscellaneous aggregate memoranda (CMR 501–508); and warehouse loans (CMR 578). In all, there are 107 separate cells on CMR collecting data on FRM loans and mortgage-backed securities (MBS). Because many of these cells collect the same sort of information for different aggregation buckets, only 18

[1] For example, CMR 006 through 010 are all weighted average remaining maturities on different buckets of fixed-rate mortgages, with the same rules for calculation.

instruction paragraphs are needed to describe these cells. In the latter two sections '' aggregate memoranda and warehouse loans '' FRMs are commingled with adjustable-rate mortgages (ARMs), multifamily mortgages, and non-residential mortgages.

Schedule RED collects FRM data in two separate sections: FRMs (10 fields, 4 of which are new ''credit-risk'' attributes); and loan memoranda (8 fields). Ignoring the credit-risk attributes, there are in all 14 separate fields on RED collecting data on FRM loans and MBS, and only 14 instruction paragraphs are needed to describe these cells.

A simplistic comparison of the CMR cell count for FRMs (107) to the RED attribute count (14) would overstate the benefits of the RED because the CMR is restricted to one data point per cell, while the RED will typically take multiple observations of each attribute field. A more informative comparison is between the instruction counts (18 CMR vs. 14 RED), since these represent the business logic that must be written, tested, deployed, and maintained in reporting software. By this measure, the RED represents a 29% reduction in reporting burden relative to the current CMR.

2. Flexibility

The current CMR format is rigid in defining the data it accepts. For example, the definition of the five coupon buckets for fixed-rate mortgages currently covers the following ranges: <7%, 7–8%, 8–9%, 9–10%, and >10%. With few exceptions, mortgages above 7% have not been issued for some time, and refinancing to the current lower rates has been intense. As a result, CMR's data bucketing has less value in the current environment, as nearly all new mortgages and refinancings fall into the first bucket. Addressing this problem by redefining the bucket ranges requires reprinting the form, editing the instructions, and testing the edit and NPV model software. This process may take several filing cycles to complete. When rates rise again, the process would have to be repeated.

These transitions would be unnecessary with Schedule RED, because flexibility is built into its structure. The basic structure of Schedule RED is similar to that currently used to collect supplemental positions (for example, the supplemental OBS or supplemental assets and liabilities tables). All data in the RED would be entered into tables, the rows of which represent financial positions held by the thrift, and the columns of which are the attributes of those positions. For example, here is one of the proposed RED tables, for ARM servicing rights:

ADJUSTABLE-RATE MORTGAGE-SERVICING RIGHTS

Type	Balance	Original maturity	Remaining maturity	Rate code	Margin	Service fee	Sub-serviced	FHA VA	Conventional

OTS believes that proposed Schedule RED eliminates most of the rigidities present in the current CMR layout while still providing pertinent data for input into the NPV model.

3. Increased Data Detail

a. Increased Granularity

While slashing the field count in half, the RED would increase the number of data points by collecting finer-grained observations on each field. All reporting schemes entail bucketing with some degree of categorization, *i.e.,* granularity. By definition, all loans within a given bucket are treated identically—typically by assuming that all loans lie at the center of the bucket. For example, suppose loans in the 2-to-5-year rate-reset bucket have an average rate-reset frequency of exactly 3.5 years. Thus, the NPVs and sensitivities of loans at one end or another of a bucket will tend to be less accurate. These estimation differences do not necessarily disappear when the whole bucket is averaged. To the extent that the NPV model's results guide supervision policy, this less accurate estimate of the loan characteristics may adversely affect some thrifts, while arbitrarily rewarding others.

Reducing bucket sizes to shrink the potential measurement error can alleviate this ''bucketing burden.'' This increases granularity and necessarily reduces the average magnitude of the estimation error in measuring loan characteristics. However, changing bucket ranges requires flexibility in the structure of the reporting schedule.

In the case of Schedule CMR, increasing granularity means adding cells. Because the cells are indexed sequentially, this requires renumbering and/or redefining some cells. For example, in the case of FRMs, there are 5 coupon buckets.[2] Inserting a new column (*i.e.,* a new bucket) on this page of the form would require either: (a) inserting cells with non-sequential numbers; or (b) renumbering all subsequent cells in the form. Either solution necessitates a redefinition of certain cells, and either is likely to create confusion and implementation difficulties. As a result, increases in data granularity are infrequent under the current Schedule CMR.

In the case of Schedule RED, the number of observations collected is open-ended, and *all* bucketing is handled through the aggregation rules defined in the instructions to the form.[3] Thus, increasing or decreasing granularity in any particular dimension involves only a change to the instructions. Of course, the reporting institutions (or their vendors) must still implement this change. However, these changes in aggregation rules do not redefine the attributes collected, but only the number and composition of the observations reported. Increases in the number of observations (the granularity) for a particular instrument have no impact on reporting elsewhere on the form. At the same time, it is similarly possible to add (or remove) to the list of RED attributes collected without affecting reporting elsewhere on the form.

[2] See Schedule CMR page 28.

[3] See discussion *infra.*

b. Aggregation Rules

Using Schedule RED simplifies the aggregation of data thrifts supply. At present, the conversion of accounting data to CMR fields often involves awkward aggregation rules. For example, balances of fixed-rate fixed-maturity deposits (FRFMD) are reported in buckets that depend on both original and remaining maturity. At the same time, balances on *brokered* FRFMD (a subset of the total) are bucketed only by original maturity. This reduces the number of cells on the form by requiring differential aggregation procedures be applied to total vs. brokered balances.

Moreover, many aggregations must be ''unwound'' within the NPV model by applying assumptions about how the aggregation should, or might, have occurred. Such derived disaggregations inevitably result in less accurate estimates. The crucial difference between proposed Schedule RED's system of aggregation and that applied on the CMR is that the RED Schedule's aggregation rules (described below) are set in the written instructions, rather than being built into the structure of the form itself. The upshot is that adjustments to the aggregation rules—to increase or decrease the level of detail collected—will be significantly simpler, as they would not affect the structure of the form or the definitions of the fields.

Schedule RED allows a wide range of possibilities for aggregating position information. For example, at one extreme, if institutions so chose, RED could allow contract-by-contract reporting of all loans in the portfolio and account-by-account reporting of deposits. At the other extreme, Schedule RED could accept highly aggregated positions, representing large segments of the portfolio as single position entries.[4]

Schedule RED will however constrain the degree of aggregation. In other words, Schedule RED imposes a maximal degree of position aggregation (or, equivalently, a minimum degree of granularity). Under this proposal, reporting institutions could potentially break positions down into more detail than required by the aggregation constraint (possibly down to the contract-by-contract level), but never less. Here are the proposed maximum aggregation limits for fixed-rate mortgages:

Maximum Aggregation Constraints

Aggregation Rule: Mortgages and MBS that match simultaneously on *all* of the following criteria can be aggregated together and reported as a single position:

1. Mortgage and MBS:
   - 30-year mortgage loans
   - 30-year MBS backed by conventional mortgages
   - 30-year MBS backed by FHA or VA mortgages
   - 15-year mortgage loans
   - 15-year MBS
   - Balloon mortgage loans
   - Balloon MBS
2. Coupon buckets (in quarter-point increments, as follows):
   - 0.00 to 0.25%
   - 0.26 to 0.50%
   - 0.51 to 0.75%
   - 0.76 to 1.00%
   - 1.01to 1.25%
   - Etc.
3. [IF SUBMITTED] Borrower credit rating type
4. [IF SUBMITTED] 5-digit zip code

Mortgages or MBS that differ in *any* of the above criteria cannot be aggregated together into the same position. NOTE: The aggregation (*i.e.,* bucketing) rules are subject to change.

There are two reasons for such constraints. First, to support current legacy applications, and to track industry trends over time, it must be possible for OTS to convert data submitted in the new RED Schedule back into the legacy CMR format. As a result, Schedule RED must always be at least as detailed as Schedule CMR. Second, OTS would like to see the benefit of the increased reporting detail that Schedule RED allows.

OTS is contemplating allowing any filing firm to submit non-aggregated data (that is, account-by-account position data). OTS anticipates that many filers may find this latter option very attractive, as it alleviates the burden of maintaining programming logic and operator intervention necessary to calculate the aggregations. It may also result in cost reductions when providing the requested information.

4. New Attributes for Loans

Schedule RED includes several new fields measuring basic loan attributes, such as loan-to-value (LTV), borrower credit rating, and collateral. The three largest potential benefits from this innovation are the improvement in OTS's ability to calibrate the NPV model,[5] assess interest rate risk in relation to portfolio risk attributes, and the possibility that the NPV model could someday provide OTS institutions with an analytical toolkit that approximates the Basel II internal-models approach. This could, after further comment and review, and consistent with systems developed by the other federal banking agencies, open the door for OTS-regulated institutions to qualify for more risk-sensitive capital treatment for their mortgage and retail assets in a manner analogous to the evolving standards of Basel II. There is clearly much to be done before such analytics could be deployed, but the underlying credit-quality data would be needed during the development and testing phases, well before any deployment.

One area where the availability of these new dimensions could improve the quality of the interest-rate risk measurement involves credit spreads on loans. Currently, we are forced to assume a fixed, one-size-fits-all credit spread for all institutions, implicitly assuming that none of the observed differences in interest rates across institutions is due to risk. With credit-quality information, we can realistically assign credit-risk-adjusted discount rates to cash flows in the model, improving the quality of the final NPV measurement.

OTS recognizes that some reporting institutions may be reluctant or unable to provide new loan attributes, as these have not been reported heretofore on the TFR. As a result, OTS proposes that reporting of these attributes under Schedule RED be optional.

B. Side-by-Side Comparison of Schedules RED and CMR

To assist the industry in assessing the impact of the proposed RED schedule, this section uses FRMs to exemplify the differences between current CMR procedures and the proposed Schedule RED. The relevant sections of Schedule CMR (pages 30 and 34 of the TFR) and of Schedule RED (FRM and loan memoranda tables) are attached here for reference (See *http://www.ots.treas.gov/docs/78155.pdf* for the full CMR form). In addition, included is a table that provides a full side-by-side comparison of the two schedules.

Schedule RED

[4] Again, this is in contrast to Schedule CMR, for which the degree of aggregation of position information is built into the structure of the form itself. This inflexibility is one of the motivations for moving to Schedule RED.

[5] For example, cash-out refinancing tends to create higher prepayment speeds for low-LTV mortgages.

FIXED-RATE MORTGAGES

Type	Balance	Coupon	Original maturity	Remaining maturity	Amortization period	LTV	Credit rating	Credit rating type	Zip code

LOAN MEMORANDA

Type	Warehouse	Non performing	Accrued interest receivable	Advances for taxes and insurance	Unamortized yield adjustment	Valuation allowance	Unrealized gains (losses)

For informational purposes only:
not for data entry

Association _____
Docket Number _____
Report Date _____ , 2003

Office of Thrift Supervision
2003 Thrift Financial Report
Schedule CMR — Consolidated Maturity/Rate

INSTRUCTIONS

1. Report Dollar Balances in Thousands ($000)
2. Report Percentages to Two (2) Decimal Places (e.g., x.xx%)
3. Report Maturities in Whole Months
4. See Instructions for Details on Specific Items

ASSETS

FIXED-RATE, SINGLE-FAMILY, FIRST MORTGAGE LOANS & MORTGAGE-BACKED SECURITIES	Coupon									
	Less Than 5%		5.00 to 5.99%		6.00 to 6.99%		7.00 to 7.99%		8.00% & Above	
30-Year Mortgages and MBS:										
Mortgage Loans	CMR001	$	CMR002	$	CMR003	$	CMR004	$	CMR005	$
WARM	CMR006	months	CMR007	months	CMR008	months	CMR009	months	CMR010	months
WAC	CMR011	. %	CMR012	. %	CMR013	. %	CMR014	. %	CMR015	. %
$ of Which Are FHA or VA Guaranteed	CMR016	$	CMR017	$	CMR018	$	CMR019	$	CMR020	$
Securities Backed By Conventional Mortgages	CMR026	$	CMR027	$	CMR028	$	CMR029	$	CMR030	$
WARM	CMR031	months	CMR032	months	CMR033	months	CMR034	months	CMR035	months
Wtd Avg Pass-Thru Rate	CMR036	. %	CMR037	. %	CMR038	. %	CMR039	. %	CMR040	. %
Securities Backed by FHA or VA Mortgages	CMR046	$	CMR047	$	CMR048	$	CMR049	$	CMR050	$
WARM	CMR051	months	CMR052	months	CMR053	months	CMR054	months	CMR055	months
Wtd Avg Pass-Thru Rate	CMR056	. %	CMR057	. %	CMR058	. %	CMR059	. %	CMR060	. %
15- Year Mortgages and MBS:										
Mortgage Loans	CMR066	$	CMR067	$	CMR068	$	CMR069	$	CMR070	$
WAC	CMR071	. %	CMR072	. %	CMR073	. %	CMR074	. %	CMR075	. %
Mortgage Securities	CMR076	$	CMR077	$	CMR078	$	CMR079	$	CMR080	$
Wtd Avg Pass-Thru Rate	CMR081	. %	CMR082	. %	CMR083	. %	CMR084	. %	CMR085	. %
WARM (of Loans & Securities)	CMR086	months	CMR087	months	CMR088	months	CMR089	months	CMR090	months
Balloon Mortgages and MBS:										
Mortgage Loans	CMR096	$	CMR097	$	CMR098	$	CMR099	$	CMR100	$
WAC	CMR101	. %	CMR102	. %	CMR103	. %	CMR104	. %	CMR105	. %
Mortgage Securities	CMR106	$	CMR107	$	CMR108	$	CMR109	$	CMR110	$
Wtd Avg Pass-Thru Rate	CMR111	. %	CMR112	. %	CMR113	. %	CMR114	. %	CMR115	. %
WARM (of Loans & Securities)	CMR116	months	CMR117	months	CMR118	months	CMR119	months	CMR120	months
Total Fixed-Rate, Single-Family, First Mortgage Loans and Mortgage-Backed Securities									CMR125	$

OTS Form 1313 Rev. November 2002

For informational purposes only:
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Association _____
Docket Number _____
Report Date _____ , 2003

Office of Thrift Supervision
2003 Thrift Financial Report
Schedule CMR — Consolidated Maturity/Rate

INSTRUCTIONS

1. Report Dollar Balances in Thousands ($000)
2. Report Percentages to Two (2) Decimal Places (e.g., x.xx%)
3. Report Maturities in Whole Months
4. See Instructions for Details on Specific Items

ASSETS - Continued

ITEMS RELATED TO MORTGAGE LOANS & SECURITIES

Nonperforming Loans	CMR501	$
Accrued Interest Receivable	CMR502	$
Advances for Taxes and Insurance	CMR503	$
Less: Unamortized Yield Adjustments	CMR504	$
Valuation Allowances	CMR507	$
Unrealized Gains (Losses)	CMR508	$

ITEMS RELATED TO NONMORTGAGE LOANS & SECURITIES

Nonperforming Loans	CMR511	$
Accrued Interest Receivable	CMR512	$
Less: Unamortized Yield Adjustments	CMR513	$
Valuation Allowances	CMR516	$
Unrealized Gains (Losses)	CMR517	$

REAL ESTATE HELD FOR INVESTMENT	CMR520	$
REPOSSESSED ASSETS	CMR525	$
EQUITY INVESTMENTS NOT SUBJECT TO SFAS NO. 115 (EXCLUDING FHLB STOCK)	CMR530	$
OFFICE PREMISES AND EQUIPMENT	CMR535	$

ITEMS RELATED TO CERTAIN INVESTMENT SECURITIES

Unrealized Gains (Losses)	CMR538	$
Less: Unamortized Yield Adjustments	CMR539	$
Valuation Allowances	CMR540	$

OTHER ASSETS

Servicing Assets, Interest-Only Strip Receivables, and Certain Other Instruments	CMR541	$
Miscellaneous I	CMR543	$
Miscellaneous II	CMR544	$
TOTAL ASSETS	CMR550	$

ASSETS-Continued

MEMORANDA ITEMS

Mortgage "Warehouse" Loans Reported as Mortgage Loans at SC23	CMR578	$
Loans Secured by Real Estate Reported as Consumer Loans at SC34	CMR580	$
Market Value of Equity Securities & Mutual Funds Rpt'd at CMR464:		
Equity Securities & Non-Mortgage-Related Mutual Funds	CMR582	$
Mortgage-Related Mutual Funds	CMR584	$
Mortgage Loans Serviced by Others:		
Fixed-Rate Mortgage Loans Serviced	CMR586	$
Wtd Avg Servicing Fee	CMR587	bp
Adjustable-Rate Mortgage Loans Serviced	CMR588	$
Wtd Avg Servicing Fee	CMR589	bp
Credit Card Balances Expected to Pay Off in Grace Period	CMR590	$

CMR/RED COMPARISON TABLE

	CMR	RED
Information structure		
Data inputs	535 cells + 26 fields	262 fields.
Distinct instructions	220 paragraphs	116 paragraphs.
Granularity increases possible	No	Yes.
Credit-risk measurement		
LTV	No	Yes (optional).
Borrower credit rating	No	Yes (optional).
Commercial loan ratings	No	Yes (optional).
Commercial borrower ratings	No	Yes (optional).
Commercial loan SNC status	No	Yes (optional).
Consumer loan collateral	No	Yes (optional).
Non-performing loans	Limited	Limited.
Valuation allowances	Limited	Limited.
Miscellaneous		
Geographic exposure data	No	Yes (optional).
Bucketing		
Fixed-rate mortgages:		
Mortgage vs. MBS	No	Yes.
Coupon range	Five 100 bp ranges	25 bp ranges as needed.
Borrower credit rating	No	Yes.
Location	No	Yes.
Adjustable-rate mortgages:		
Mortgage vs. MBS	No	Yes.
Reset frequency	2 or 3 buckets	monthly.
Rate index	No	Yes.
Teaser vs. non-teaser	Yes	Yes.
Current vs. lagging index	Partial	Yes.
Distance to lifetime cap	4 buckets	100 bp ranges as needed.
Periodic caps	Partial	Yes.
Periodic floors	Partial	Yes.
Borrower credit rating	No	Yes.
Location	No	Yes.
Fixed-rate other real estate loans:		
Balloon multifamily/amortizing multifamily/2nd mortgage/land	Yes	Yes.
Coupon range	Five 100 bp ranges	25 bp ranges as needed.
Borrower credit rating	No	Yes.
Location	No	Yes.
Adjustable-rate other real estate loans:		
Balloon multifamily/amortizing multifamily/2nd mortgage/land	Yes	Yes.
Rate index	Limited	Yes.
Distance to lifetime cap	No	100 bp ranges as needed.
Borrower credit rating	No	Yes.
Location	No	Yes.
Commercial loans:		
Adjustable vs. fixed-rate	Yes	Yes.
Rate index (adjustable rate)	No	Yes.
Consumer loans:		
Adjustable vs. fixed-rate	Yes	Yes.
Rate index (adjustable rate)	No	Yes.
Borrower credit rating	No	Yes.
Location	No	Yes.
Fixed-rate mortgage servicing rights:		
Servicing by vs. for others	Limited	Yes.
Coupon range	Five 100 bp ranges	25 bp ranges as needed.
Adjustable-rate mortgage servicing rights:		
Servicing by vs. for others	Limited	Yes.
Rate index	No	Yes.
Current vs. lagging index	Yes	Yes.
Money market assets:		
Instrument type	Partial	Yes.
Fixed-rate fixed-maturity deposits:		
Deposit type	No	Yes.
Coupon range	No	25 bp ranges as needed.
Original maturity	3 ranges	12-mo. ranges as needed.
Remaining maturity	4 ranges	3-mo. (short-term) or 12-mo. ranges as needed.

CMR/RED COMPARISON TABLE—Continued

	CMR	RED
Variable-rate fixed-maturity deposits:		
Deposit type	No	Yes.
Rate index	No	Yes.
Remaining maturity	3 ranges	3-mo. (short-term) or 12-mo. ranges as needed.
Non-maturity deposits:		
Deposit type	Yes	Yes.
Other liabilities:		
Liability type	Yes	Yes.
Commitments to buy, sell or originate:		
Firm vs. optional	Yes	Yes.
Buy/sell/originate	Yes	Yes.
Underlying type	Yes	Yes.
Mortgage subtype	Yes	Yes.
MDP subtype	Yes	Yes.
Long vs. short	Yes	Yes.
Construction loans in process (LIP):		
Coupon range	No	25 bp ranges as needed.
Interest-rate derivatives (swaps, swaptions, caps, collars, floors, futures and options):		
Position-level	Yes	Yes.
Self-valued instruments:		
Instrument type	Limited	Yes.

C. Request for Comments

OTS invites comment on all aspects of the proposed Schedule RED and, in particular, whether the proposal will in fact reduce reporting burden, aid in more flexible data collection, and provide an opportunity for more accurate analysis of institution-specific and industry-wide interest rate risk. Consideration should be given to the amount of data collected and the ease of obtaining the data. Moreover, comments are requested on the amount of transition costs to convert from Schedule CMR to Schedule RED and the extent to which cost savings would be realized over time as a result of change.

Further, OTS requests comments on:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

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 information technology.

Type of Review: Revision.

Affected Public: Business or for profit.

Estimated Number of Respondents: 915.

Estimated Frequency of Response: Four times per year.

Estimated Burden Hours per Response: 12 hours.

Estimated Total Burden: 43,920 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: March 14, 2003.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 03–6652 Filed 3–19–03; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act; Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, March 20, 2003, 9 a.m.–5 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525.

AGENDA: March 2003 Board Meeting; Approval of Minutes of the One Hundred Eighth (January 30, 2003) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Consideration of fellowship applications and consideration of list of recommended Grants; Strategic Planning; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: March 13, 2003.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 03–6780 Filed 3–17–03; 5:15 pm]

BILLING CODE 6820–AR–M

Federal Register

Thursday,
March 20, 2003

Part II

Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

27 CFR Part 555

Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296; Interim Final Rule

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

27 CFR Part 555

[ATF No. 1; Docket No. 2002R–341P]

RIN 1140–AA00

Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is amending the regulations to implement the provisions of the Safe Explosives Act, Title XI, Subtitle C of Pub. L. 107–296, the Homeland Security Act of 2002 (enacted November 25, 2002). This interim rule implements the law which: requires that all persons receiving explosives on and after May 24, 2003, obtain a Federal license or permit, and creates a new type of permit, the ''limited permit;'' requires applicants for licenses and permits to provide as part of their application the names and appropriate identifying information regarding employees authorized to possess explosive materials as well as fingerprints and photographs of ''responsible persons;'' extends the time for ATF to act on an application for a license or permit from 45 days to 90 days; authorizes warrantless inspections of places of storage maintained by applicants for limited permits and holders of limited permits; provides that only licensees and holders of user permits must post their licenses and permits and make them available for inspection; requires that ATF conduct background checks on responsible persons and employees authorized to possess explosive materials; specifies additional categories of persons who may not lawfully receive or possess explosive materials, *i.e.*, aliens (other than permanent resident aliens and other excepted aliens), persons dishonorably discharged from the military, and persons who have renounced their U.S. citizenship; broadens the interstate commerce element of the prohibited persons section of the law to specify that a violation is committed if possession of explosive materials affects interstate or foreign commerce; provides ATF the authority to require licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product; broadens the scope of a criminal violation of the law to include any institution or organization receiving Federal financial assistance within the categories of property covered by the violation; expands ATF's authority to grant relief from disabilities to all categories of prohibited persons; and adds a new theft-reporting violation, providing felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery. This interim rule also incorporates the provisions of ATF Ruling 76–10, which will become obsolete as of May 24, 2003.

The interim rule will remain in effect until superseded by final regulations.

DATES: *Effective date:* This interim rule is effective March 20, 2003.

Comment date: Comments must be submitted on or before June 18, 2003.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5150; Bureau of Alcohol, Tobacco, Firearms and Explosives; PO Box 50221; Washington, DC 20091–0221; *Attn: ATF No. 1.* Written comments must be signed, and may be of any length.

E-mail comments may be submitted to: *nprm@atf.gov.* E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this document number, as noted above, and be legible when printed on 8½'' × 11'' paper. ATF will tr0eat e-mail as originals and ATF will not acknowledge receipt of e-mail. See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Firearms, Explosives and Arson; Bureau of Alcohol, Tobacco, Firearms and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8203.

SUPPLEMENTARY INFORMATION:

Background

Public Law 107–296 (116 Stat. 2135), the Homeland Security Act of 2002, was enacted on November 25, 2002. In general, the provisions of the Homeland Security Act became effective 60 days after the date of enactment, January 24, 2003. Under Title XI, Subtitle B of the Homeland Security Act, the law enforcement responsibilities of the Bureau of Alcohol, Tobacco and Firearms, including its authority over explosives, were transferred to the new Bureau of Alcohol, Tobacco, Firearms and Explosives of the Department of Justice.

Section 1512(a) of the Homeland Security Act provides in pertinent part that the completed administrative actions of an agency shall not be affected by either the enactment of the Act or the transfer of the agency to the Department of Homeland Security. In the regulations in Title 28, CFR, the Attorney General has delegated to the new Bureau of Alcohol, Tobacco, Firearms and Explosives (which will also be known as ''ATF'') the statutory authorities that were transferred to the Attorney General by the Homeland Security Act, including authority over Chapter 40 of Title 18, United States Code. That regulation also provided that the regulations previously issued by ATF in 27 CFR part 55, will continue in effect as if adopted by the Attorney General until recodified, superseded, repealed or amended.

In a separate document published in the **Federal Register** on January 24, 2003 (68 FR 3744), the regulations in 27 CFR part 55 were transferred from Chapter 1 to Chapter 2 of Title 27, and were redesignated as part 555.

Title XI, Subtitle C of Public Law 107–296, the Safe Explosives Act (hereafter, ''the Act''), amended the Federal explosives laws in 18 U.S.C. Chapter 40. As stated in House Report No. 107–658, 107th Congress, 2d Session, September 17, 2002, accompanying H.R. 4864, the ''Anti-terrorism Explosives Act of 2002'' (the House version of the Act), the primary purpose of the Act is to provide tighter security for explosive materials and increased security measures for purchasers and possessors of explosives by requiring all persons who wish to obtain explosives, even for limited use, to obtain a Federal license or permit. The House Report notes that since September 11, 2001, the United States has been on high alert due to concern about possible terrorist threats and, accordingly, has increased security throughout our society. The report notes that additional precautions will help to prevent threats posed by explosive materials, and the legislation seeks to address such precautions. The report mentions incidents of concern such as the 1993 World Trade Center bombing, the 1995 Oklahoma City bombing, the 2002 attempt to detonate a bomb in a suspect's shoe on an aircraft, and the Federal Bureau of Investigation's (FBI's) uncovering of a terrorist plot to detonate

a ''dirty bomb.'' The report notes that the Attorney General has stated that suicide bombings and car bombings could be the next line of attack by terrorists in the United States.

As noted by Senator Kohl during consideration of the Act in the Senate:

> Most Americans would be stunned to learn that in some States it is easier to get enough explosives to take down a house than it is to buy a gun, get a driver's license, or even obtain a fishing license. Currently, it is too easy for would be terrorists and criminals to obtain explosive materials. Although permits are required for interstate purchases of explosives, there are no current uniform national limitations on the purchase of explosives within a single State by a resident of that State.* * * We must take all possible steps to keep deadly explosives out of the hands of dangerous individuals seeking to threaten our livelihood and security. The Safe Explosives Act is critical legislation, supported by the administration. It is designed solely to [sic] the interest of public safety. It will significantly enhance our efforts to limit the proliferation of explosives to would be terrorists and criminals. It will close a loophole that could potentially cause mass destruction of property and life.

148 Cong. Rec. S 11374, 11391–11394, Vol. 148, No. 150 (November 19, 2002)

Effective Dates for the Provisions of the Safe Explosives Act

A. Provisions Effective January 24, 2003

The following provisions of the Act became effective January 24, 2003:

- Adding three new categories of persons who may not lawfully receive or possess explosive materials;
- Broadening the interstate commerce element of the prohibited persons section of the law to specify that a violation is committed if possession of explosive materials affects interstate or foreign commerce;
- Providing ATF the authority to require licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product;
- Broadening the scope of a criminal violation of the law to include any institution or organization receiving Federal financial assistance within the categories of property covered by the violation;
- Expanding ATF's authority to grant relief from disabilities to all categories of prohibited persons; and
- Adding a new theft-reporting violation, providing felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery.

B. Provisions Effective May 24, 2003

The following provisions of the Act become effective May 24, 2003:

- The requirement that all persons receiving explosives obtain a Federal license or permit, and the creation of a new type of permit, the ''limited permit;''
- The requirement that applicants for licenses and permits provide as part of their application the names and appropriate identifying information regarding employees authorized to possess explosive materials as well as fingerprints and photographs of ''responsible persons;''
- The extension of the time for ATF to act on an application for a license or permit from 45 days to 90 days;
- The authorization for warrantless inspections of places of storage for applicants for limited permits and holders of limited permits;
- The provision that only licensees and holders of user permits must post their licenses and permits and make them available for inspection; and
- The requirement that ATF conduct background checks on responsible persons and employees authorized to possess explosive materials.

Changes to Explosives Laws and Regulations

The new statutory provisions and the regulatory changes necessitated by the law are as follows:

I. Limited Permit

The Act amended the Federal explosives laws in 18 U.S.C. Chapter 40 to require that all persons receiving explosives on and after the effective date (May 24, 2003) obtain a Federal permit. Existing law provides for a ''user permit'' that is necessary only if the holder transports, ships, or receives explosive materials in interstate or foreign commerce. The Act creates an additional type of permit, the ''limited permit,'' that will authorize the holder to receive explosive materials only within his State of residence on no more than 6 separate occasions during the one-year period of the permit. The interim regulations specify that the term ''6 separate occasions'' means six deliveries of explosive materials. Each delivery must relate to a single purchase transaction and be documented on only one ATF Form 5400.4, Limited Permittee Transaction Report; be referenced on a single commercial invoice or purchase order; and be delivered in one shipment to the purchaser.

ATF Ruling 76–10 (1976–ATF C.B. 105) holds that a single Form 5400.4 may be used for a series of deliveries of explosive materials made over a 30-day period. Since that ruling is inconsistent with the definition of ''6 separate occasions'' set forth in this rule, it will become obsolete as of May 24, 2003.

Section 845, title 18 U.S.C., and implementing regulations at section 555.141, provide that the law and regulations, except for certain specified criminal violations, do not apply to activities and products specified therein. Among the exemptions listed are black powder (50 pounds for sporting and other limited purposes); small arms ammunition and components; Government agencies; and consumer fireworks. These exemptions are not changed by the Act or this interim rule.

The Act also provides that the maximum fee to be charged for the limited permit is $50 for a one-year period, and the renewal fee may not exceed one-half the original fee.

Regulations that implement these provisions of the Act are in §§ 555.26, 555.27, 555.43, 555.45, 555.102, 555.103, 555.105, 555.106, 555.125, and 555.126.

A. Section 555.26 (Prohibited Shipment, Transportation, Receipt, Possession, or Distribution of Explosive Materials)

Section 555.26 has been amended to describe activities that are not authorized by a limited permit. Specifically, the section prescribes, in accordance with the provisions of the Act, that holders of limited permits may not transport, ship, cause to be transported or receive explosive materials in interstate or foreign commerce. Holders of limited permits may receive explosives only from distributors located in the permit-holder's State of residence and such receipt of explosive materials may occur no more than six times during the one-year duration of the limited permit. Persons seeking to acquire explosive materials more frequently or seeking to acquire or transport explosive materials in interstate commerce must obtain a Federal explosives license or user permit.

This section has also been amended to reflect the newly expanded categories of persons prohibited from shipping, transporting, receiving, and possessing explosive materials. Newly added ''prohibited categories'' include illegal and nonimmigrant aliens, persons who have been discharged from the armed forces under dishonorable conditions, and persons who have renounced their United States citizenship. Section 555.106 has been amended to reflect these new categories as well, in the

context of persons to whom distribution of explosive materials is prohibited.

B. Section 555.27 (Out-of-State Disposition of Explosive Materials)

Effective May 24, 2003, the provisions of section 555.27 will no longer apply because this section contemplates that distributions of explosives can be made to persons not holding a Federal explosives license or permit. The Federal explosives law, as amended by the Act, now provides that all persons acquiring explosives must have, at minimum, a limited permit.

C. Section 555.43 (Permit Fees)

Section 555.43 has been amended to describe the fee structure for the issuance of limited permits, including renewals of limited permits. The Act provides that the fee for a limited permit may not exceed $50. The fee for renewal of a limited permit is capped by statute at one-half the amount of the original fee. This section sets the fee for a limited permit significantly lower than the statutory maximum, providing that the fee for an original limited permit will be $25 and providing also that the fee for each subsequent renewal of a limited permit will be $12. ATF believes this fee is affordable for most infrequent users but serves to offset some of the costs associated with processing an application. The fee for the limited permit is not intended as a ''user fee,'' because it does not compensate ATF for the full cost of processing the application, conducting an inspection of storage facilities, and conducting background checks for the applicant, responsible persons, and employees.

D. Section 555.45 (Original License or Permit)

Section 555.45 explains that license and permit applications postmarked on or after the effective date of this interim rule, must be submitted along with ATF Form 5400.28 (Responsible Person Questionnaire) or, where applicable, multiple Forms 5400.28. On this form, applicants and others who will direct the policies of the applicant with respect to explosive materials will be required to answer whether they fall within any of the categories of persons prohibited from possessing explosive materials. Form 5400.28 includes questions concerning the newly added categories of prohibited persons. It is important that ATF obtain this information for all licenses and permits issued after the effective date to ensure that no persons with authority to direct the explosives operations of a licensee or permittee are prohibited by law from possessing explosive materials.

For licenses and permits to be issued on and after May 24, 2003, ATF Forms 5400.13 and 5400.16 will mandate that all responsible persons be identified. The statutory requirement to include fingerprints and photographs of each responsible person will also become effective.

On and after May 24, 2003, ATF Form 5400.28 will be re-titled as the Employee Possessor Questionnaire. Each person who will be possessing explosive materials in the course of his employment will be required to complete this form. Each person completing the form will be required to provide appropriate identifying information, including name of employer and residential address and will be required to declare whether he falls within any of the categories of persons prohibited from possessing explosive materials. This information will be used to conduct a background check to ensure that employees are not within the categories of persons Congress has determined should not possess explosive materials. Responsible persons will not complete a Form 5400.28 because their identifying information will be submitted on the license or permit application form.

An applicant for a license or permit that will be issued on and after May 24, 2003, must submit an application that includes the appropriate identifying information for responsible persons as well as their fingerprints and photographs. Fingerprints must be submitted on FBI Form FD–258 in accordance with the instructions on the form and must be submitted by the applicant with the application. Also, where applicable, Form 5400.28, Employee Possessor Questionnaire must be submitted with the application for each employee who will be possessing explosive materials in the course of his employment.

E. Section 555.102 (Authorized Operations by Permittees)

Section 555.102 has been amended to reflect that, effective May 24, 2003, persons not holding a Federal explosives license or permit will be prohibited from acquiring explosive materials. Accordingly, this section has been changed to provide that permittees disposing of surplus stocks of explosive materials may dispose of those stocks only to licensees or other permittees.

F. Section 555.103 (Transactions Among Licensees/Permittees and Transactions Among Licensees and Holders of User Permits)

Section 555.103 has been amended to clarify the procedures to be followed where distributions of explosives are made by licensees to other licensees and holders of user permits. These procedures have been clarified to conform to the newly applicable procedures set forth in section 555.105 for transactions in which limited permittees are acquiring explosive materials. In this regard, section 555.103, like section 555.105, has been amended to comport with Congress' intention, as expressed in the House Report No. 107–658, 107th Congress, 2d Session, September 17, 2002, to ''provid[e] tighter security for explosive materials and increased security measures for purchasers and possessors of explosives.''

In general, the procedures outlined in this section are similar to practices currently authorized (and/or required) under part 555. Included among these are a requirement that the distributor verify the licensed status of the licensee or permittee who wishes to purchase explosive materials and a requirement that, prior to or at the time of distribution, the distributee provide the distributor with a list of persons authorized to accept delivery of explosive materials and with a statement identifying the intended use for the explosive materials. Distributors will be required to verify that any person seeking to accept delivery of explosive materials on behalf of a distributee is, in fact, on the list of persons authorized to accept delivery and to verify the identity of such person by examining an identification document. The term ''identification document'' is defined in section 555.11.

Current regulations require that purchasers provide the distributor with a certified list of persons authorized to order explosive materials. Because most orders are placed via phone or fax, rather than over-the-counter, ATF believes this requirement is not particularly helpful in ensuring distribution of explosives to authorized persons. Accordingly, sections 555.103 and 555.105 have been revised to eliminate this requirement and to replace it with the requirement to provide a certified list of persons authorized to accept delivery of explosives. ATF believes this system is consistent with Congress' intention that there should be stringent security in the system established for transfers of explosive materials. The system set forth in sections 555.103 and 555.105 is designed to ensure that licensees and permittees deliver explosives only to persons affiliated with a purchaser holding a license or permit and to require verification of those persons' identities prior to relinquishing

possession of the explosive materials. Once all licenses and permits have been renewed under the licensing criteria of the Act, any person accepting delivery of explosives would have had a background check conducted in accordance with section 555.33, as an employee authorized to possess explosive materials. Thus, the regulatory system established in sections 555.103 and 555.105 will reduce the likelihood of the delivery of explosive materials to prohibited persons who are employed by members of the explosives industry. ATF believes these controls are essential in ensuring that persons who are likely to use explosives for criminal or terrorist purposes are denied access through legitimate industry channels.

G. Sections 555.105, 555.106, and 555.126 (Distribution of Explosive Materials and Records)

Sections 555.105, 555.106, and 555.126 have been amended to conform to the Act's mandate that all persons who wish to acquire explosives, whether in interstate or intrastate commerce, must obtain a Federal explosives license or permit. As noted above, the Act created a new type of permit, the ''limited permit'' that can be used by persons who wish to obtain explosives only within their states of residence on no more than six occasions per year. Previously, ''intrastate'' purchasers of explosives could acquire explosives without a Federal license or permit. Intrastate purchasers prior to receiving explosive materials completed ATF Form 5400.4, Explosives Transaction Record. The form required the purchaser to certify that he was not a felon, fugitive, or other prohibited person. This system of transactions relied on the ''honor system'' since background checks were not conducted on purchasers. Effective May 24, 2003, ATF Form 5400.4 will be revised and re-titled as the Limited Permittee Transaction Report. This form will be completed by limited permittees when purchasing explosive materials from licensees or permittees.

The amended provisions of sections 555.105 and 555.126 outline procedures for explosives transactions involving holders of limited permits. These procedures have been amended to comport with Congress' intention, as expressed in the House Report No. 107–658, 107th Congress, 2d Session, September 17, 2002, to ''provid[e] tighter security for explosive materials and increased security measures for purchasers and possessors of explosives.''

The amended provisions require that, prior to (or at the time of) taking distribution of explosive materials, a limited permittee must have submitted to the distributor a list of persons authorized to accept delivery of explosive materials on the limited permittee's behalf. Additionally, prior to a delivery of explosive materials, the limited permittee must complete the appropriate section on Form 5400.4 and affix to the form one of his six original Intrastate Purchase of Explosives Coupons (IPECs), ATF Form 5400.30. Form 5400.4 (with the appropriate section completed and with IPEC affixed) must be provided by the limited permittee to the distributor prior to (or at the time of) distribution, and the distributor must, after verifying the identification of the purchaser and executing the appropriate section on the form, remit one copy of the form to ATF and retain the other copy in his permanent records as required by section 555.121.

The information concerning acquisition of explosive materials by a particular limited permittee will be used to ensure that the permittee does not exceed the 6 transactions authorized by his permit and that the permittee has storage magazines suitable for the type and quantity of explosive materials acquired. If a Form 5400.4 indicates, for example, that a particular limited permittee acquired 1,000 pounds of explosive materials, but the application inspection indicated that the limited permittee maintained only a single indoor storage magazine (capable of lawfully storing only 50 pounds of explosives), the report would be referred to an ATF field office for investigation. This is another important safeguard to prevent theft, loss, or diversion of explosives into criminal channels due to unsafe or insecure storage.

Form 5400.4 requires that the limited permittee provide information regarding the use to which he intends to put the explosive materials. Identifying information concerning the limited permittee and, if applicable, the person who will be accepting delivery of the explosive materials is also required. The form prescribes that the distributor examine an identification document provided by the person accepting delivery of explosive materials and that he note the type and number of the identification document. The distributor must also report the quantity, manufacturer, and description of the explosive materials to be distributed. The form also provides an option for the distributor to document information concerning marks of identification and size of the explosives to be distributed. This information is helpful in tracing explosives at the request of law enforcement officials who have recovered stolen explosives or explosives that have been used in an actual or attempted criminal or terrorist bombing. ATF is soliciting comment as to whether this optional information should be mandatory.

Included among the provisions of sections 555.103 and 555.106 is a requirement that the distributor verify the status of the licensee or permittee who wishes to purchase explosive materials and a requirement that, prior to or at the time of distribution, the distributee provide the distributor with a list of persons authorized to accept delivery of explosive materials and a statement identifying the intended use for the explosive materials. Distributors will be required to verify that any person seeking to accept delivery of explosive materials on behalf of a distributee is, in fact, on the list of persons authorized to accept delivery and to verify the identity of such person by examining an identification document.

Sections 555.103 and 555.105 also revise procedures for use of ATF Form 5400.8 (Explosives Delivery Record). In all cases, the distributor will be required to verify the identity of the person taking possession of explosive materials by examining an identification document and noting the type and number of the document on Form 5400.8. This procedure will remain in effect until May 24, 2003. On and after this date, the procedure for executing Form 5400.8 will require that all common or contract carriers taking possession of explosive materials for delivery to a licensee or permittee must complete this form prior to taking possession of explosive materials whether they are hired by the distributor or by the distributee. Employees of purchasers will no longer complete ATF Form 5400.8.

ATF believes it is essential that Form 5400.8 be executed in all instances when licensees and permittees transfer possession of explosive materials to a truck driver who is not an employee of the distributor. Truck drivers employed by the distributor would be employees authorized to possess explosives and would have had a background check conducted in accordance with section 555.33. Execution of the delivery record by employees of common or contract carriers who transport explosive materials and verification of their identification will help ensure that explosives are not placed in the hands of prohibited persons for possible diversion to criminal or terrorist use.

ATF believes the most efficient manner of conducting transactions with limited permittees would be a system whereby a distributor verifies the limited permittee's status and the number of authorized transactions remaining by conducting an online query of a database maintained by ATF. For distributors who do not have access to a computer, such queries would be conducted via a toll-free number connected to ATF's Firearms and Explosives Licensing Center. Such a system would virtually eliminate fraud since there would be no presentation of permits or Intrastate Purchase of Explosives Coupons. Such a system would also reduce the burden on buyers and sellers of explosives. ATF has established a similar system to be used voluntarily by Federal firearms licensees (FFLs) to verify the validity of a license held by another licensee. This system, the FFL eZ Check system, is accessed via ATF's website or by calling the Firearms and Explosives Licensing Center. The eZ Check system is popular with Federal firearms licensees and is an efficient method of verifying license status. ATF believes a similar system would be useful for verifying permit status of licensees and permittees as required under part 555. ATF seeks comment on the feasibility and utility of establishing such a system and whether such a system should be used in conjunction with the procedures required by sections 555.103 and 555.105.

H. Section 555.125 (Records Maintained by Permittees)

Section 555.125 has been revised to set forth recordkeeping requirements for limited permittees. Because ATF has no statutory right to inspect such records, absent consent or a warrant, the requirements imposed are only those necessary to ensure the permittee's ability to detect a theft or loss of explosives and to respond to requests from ATF to trace explosives. Specifically, limited permittees will be required to take a physical inventory of explosives on an annual basis. Limited permittees will also be required to keep permanent acquisition and disposition records of explosive materials that include date of acquisition; name of manufacturer; manufacturer's marks of identification; quantity; description; and name, address and license number of the person from whom received. Significantly, this section provides that a commercial record may be used as the permanent record, if it includes all the foregoing information. It should be noted that no recordkeeping entries are required for explosive materials that are used by a limited permittee in its business or operations. However, limited permittees disposing of surplus stocks to other licensees or permittees would be required to make a permanent record of such dispositions. Because permittees are not authorized to engage in an explosives business, such disposition records would not be a commercial record. Accordingly, such record would take the form of a permanent written record, such as a notebook. Finally, section 555.127, which is not amended by this interim rule, will also apply to limited permittees. This section will require limited permittees to keep a daily summary of magazine transactions for each magazine used to store explosive materials. This summary requires recording, not later than the close of the next business day, the total quantity of explosives received in and removed from each magazine during a 24-hour period and the total explosives remaining on hand at the end of the day. This requirement has applied to all licensees and permittees since 1971. It enables licensees and permittees to readily detect discrepancies between physical inventory and record inventory so that thefts and losses can be promptly reported.

I. Elimination of the ''User-Limited'' Permit

ATF is also soliciting comment on removal of the user-limited permit from part 555. This permit authorizes the holder to ship, transport, and receive explosive materials in interstate or foreign commerce, but is valid for only a single purchase transaction. ATF issues very few of these permits each year, generally to organizations that wish to obtain fireworks for annual Fourth of July displays. Most organizations have, in recent years, arranged for the distributor of the fireworks to arrive at the event and put on the fireworks display. This eliminates the need for the organization to obtain a permit and ensures that persons trained to handle explosive materials maintain custody and control of the explosives throughout the event. Those few organizations that wish to obtain explosives interstate for the Fourth of July or other purposes, may obtain a user permit. ATF believes that retention of the user-limited permit is unnecessary and proposes elimination of this permit from part 555.

II. Licensing Information and Criteria

The Act amended Chapter 40 to require applicants for licenses and permits to provide with the application the names and appropriate identifying information regarding employees authorized to possess explosive materials as well as fingerprints and photographs of ''responsible persons.'' The requirement to submit fingerprints and photographs ensures that a thorough background check can be completed. The term ''responsible person'' is defined in the law as an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. This would generally include sole proprietors, partners, site managers, corporate officers and directors, and majority shareholders.

This provision does not require corporate applicants for licenses or permits to list every corporate officer or director as a ''responsible person'' on its application. Those officials having no power to direct the management and policies of the applicant with respect to explosive materials are not ''responsible persons'' and may not be listed on the application. For example, in a large corporation that uses explosive materials in one of its many business activities, there will likely be many corporate officials having no responsibility or authority in connection with the company's explosives business. These officials should not be listed as ''responsible persons'' on the application, and need not submit fingerprints and photographs to ATF.

The requirement that applicants provide names of, and appropriate identifying information for, all employees authorized to possess explosive materials allows ATF to verify, by conducting a background check, that these individuals are not prohibited from receiving or possessing explosive materials. As noted in the legislative history of the Act, ''[i]t is too easy for would-be terrorists and criminals to obtain access to explosive materials by obtaining jobs with explosives licensees or permittees.'' House Report No. 107–658, 107th Congress, 2d Session, September 17, 2002. Applicants for licenses and permits are not required to list every employee of the business. Rather, they must list only those employees expected to possess explosive materials as part of their duties. As directed by Congress (See House Report 107–658, *id.*), ATF is guided by case law interpreting ''possession'' under the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. Possession under the GCA may be either actual or constructive. Actual possession exists when a person is in immediate possession or control of explosive materials, and includes instances where a person knowingly has direct physical control over the

explosive materials at a given time. Thus, employees who handle explosive materials in the course of their employment would clearly be in possession of those materials. This would include employees who handle explosive materials as part of the production process; employees who handle explosive materials in order to ship, transport, or sell them; and employees, such as blasters, who actually use explosive materials.

Where direct physical control over explosive materials is absent, an employee has constructive possession where he knowingly has the power and intention to exercise dominion and control over the explosive materials, either directly or indirectly through others. For example, an employee at a construction site who keeps keys for magazines in which explosive materials are stored or who directs the use of explosive materials by other employees would be in constructive possession of the explosive materials. Likewise, an employee transporting explosive materials from a licensee to a purchaser has constructive possession of the explosive materials, even though the employee may not have direct contact with the explosives.

The criteria for issuing licenses have been revised to provide that a license will not be issued to an applicant if any of the employees authorized to possess explosive materials is described in any paragraph of section 842(i) of the statute. This section lists ''prohibited persons'' who may not lawfully receive or possess explosive materials including felons, unlawful drug users, and fugitives.

A new provision has been added to require that applicants for limited permits provide a certification with the application stating that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period of the permit. This provision is effective May 24, 2003.

Regulations that implement these provisions of the Act are in §§ 555.11, 555.34, 555.49, 555.54, and 555.57.

III. Time Period for Acting on Applications

Current law gives ATF 45 days to act on an application for a license or permit. The Act extended that period to 90 days. This provision is effective on May 24, 2003. Regulations that implement this provision of the Act are in § 555.49.

IV. Inspection Authority

The Act also amended the licensing criteria to provide that ATF must verify ''by inspection'' that applicants for user permits and licenses have places of storage for explosive materials that meet the standards of safety and security set forth in the regulations. This will require an on-site inspection of all new applicants for user permits and licenses issued on and after May 24, 2003, in order to verify compliance with the storage requirements specified in the regulations. The inspection requirement will also apply to renewals for user permits and licenses after the effective date.

The Act does not require an on-site inspection of storage facilities for applicants for limited permits. Instead, it provides that ATF may verify by inspection or by such other means as the Attorney General determines appropriate that the applicant for the limited permit has suitable storage. The Act allows ATF the option to verify storage by means other than an on-site inspection for the first or second renewal of a limited permit, and requires an on-site inspection for the third renewal if an inspection has not been conducted within the previous 3 years. Other means of verification include written certifications, telephone interviews, site plans, magazine description worksheets, and other appropriate means. The above provisions of the Act are effective on May 24, 2003.

Regulations that implement these provisions of the Act are in §§ 555.24, 555.34, 555.49, 555.54, 555.57, 555.121, 555.125, and 555.126.

V. Posting of Permits

The Act amended section 843(g) of the Federal explosives laws, 18 U.S.C. 843(g), to provide that only licensees and holders of user permits must post their licenses and permits and make them available for inspection. Thus, holders of limited permits are exempted from this requirement. This provision is effective on May 24, 2003.

Regulations that implement this provision of the Act are in § 555.101.

VI. Background Checks and Letters of Clearance

A. Voluntary Checks Not Associated With a License or Permit Application

Effective May 24, 2003, the Act requires ATF to conduct background checks on responsible persons and employees authorized to possess explosive materials upon request by a licensee or permittee. In addition, the law requires ATF to determine whether any of the responsible persons or employees are prohibited persons under 18 U.S.C. 842(i), and to notify the employer of the determination. Also, the Act requires ATF to issue a letter of clearance to the responsible person or employee, if the results of the background check do not indicate that the person is prohibited from possessing explosive materials. If the results of the background check indicate that the person may be prohibited from possessing explosive materials, ATF must notify the employer of the determination and issue a letter to the employee or responsible person advising of the determination, providing information concerning how the disability may be relieved, and explaining how the determination may be appealed.

Regulations that implement these provisions of the Act are in §§ 555.33. Section 555.33 provides that, if ATF receives from a licensee or permittee the names and appropriate identifying information of responsible persons and employees who will be authorized by an employer to possess explosive materials in the course of employment with an employer, ATF will conduct a background check to determine whether the responsible person or employee is one of the persons prohibited from possessing explosive materials. If ATF determines that the responsible person or the employee does not fall within a prohibited category, ATF will notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance that confirms the determination. As noted in House Report 107–658, ATF will not violate the privacy rights of an employee by disclosing to an employer the reason for the determination that an employee is a prohibited person. The employer will be notified only whether the employee is cleared or may be a prohibited person. Only an employee who ATF has determined is prohibited will receive information regarding the basis for the prohibition.

If ATF determines that the responsible person or employee is prohibited from possessing explosive materials, ATF will notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that: confirms the determination; explains the grounds for the determination; provides information on how the disability may be relieved; and explains how the determination may be appealed. The employer must then take immediate steps to remove the responsible person from his position directing the management and policies of the business or operations as they relate to explosive materials or, as the

case may be, to remove the employee from a position requiring the possession of explosive materials. Also, if the employer has listed the employee as a person authorized to accept delivery of explosive materials, the employer must remove the employee from such list and immediately, and in no event later than the second business day after such change, notify distributors of such change.

Section 555.33 also provides for an appeal process for a responsible person or employee to challenge an adverse determination. Such appeals must be submitted to the Director in writing within 45 days of issuance of the determination. In the case of employees and responsible persons who have not submitted fingerprint cards, fingerprints must be submitted in accordance with the instructions in the letter of denial. In the case of both responsible persons and employees, it may be necessary to submit additional information or documents in support of an appeal, such as certified court records. Responsible persons and employees, where appropriate, are encouraged to contact the agency that originated the record containing the information causing the adverse determination. If the records are corrected as a result of contact with an originating agency, ATF will take steps to correct the record with the agency responsible for the record system.

B. Background Checks Conducted in Connection With Applications for License or Permit (Including Renewals)

The background checks conducted under section 555.33 will also be done in conjunction with the issuance of a license or permit under 18 U.S.C. 843.

There is no requirement that persons holding a license or permit prior to May 24, 2003, submit names of responsible persons and employees for background checks. Such licensees and permittees need not provide this information until their license or permit is renewed on or after May 24, 2003. Moreover, ATF has no authority, prior to May 24, 2003, to conduct background checks that are not associated with a license or permit application, including a renewal application.

C. Reporting Changes in Responsible Persons and Employees Authorized To Possess Explosive Materials

All persons who have been issued licenses or permits, including renewals, on and after May 24, 2003, must report any change in responsible persons or employees authorized to possess explosive materials. ATF will then conduct a background check on any new responsible persons or employees in accordance with section 555.33. The report of such changes will ensure that all persons having access to or possession of explosive materials are not prohibited persons likely to misuse explosives for criminal or terrorist purposes. Regulations that implement these provisions of the Act are in §§ 555.33 and 555.57.

VII. Prohibited Persons

A. Definitions

The Act amended 18 U.S.C. 842(d) and 842(i) to provide additional categories of persons who may not lawfully transport, ship, receive or possess explosive materials. Prior to amendment, persons under indictment for or convicted of a felony, fugitives from justice, unlawful users of or persons addicted to controlled substances, and persons adjudicated as a mental defective or committed to a mental institution were prohibited from transporting, shipping, receiving or possessing explosive materials. The Act added aliens (other than permanent resident aliens and certain other excepted aliens), persons dishonorably discharged from the military, and persons who have renounced their U.S. citizenship to the list of prohibited persons. These provisions of the law became effective on January 24, 2003.

Definitions for the categories of prohibited persons are set forth in section 555.11 and are consistent with the definitions for the categories of persons prohibited from receiving or possessing firearms contained in 27 CFR 478.11. (For background information concerning these definitions see T.D. ATF–391, June 27, 1997; 62 FR 34634.) The definitions in this part and part 478 of this chapter are also consistent with judicial decisions interpreting the statutory categories of prohibited persons. The new definitions in section 555.11 include the three new categories added to the law by the Act as well as definitions for categories that have been in the statute since 1970. These include ''committed to a mental institution,'' ''adjudicated as a mental defective,'' and ''unlawful user of or addicted to any controlled substance.'' It was necessary to define all these terms so that persons applying for explosives licenses or permits on or after the effective date of this interim rule, will know whether responsible persons (such as partners, corporate officers, and directors) are prohibited and therefore cannot be associated with the applicant. It is also necessary to define these terms so that persons who are subject to explosives disabilities are put on notice that they may not lawfully transport, ship, receive or possess explosives. These persons need to know the criteria ATF will use in determining who is subject to such disabilities so that they may apply for relief from disabilities pursuant to 18 U.S.C. 845(b) if they desire.

Finally, it is also necessary to clearly define the categories of prohibited persons so that a thorough background check can be conducted on applicants for licenses and permits, responsible persons, and persons applying for relief from disabilities. A clear understanding of which persons fall within the different statutory categories is necessary to determine whether a particular person is a prohibited person under the law. Background checks will also be conducted on employees authorized to possess explosive materials by an employer applying for, or renewing, a license or permit that will be issued on and after May 24, 2003. Because it generally takes 90 days to process such applications, it is anticipated that many applications for the new limited permit will be submitted in February and March of 2003. Thus, background checks on employees may begin in February 2003, necessitating clear definitions for the guidance of those persons conducting the background checks. Clear definitions will also assist employees and responsible persons who appear to fall within a category of prohibited persons in preparing an appeal to a prohibited person determination they believe is erroneous or to file an application for relief from disabilities if they desire.

An amendment has been made to section 555.45(a) requiring submission of ATF Form 5400.28, Responsible Person Questionnaire, for all applications for a license or permit postmarked on or after the effective date of this interim rule. The purpose of the questionnaire is to obtain a certification from each responsible person stating that he or she is not prohibited from receiving or possessing explosive materials under the new prohibited persons provisions of the law, *i.e.*, non-excepted aliens, persons dishonorably discharged from the military, and renunciates.

As stated previously in relation to licensing criteria, in determining whether a particular person is in possession of explosives, ATF is guided by case law under the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. Possession may be actual or constructive, but in all instances no violation of section 842(i) is committed unless the person ''knowingly'' possesses the explosives.

Regulations that implement the prohibited persons provisions of the Act are in §§ 555.11, 555.26, 555.106, and 555.142.

B. Department of Transportation Exemption

Current law, 18 U.S.C. 845(a)(1), provides an exemption from the Federal explosives laws (except for specified plastic explosives and bombing and arson offenses) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertain to safety.'' The Act did not amend this provision of the law. This provision exempts persons from application of the Federal explosives laws when (1) the Department of Transportation (DOT) has actually regulated a relevant aspect of the transportation of explosive materials or explicitly determined that regulation is not necessary; and (2) those regulations cover the particular aspect of the safe transportation of explosives that prompted Congress to enact the criminal statute from which exemption is sought. For purposes of this exemption, the term ''safety'' includes security concerns.

DOT has recently issued an interim final rule, effective February 3, 2003, that addresses security issues regarding transportation of explosives by aliens via commercial motor vehicles and railroads from Canada into the United States. 68 FR 6083 (February 6, 2003). In the new regulation, DOT has exercised its authority to make security determinations, and generally provides that Canadian truck and rail operators may transport explosives to the United States only after they have been the subject of security checks to ensure that the operators do not pose a security risk.

The DOT interim rule did not establish new requirements regarding the transportation of explosives by air or by water, but the supplementary information to that rule discussed the existing rules and procedures enforced by the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA), and by the United States Coast Guard, regulating aliens transporting explosives in commerce into the United States by air or by water, respectively.

DOT is currently assessing the need for new or revised regulations concerning security aspects of the commercial transportation of explosives and certain other hazardous materials by air, rail, highway, and vessel carriers. As part of this assessment, DOT is examining the extent to which security concerns related to prohibited persons who handle explosives incident to and in connection with the commercial transportation of explosives are already addressed under existing regulations. Where such concerns are not currently addressed in the existing DOT regulatory scheme, DOT has the authority to issue new or revised regulations in the future addressing the security risks posed by the commercial transportation of explosives by any of the categories of prohibited persons. For example, DOT has stated that it plans to issue regulations in the near future to implement the provisions of section 1012 of the USA Patriot Act, Pub. L. No. 107–56, 115 Stat. 272 (2001). This statute requires, in pertinent part, that the Department of Justice conduct background checks on drivers of commercial motor vehicles applying to States for a hazardous materials endorsement and report the results of the background check to DOT, which will then determine whether the driver poses a security risk.

When DOT has exercised its authority to assess the security risks related to persons who handle explosives incident to and in connection with the transportation of explosives in commerce, and has an existing regulation or has implemented a new or revised regulation addressing this aspect of the transportation of explosives by a particular mode, whether by truck, railroad, air, or water, ATF's authority to enforce the Federal explosives laws against such persons during the commercial transportation of explosives is preempted under 18 U.S.C. 845(a)(1), to the extent that the regulation and security assessment address the prohibited categories set forth in 18 U.S.C. 842(i). For example, if DOT conducts a security assessment and adopts regulations to permit certain felons to obtain a commercial driver's license with a hazardous materials endorsement, then ATF would have no authority to enforce 18 U.S.C. 842(i)(1) against such felons while they are shipping, transporting, receiving, or possessing explosives incident to and in connection with the commercial transportation of explosives.

It is important to note that DOT's regulatory authority covers commercial transportation only. Thus, the preemption of the explosives laws occurs only during the commercial transportation of the explosives (and applies only to the shipping, possessing and receiving incident to and in connection with commercial transportation). A prohibited person who ships, transports, receives, or possesses explosives not incident to and in connection with commercial transportation will violate 18 U.S.C. 842(i) irrespective of DOT's regulation.

ATF has amended 27 CFR 555.141(a)(1) to include language clarifying the DOT exception of 18 U.S.C. 845(a)(1).

ATF has recently been advised that the trucking industry may employ persons who are subject to Federal explosives disabilities. It is ATF's longstanding position that a driver transporting explosive materials in a truck or other vehicle has possession of such materials. Thus, if the driver falls within any of the categories of prohibited persons, the driver may not knowingly ship or transport any explosive in interstate or foreign commerce or receive or possess any explosive which has been shipped or transported in interstate or foreign commerce, unless the person is addressed by a current DOT security assessment regulation as discussed above, or one of the other statutory exemptions applies. *See* 18 U.S.C. 845(a).

It is not ATF's intention to place unnecessary obstacles in the path of legitimate commerce in explosive materials. However, Congress has made it clear that the persons specified in section 842(i) may not lawfully possess explosives unless their activities fall within one of the statutory exceptions in 18 U.S.C. 845(a) or they apply for and receive relief from disabilities under 18 U.S.C. 845(b). ATF encourages any individual who is a prohibited person, who has a need to possess or transport explosives for purposes of his employment, and who is not within the scope of any DOT security assessment regulation, to apply for relief under 18 U.S.C. 845(b) as soon as possible. ATF will process relief applications as quickly as possible when a person's employment is contingent upon lawful possession of explosives.

VIII. Interstate Commerce Element of 18 U.S.C. 842(i)

The Act also amended section 842(i) to broaden the interstate commerce element of the statute. Prior to amendment, section 842(i) made it unlawful for prohibited persons to ship or transport any explosive in interstate or foreign commerce or to receive or possess any explosive which has been shipped or transported in interstate or foreign commerce. The amendment adds ''or affecting'' before ''interstate'' each place the term appears in section 842(i). This provision became effective on January 24, 2003.

Regulations that implement this provision of the Act are in § 555.26.

IX. Samples of Explosive Materials and Ammonium Nitrate

The Act added a new section 843(i) to Chapter 40 providing ATF the authority to require licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate to provide samples, information on chemical composition, and other information relevant to the identification of the product. The Act requires ATF to authorize, by regulation, reimbursement of the fair market value of the samples furnished as well as reasonable cost of shipment.

This provision became effective on January 24, 2003. Regulations that implement this provision of the Act are in § 555.110.

X. Amendment of 18 U.S.C. 844(f)

The Act amended section 844(f)(1) of Chapter 40 to broaden the scope of the statute. Prior to amendment, this section made it unlawful to damage or destroy by means of fire or explosive any building, vehicle, or other personal or real property owned, possessed by, or leased to a Federal agency. The amendment broadens the statute by including any institution or organization receiving Federal financial assistance within the categories of property covered by the prohibition. This amendment restores language inadvertently deleted from the statute by the Antiterrorism and Effective Death Penalty Act of 1996. This provision became effective on January 24, 2003.

XI. Relief From Disabilities

The Act amended section 845(b) of Chapter 40 to expand ATF's authority to grant relief from disabilities to all categories of prohibited persons. Prior to enactment of the Act, the statute provided authority for ATF to grant relief only to persons under indictment for or convicted of a felony. ATF had no statutory authority to grant relief to persons falling within the remaining prohibited categories. Although all persons may now apply for relief, the statute did not expand the existing language allowing licensees or permittees who apply for relief due to an indictment or conviction for a felony to continue their operations until the application for relief is acted upon. Thus, because the law does not provide a similar benefit for other disabilities, licensees and permittees subject to other disabilities will not be allowed to continue operations during the pendency of a relief application. This provision became effective on January 24, 2003.

Regulations that implement this provision of the law are in § 555.142. The regulation requires an application for relief to be filed on ATF Form 5400.29, Application for Restoration of Explosives Privileges. The regulation also specifies categories of persons to whom the Director will generally not grant relief. Such categories of persons include persons who have not been discharged from parole or probation for at least 2 years, fugitives, non-excepted aliens, unlawful drug users, persons committed to a mental institution or adjudicated as a mental defective, and persons prohibited by the law of the State in which the applicant resides from receiving or possessing explosive materials. However, the Director will consider such applications and may grant relief in extraordinary circumstances where the granting of such relief is consistent with the public interest. The Director may also grant relief to non-excepted aliens who have been lawfully admitted to the United States or to persons who have not been discharged from parole or probation for a period of at least 2 years if he determines that the applicant has a compelling need to possess explosives, such as for purposes of employment. Thus, ATF will entertain relief applications from such persons who need to possess explosives for purposes of their employment with an explosives licensee or permittee or other employment where possession of explosives is required as part of the employee's duties. The regulation is intended to convey ATF's general policy that it is not in the public interest to grant relief to prohibited persons so they may lawfully possess explosives in the United States. This approach is consistent with the history and purposes of the Act, which indicate Congress' intention to prevent access to explosives by those categories of persons deemed most likely to misuse them in criminal or terrorist incidents.

ATF has been advised that there may be a significant number of non-excepted aliens who are employed by the explosives industry in the United States or who transport explosives via common carrier. To date, it appears that the majority of such aliens are Canadian citizens. As stated above, non-excepted aliens who have a need to possess explosives for purposes of employment fall within the ''compelling need'' provisions of the regulations and will have their applications for relief processed expeditiously. ATF has been working with the Canadian government to streamline the procedures for processing relief applications submitted by Canadian citizens, particularly with respect to criminal background checks conducted in connection with such investigations. Again, it is not ATF's intention to impose unnecessary obstacles to commerce in explosives. ATF anticipates granting relief to many Canadian citizens who have no criminal records and whose records and reputations indicate that their possession of explosives in the United States poses no threat to public safety. Likewise, citizens of other countries who have a need to possess explosives for purposes of employment can expect ATF to act as quickly as possible on properly completed applications for relief from disabilities.

XII. Theft Reporting

The Act added a new section 844(p) to Chapter 40, providing for felony penalties for a licensee or permittee who fails to report thefts of explosives within 24 hours of discovery. Existing law, section 842(k), makes it unlawful for any person having knowledge of the theft or loss of explosive materials to fail to report such theft or loss within 24 hours of discovery to ATF and local authorities. The penalty for violation of section 842(k) is a fine of not more than $100,000, imprisonment for not more than one year, or both. By contrast, the penalty for licensees or permittees who violate section 844(p) is a fine of not more than $250,000, imprisonment for not more than five years, or both. This provision became effective on January 24, 2003.

Regulations that implement this provision of the Act are in § 555.165.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation. The Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. However, this rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local or tribal governments or communities. Accordingly, this rule is not an

''economically significant'' rulemaking as defined by Executive Order 12866. Following is an assessment of the costs and benefits of this regulation.

1. Estimated Costs

i. Cost of obtaining a ''limited permit'' for infrequent users of explosive materials. By statute, the fee for obtaining a ''limited permit'' is capped at $50 for an original permit and at one-half the origination fee for timely renewals. This rule sets the fee for obtaining an original limited permit significantly lower than the statutory allowance. The fee is set at $25 for an original limited permit and at $12 for each renewal. ATF estimates that the requirement to obtain a limited permit will impact approximately 20,000 persons. Each applicant for a limited permit must submit an application that includes information on each responsible person and employee possessor and which includes photographs and fingerprints for each responsible person. ATF estimates that applicants for a limited permit will generally have three to five responsible persons per applicant. ATF estimates that the average cost of taking and submitting photographs will be approximately $1.50 per photograph. Although some law enforcement agencies assess fees for taking fingerprints, others perform this service without charge. ATF is advised that, where a fee is assessed, the fee generally ranges from five to ten dollars per set of fingerprints. In connection with background checks conducted as part of the application process, employee possessors will have to submit fingerprints if the employee appeals an adverse determination or challenges the accuracy of the record upon which the adverse determination is based. ATF estimates that each applicant for a limited permit will have three to five employee possessors and that name-based checks of such employees will result in adverse determinations for less than one percent. ATF estimates that the time required to complete the application for a limited permit is 1 hour and 30 minutes. In addition, ATF estimates that the time required for each employee possessor to complete Form 5400.28 (Employee Possessor Questionnaire) is 20 minutes per employee. Finally, each applicant for a limited permit will spend 1 to 2 hours complying with an ATF inspection of their storage facilities. Therefore, ATF estimates that the initial economic impact of this rule is as follows:

Application fee—20,000 applicants × $25 = $500,000.

Photographs for responsible persons—100,000 × $1.50 = $150,000.

Fingerprints for responsible persons—100,000 × $10 = $1,000,000.

Fingerprints for employees—1,000 × $10 = $10,000.

Time to complete application—20,000 × 1.5 hours × $13 (mean hourly wage for clerical worker) = $390,000.

Time to complete Form 5400.28—100,000 × .33 (hours) × $14 (mean hourly wage for blue collar worker) = $462,000.

Time spent on ATF inspection—20,000 × 2 (hours) × $17 (mean hourly wage for supervisory blue collar workers) = $680,000.

Accordingly, this interim rule will result in approximately a $3,192,000 cost to the explosives industry's nonlicensed/nonpermitted population.

ii. No additional cost to limited permittees associated with storage of explosive materials. Existing law and regulations require that all persons storing explosive materials do so in accordance with 27 CFR part 555, subpart K. Accordingly, persons who have been acquiring explosive materials, even on an infrequent basis, should already have proper explosives storage facilities. However, because the Safe Explosives Act brings previously nonlicensed/nonpermitted infrequent users of explosive materials under ATF's oversight and mandates that ATF verify the storage facilities of all licensees and permittees, certain persons may need to obtain an appropriate explosives storage magazine. Because infrequent users of explosive materials will not likely be storing large quantities of explosive materials, ATF believes that such users will acquire indoor explosives storage magazines. Quantity restrictions for indoor storage of explosive materials are limited to 50 pounds. The cost of indoor explosives storage magazines that meet the regulatory requirements of part 555, subpart K is approximately $300. However, because the requirement to properly store explosive materials is a pre-existing requirement for all persons, whether a licensee or permittee or a nonlicensed/nonpermitted person, this cost does not result from the Act and this rule.

iii. Similar process for explosives transactions under existing regulations and new regulations. ATF regulations already require that nonlicensee/nonpermittee purchasers complete a transaction record requiring, among other things, that purchasers provide their names, addresses, appropriate identifying information, and a certification that they are not prohibited from receiving explosive materials. The distributor is required to verify the identity of the purchaser, and indicate on the transaction record the quantity and type of explosive materials distributed to the purchaser. This record is completed each time a seller distributes explosive materials to a nonlicensee/nonpermittee.

This rule will require the same basic information before a purchaser may be issued a ''limited permit'' and the six Intrastate Purchase of Explosives Coupons (IPECs). This rule continues the requirement that a distributor complete a form prior to distribution of explosive materials. However, much of the information required by the form is listed on the IPEC that will be affixed to the transaction record. This change will not result in significant costs.

iv. Additional cost of compliance for licensees and holders of user permits. There are approximately 8,600 persons holding explosives licenses and user permits as of the date of this interim rule. Upon the first renewal of such licenses and permits on and after May 24, 2003, the holders must comply with the new photograph and fingerprint requirements of the Act. Each renewal application must also include a completed Form 5400.28 for each employee possessor. Assuming three to five responsible persons per licensee/permittee and three to five employee possessors for same, the additional estimated cost of compliance would be as follows:

Time to complete Form 5400.28—8,600 × 5 × $14 (mean hourly wage for blue collar worker) = $602,000.

Photographs for responsible persons—8,600 × 5 × $1.50 = $64,500.

Fingerprints for responsible persons—8,600 × 5 × $10 = $430,000.

Fingerprints for employees—430 × $10 = $4,300.

Accordingly, this interim rule will result in a cost to persons currently holding a license or permit of approximately $1,100,800.

2. Benefits

The Act and this rule provide important benefits in public security and safety. The Act mandates ATF to perform background checks of persons and business entities to ensure that responsible persons and employee possessors of explosive materials are not prohibited from shipping, transporting, receiving, or possessing explosive materials. This mandate enables ATF to determine whether a person is subject to an explosives disability before such person may obtain explosive materials. Thus, the Act as implemented by this

rule provides preventative tools to increase public safety and security. Moreover, the required background checks may help to ensure that would-be terrorists are not permitted to obtain explosive materials for illicit use.

Prior to enactment, ATF did not have the authority to verify that persons, except licensees and permittees, properly stored explosive materials. The Act requires that all persons who wish to acquire explosive materials obtain, at minimum, a ''limited permit,'' and that ATF verify the storage facilities of all licensees and permittees. This mandate authorizes ATF to verify that explosive materials are securely stored and that storage of explosive materials does not pose a threat to public safety.

3. Assessment

The public security and safety benefits of this rule outweigh its costs. As stated above, the costs are minimal, affect a small sector of the economy, and in some cases represent pre-existing requirements (*e.g.*, storage).

B. Executive Order 13132

This regulation 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, ATF has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988: Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Administrative Procedure Act (APA)

Immediate implementation of this rule as an interim rule with provision for post-promulgation public comments is based upon the exceptions found at 5 U.S.C. 553(b)(A), (b)(B), and (d). The Safe Explosives Act was enacted in response to the terrorist attacks of September 11, 2001. Its provisions close numerous gaps in Federal law to prevent the threat of the use of explosives in future acts of terrorism. Issuance of a notice of proposed rulemaking followed by a comment period, consideration of the comments, and publication of a final rule would delay implementation of these important security and safety provisions. In addition, the effective date for certain provisions of the Safe Explosives Act was January 24, 2003, only 60 days after enactment, with the remaining provisions effective on May 24, 2003. The explosives industry needs immediate guidance to comply with the statute. For example, industry members will need to determine whether any of their employees are prohibited from possessing explosives under the new prohibited person categories added to 18 U.S.C. 842(i). In addition, the explosives industry, responsible persons, employees who possess explosives in the course of their employment, and members of the general public need immediate guidance on the procedures for applying for relief from explosives disabilities under 18 U.S.C. 845(b). It is also necessary to provide immediate guidance concerning the limited permittee provisions of the law to give persons who may require such a permit time to learn the new requirements of the law, determine whether they should obtain a limited permit or a user permit, and file an application to avoid conduct which will be unlawful after the applicable effective date.

The portion of this interim rule that reflects agency organization, procedure and practice is exempt under section 553(b)(A) of the APA. With respect to the portion of this interim rule that makes technical amendments, there is good cause for a finding that notice and public procedure is unnecessary and contrary to the public interest pursuant to section 553(b)(B) of the APA. With respect to the remainder of this interim rule, there is good cause for a finding that notice and public procedure is impracticable and contrary to the public interest, pursuant to section 553(b)(B) of the APA. The due and timely execution of the agency's responsibilities in implementing the Safe Explosives Act would be unavoidably impeded by a time-consuming notice and comment period. For the reasons stated above, there is also good cause for a finding that this interim rule is exempt from the effective date limitations under section 553(d).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect persons who hold a Federal explosives license as a manufacturer or importer of, or dealer in, explosive materials. It will also affect persons who hold Federal user permits that authorize them to obtain explosives in interstate or foreign commerce. Users include farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and sport rocketry enthusiasts. The rule will also affect infrequent or occasional users who obtain explosive materials within their State of residence. The foregoing would include farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and sport rocketry enthusiasts. The rule will also affect ''responsible persons'' affiliated with Federal explosives licensees and permittees, as well as employees authorized by a licensee or permittee to possess explosive materials in the course of their employment. Finally, the rule will affect individuals subject to Federal explosives disabilities under 18 U.S.C. 842(i).

Although a number of the persons affected by the rule may be small businesses, many of these businesses already hold Federal explosives licenses and permits and, therefore, the economic impact upon these businesses will not be significant. Moreover, the requirement for businesses to comply with the requirements of the rule is a statutory mandate that ATF must implement. The rule will improve ATF's service to the explosives industry and the general public by setting forth clear procedures for obtaining a license or permit under the new provisions of the law, by setting forth definitive criteria for conducting background checks, and by providing a thorough description of the relief from disabilities provisions of 18 U.S.C. 845(b). The obligations placed on limited permittees under the provisions of the interim rule are only those necessary to ensure that such persons are not prohibited from possessing explosives and to limit their access to explosives in accordance with the restrictions in the law. The rule has been drafted to impose as few obstacles as possible to the acquisition of explosive materials by these infrequent, intrastate users.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small

Business Regulatory Enforcement Fairness Act of 1996. 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, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

G. 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.

H. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under the following control numbers: 1140–0030, 1140–0073, 1140–0074, 1140–0075, 1140–0076, 1140–0077, 1140–0078, 1140–0079, 1140–0080, 1140–0081, 1140–0082, and 1140–0083. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information in this regulation are in 27 CFR 555.33, 555.34, 555.41, 555.45, 555.49, 555.54, 555.57, 555.103, 555.105, 555.110, 555.125, 555.126, and 555.142.

This information is required to ensure compliance with the provisions of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296. The collections of information are mandatory. The likely respondents are individuals and businesses.

As indicated, the collections of information contained in this interim rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco, Firearms and Explosives, 650 Massachusetts Avenue, NW., Washington, DC 20226. Comments are specifically requested concerning:

- Whether the collections of information are necessary for the proper performance of the function of the Bureau of Alcohol, Tobacco, Firearms and Explosives, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the collections of information (see below);
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

With respect to § 555.33:

Estimated total annual reporting and/or recordkeeping burden: 1,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 500.

Estimated annual frequency of responses: 1.

With respect to § 555.34:

Estimated total annual reporting and/or recordkeeping burden: 264 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .33 hours (20 minutes).

Estimated number of respondents and/or recordkeepers: 800.

Estimated annual frequency of responses: 1.

With respect to §§ 555.41 and 555.45:

Estimated total annual reporting and/or recordkeeping burden: 2,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 seconds.

Estimated number of respondents and/or recordkeepers: 40,000.

Estimated annual frequency of responses: 6.

With respect to § 555.49:

Estimated total annual reporting and/or recordkeeping burden: 416 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 30 seconds.

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 1.

With respect to § 555.54:

Estimated total annual reporting and/or recordkeeping burden: 170 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .17 hours (10 minutes).

Estimated number of respondents and/or recordkeepers: 1,000.

Estimated annual frequency of responses: 1.

With respect to § 555.57:

Estimated total annual reporting and/or recordkeeping burden: 100,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 2.

With respect to § 555.103:

Estimated total annual reporting and/or recordkeeping burden: 25,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .5 hours (30 minutes).

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 1.

With respect to § 555.105:

Estimated total annual reporting and/or recordkeeping burden: 25,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .5 hours (30 minutes).

Estimated number of respondents and/or recordkeepers: 50,000.

Estimated annual frequency of responses: 1.

With respect to § 555.110:

Estimated total annual reporting and/or recordkeeping burden: 1,175 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .5 hours (30 minutes).

Estimated number of respondents and/or recordkeepers: 2,350.

Estimated annual frequency of responses: 1.

With respect to § 555.126:

Estimated total annual reporting and/or recordkeeping burden: 12,000 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .08 hours (5 minutes).

Estimated number of respondents and/or recordkeepers: 5,000.

Estimated annual frequency of responses: 300.

With respect to § 555.142:

Estimated total annual reporting and/or recordkeeping burden: 1 hour.

Estimated average annual burden hours per respondent and/or recordkeeper: .02 hours (1 minute).

Estimated number of respondents and/or recordkeepers: 50.

Estimated annual frequency of responses: 1.

Public Participation

ATF is requesting comments on the interim regulations from all interested persons. ATF is also specifically requesting comments on the clarity of this interim rule and how it may be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

You may submit written comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible;
- Reference this document number;
- Be 8½″ x 11″ in size;
- Contain a legible written signature; and
- Be not more than five pages long.

ATF will not acknowledge receipt of facsimile transmissions. ATF will treat facsimile transmissions as originals.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this interim rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the **Federal Register** in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Drafting Information

The author of this document is James P. Ficaretta; Firearms, Explosives and Arson; Bureau of Alcohol, Tobacco, Firearms and Explosives.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

For the reasons discussed in the preamble, 27 CFR Part 555, is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

Paragraph 1. The authority citation for 27 CFR Part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

Par. 2. Section 555.1 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 555.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in explosives and implement Title XI, Regulation of Explosives (18 U.S.C. Chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922), Pub. L. 103–322 (108 Stat. 1796), Pub. L. 104–132 (110 Stat. 1214), and Pub. L. 107–296 (116 Stat. 2135).

(b) * * *

(3) The issuance of permits;

* * * * *

Par. 3. Section 555.11 is amended by revising the definitions for ''ATF officer,'' ''Bureau,'' ''Director,'' and ''Permittee'' and by adding new definitions for the terms ''Adjudicated as a mental defective,'' ''Alien,'' ''Appropriate identifying information,'' ''ATF,'' ''Committed to a mental institution,'' ''Common or contract carrier,'' ''Controlled substance,'' ''Discharged under dishonorable conditions,'' ''Identification document,'' ''Limited permit,'' ''Mental institution,'' ''Renounced U.S. citizenship,'' ''Responsible person,'' and ''Unlawful user of or addicted to any controlled substance'' to read as follows:

§ 555.11 Meaning of terms.

* * * * *

Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(1) Is a danger to himself or to others; or

(2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term will include—

(1) A finding of insanity by a court in a criminal case; and

(2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility by any court or pursuant to articles 50a and 76b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

Alien. Any person who is not a citizen or national of the United States.

* * * * *

Appropriate identifying information. The term means, in relation to an individual:

(a) The full name, date of birth, place of birth, sex, race, street address, State of residence, telephone numbers (home and work), country or countries of citizenship, and position at the employer's business or operations of responsible persons and employees authorized to possess explosive materials;

(b) The business name, address, and license or permit number with which the responsible person or employee is affiliated;

(c) If an alien, INS-issued alien number or admission number; and

(d) Social security number, as optional information (this information is not required but is helpful in avoiding misidentification when a background check is conducted).

* * * * *

ATF. (a) *Prior to January 24, 2003.* The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

(b) *On and after January 24, 2003.* The Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC.

ATF officer. (a) *Prior to January 24, 2003.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

(b) *On and after January 24, 2003.* An officer or employee of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorized to perform any function relating to the administration or enforcement of this part.

* * * * *

Bureau. (a) *Prior to January 24, 2003.* The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

(b) *On and after January 24, 2003.* The Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC.

* * * * *

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Common or contract carrier. Any individual or organization engaged in the business of transporting passengers or goods.

* * * * *

Controlled substance. A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

* * * * *

Director. (a) *Prior to January 24, 2003.* The Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

(b) *On and after January 24, 2003.* The Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC.

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a dishonorable discharge or dismissal adjudged by general court-martial. The term does not include any separation from the Armed Forces resulting from any other discharge, *e.g.,* a bad conduct discharge.

* * * * *

Identification document. A document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, a political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

* * * * *

Limited permit. A permit issued to a person authorizing him to receive for his use explosive materials from a licensee or permittee in his state of residence on no more than 6 occasions during the 12-month period in which the permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce.

* * * * *

Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

* * * * *

Permittee. Any user of explosives for a lawful purpose who has obtained either a user permit or a limited permit under this part.

* * * * *

Renounced U.S. citizenship. (a) A person has renounced his U.S. citizenship if the person, having been a citizen of the United States, has renounced citizenship either—

(1) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. 1481(a)(5); or

(2) Before an officer designated by the Attorney General when the United States is in a state of war pursuant to 8 U.S.C. 1481(a)(6).

(b) The term will not include any renunciation of citizenship that has been reversed as a result of administrative or judicial appeal.

Responsible person. An individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. Generally, the term includes partners, sole proprietors, site managers, corporate officers and directors, and majority shareholders.

* * * * *

Unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of a controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before possession of the explosive materials, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire explosive materials or receives or possesses explosive materials. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, *e.g.,* a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past 5 years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, *e.g.,* court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure.

* * * * *

Par. 4. Section 555.24 is revised to read as follows:

§ 555.24 Right of entry and examination.

(a) Any ATF officer may enter during business hours the premises, including places of storage, of any licensee or holder of a user permit for the purpose of inspecting or examining any records or documents required to be kept under this part, and any facilities in which explosive materials are kept or stored.

(b) Any ATF officer may inspect the places of storage for explosive materials of an applicant for a limited permit or, in the case of a holder of a limited permit, at the time of renewal of such permit.

(c) The provisions of paragraph (b) of this section do not apply to an applicant for the renewal of a limited permit if an ATF officer has, within the preceding 3 years, verified by inspection that the applicant's place of storage for explosive materials meets the requirements of subpart K of this part.

Par. 5. Section 555.26 is revised to read as follows:

§ 555.26 Prohibited shipment, transportation, receipt, possession, or distribution of explosive materials.

(a) *General.* No person, other than a licensee or permittee knowingly may transport, ship, cause to be transported, or receive any explosive materials:

Provided, That the provisions of this paragraph (a) do not apply to the lawful purchase by a nonlicensee or nonpermittee of commercially manufactured black powder in quantities not to exceed 50 pounds, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term ''destructive device'' in 18 U.S.C. 921(a)(4).

(b) *Holders of a limited permit.* No person who is a holder of a limited permit may—

(1) Transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials;

(2) Receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder; or

(3) Receive explosive materials on more than 6 separate occasions, during the period of the permit, from one or more licensees or permittees whose premises are located within the State of residence of the limited permit holder. (See § 555.105(b) for the definition of ''6 separate occasions.'')

(c) *Possession by prohibited persons.* No person may ship or transport any explosive material in or affecting interstate or foreign commerce or receive or possess any explosive materials which have been shipped or transported in or affecting interstate or foreign commerce who:

(1) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) and § 555.11);

(4) Has been adjudicated as a mental defective or has been committed to a mental institution;

(5) Is an alien, other than an alien who—

(i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a) of the Act, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(6) Has been discharged from the armed forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

(d) *Distribution to prohibited persons.* No person may knowingly distribute explosive materials to any individual who:

(1) Is under twenty-one years of age;

(2) Is under indictment or information for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(3) Is a fugitive from justice;

(4) Is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802) and § 555.11);

(5) Has been adjudicated as a mental defective or has been committed to a mental institution;

(6) Is an alien, other than an alien who—

(i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101)); or

(ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a) of the Act, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(7) Has been discharged from the armed forces under dishonorable conditions; or

(8) Having been a citizen of the United States, has renounced citizenship.

(e) See § 555.180 for regulations concerning the prohibited manufacture, importation, exportation, shipment, transportation, receipt, transfer, or possession of plastic explosives that do not contain a detection agent.

Par. 6. Section 555.27 is revised to read as follows:

§ 555.27 Out-of-State disposition of explosive materials.

(a) No nonlicensee or nonpermittee may distribute any explosive materials to any other nonlicensee or nonpermittee who the distributor knows or who has reasonable cause to believe does not reside in the State in which the distributor resides.

(b) The provisions of this section do not apply on and after May 24, 2003.

Par. 7. Section 555.33 is added to subpart C to read as follows:

§ 555.33 Background checks and clearances (effective May 24, 2003).

(a) *Background checks.* (1) If the Director receives from a licensee or permittee the names and appropriate identifying information of responsible persons and employees who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Director will conduct a background check in accordance with this section.

(2) The Director will determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i) of the Act (see § 555.26). In making such determination, the Director may take into account a letter or document issued under paragraph (a)(3) of this section.

(3)(i) If the Director determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i) of the Act (see § 555.26), the Director will notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, as the case may be, a letter of clearance which confirms the determination.

(ii) If the Director determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i) of the Act (see § 555.26), ATF will notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that confirms the determination; explains the grounds for the determination; provides information on how the disability may be relieved; and explains how the determination may be appealed. The employer will retain the notification as part of his permanent records in accordance with § 555.121. The employer will take immediate steps to remove the responsible person from his position directing the management or policies of the business or operations as they relate to explosive materials or, as the case may be, to remove the employee from a position requiring the possession of explosive materials. Also, if the employer has listed the employee as a person authorized to accept delivery of explosive materials, as specified in § 555.103 or § 555.105, the employer must remove the employee from such list and immediately, and in no event later than the second business day after such change, notify distributors of such change.

(b) *Appeals and correction of erroneous system information.* (1) *In general.* A responsible person or employee may challenge the adverse determination set out in the letter of denial, in writing and within 45 days of issuance of the determination, by directing his or her challenge to the basis for the adverse determination, or to the accuracy of the record upon which the adverse determination is based, to the Director. The appeal request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge. Any record or document of a court or other government entity or official furnished in support of an appeal must be certified by the court or other government entity or official as a true copy. In the case of an employee, or responsible person who did not submit fingerprints, such appeal must be accompanied by two properly completed FBI Forms FD–258 (fingerprint card). The Director will advise the individual in writing of his decision and the reasons for the decision.

(2) *Employees.* The letter of denial, among other things, will advise an employee who elects to challenge an adverse determination to submit the fingerprint cards as described above. The employee also will be advised of the agency name and address that originated the record containing the information causing the adverse determination (''originating agency''). At that time, and where appropriate, an employee is encouraged to apply to the originating agency to challenge the accuracy of the record(s) upon which the denial is based. The originating agency may respond to the individual's application by addressing the individual's specific reasons for the challenge, and by indicating whether additional information or documents are required. If the record is corrected as a result of the application to the originating agency, the individual may so notify ATF which will, in turn, verify the record correction with the originating agency and take all necessary steps to contact the agency responsible for the record system and correct the record. The employee may provide to ATF additional and appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge to ATF's decision to uphold the initial denial. If ATF does not receive such additional documentation or record(s) within 45 days of the date of the decision upholding the initial denial, ATF will close the appeal.

(3) *Responsible persons.* The letter of denial, among other things, will advise a responsible person of the agency name and address which originated the record containing the information causing the adverse determination (''originating agency''). A responsible person who elects to challenge the adverse determination, where appropriate, is encouraged to apply to the originating agency to challenge the accuracy of the record(s) upon which the denial is based. The originating agency may respond to the individual's application by addressing the individual's specific reasons for the challenge, and by indicating whether additional information or documents are required. If the record is corrected as a result of the application to the originating agency, the individual may so notify ATF which will, in turn, verify the record correction with the originating agency and take all necessary steps to contact the agency responsible for the record system and correct the record. A responsible person may provide additional documentation or records as specified for employees in paragraph (b)(2) of this section.

(Approved by the Office of Management and Budget under control number 1140–0081)

Par. 8. Section 555.34 is added to subpart C to read as follows:

§ 555.34 Replacement of stolen or lost ATF Form 5400.30 (Intrastate Purchase of Explosives Coupon (IPEC)).

When any Form 5400.30 is stolen, lost, or destroyed, the person losing possession will, upon discovery of the theft, loss, or destruction, immediately, but in all cases before 24 hours have elapsed since discovery, report the matter to the Director by telephoning 1–888–ATF–BOMB (nationwide toll free number). The report will explain in detail the circumstances of the theft, loss, or destruction and will include all known facts that may serve to identify the document. Upon receipt of the report, the Director will make such investigation as appears appropriate and may issue a duplicate document upon such conditions as the circumstances warrant.

(Approved by the Office of Management and Budget under control number 1140–0077)

Par. 9. Section 555.41 is revised to read as follows:

§ 555.41 General.

(a) *Licenses and permits issued prior to May 24, 2003.* (1) Each person intending to engage in business as an importer or manufacturer of, or a dealer

in, explosive materials, including black powder, must, before commencing business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, must obtain a permit under this subpart; except that it is not necessary to obtain a permit if the user intends to lawfully purchase:

(i) Explosive materials from a licensee in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State; or

(ii) Commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(2) Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer must file an application, with the required fee (see § 555.42), with ATF in accordance with the instructions on the form (see § 555.45). A license will, subject to law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials except under the following circumstances:

(i) A separate license will not be required for storage facilities operated by the licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part.

(ii) A separate license will not be required of a licensed manufacturer with respect to his on-site manufacturing.

(iii) It will not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials.

(iv) A separate license will not be required of licensed manufacturers with respect to their on-site manufacture of theatrical flash powder.

(3) Except as provided in paragraph (a)(1) of this section, each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, must file an application, with the required fee (see § 555.43), with ATF in accordance with the instructions on the form (see § 555.45). A permit will, subject to law, entitle the permittee to acquire, transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by this permit. Only one permit is required under this part.

(b) *Licenses and permits issued on and after May 24, 2003.* (1) *In general.* (i) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials, including black powder, must, before commencing business, obtain the license required by this subpart for the business to be operated.

(ii) Each person who intends to acquire for use explosive materials within the State in which he resides on no more than 6 separate occasions during the 12-month period in which the permit is valid must obtain a limited permit under this subpart. (See § 555.105(b) for definition of ''6 separate occasions.'')

(iii) Each person who intends to acquire for use explosive materials from a licensee or permittee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who intends to acquire for use explosive materials within the State in which he resides on more than 6 separate occasions during a 12-month period, must obtain a user permit under this subpart.

(iv) It is not necessary to obtain a permit if the user intends only to lawfully purchase commercially manufactured black powder in quantities not to exceed 50 pounds, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or in antique devices.

(2) *Importers, manufacturers, and dealers.* Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer must file an application, with the required fee (*see* § 555.42), with ATF in accordance with the instructions on the form (*see* § 555.45). A license will, subject to law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials except under the following circumstances:

(i) A separate license will not be required for storage facilities operated by the licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part.

(ii) A separate license will not be required of a licensed manufacturer with respect to his on-site manufacturing.

(iii) It will not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials. No licensee will be required to obtain a user permit to lawfully transport, ship, or receive explosive materials in interstate or foreign commerce.

(iv) A separate license will not be required of licensed manufacturers with respect to their on-site manufacture of theatrical flash powder.

(3) *Users of explosive materials.* (i) A limited permit will, subject to law, entitle the holder of such permit to receive for his use explosive materials from a licensee or permittee in his state of residence on no more than 6 separate occasions during the 12-month period in which the permit is valid. A limited permit does not authorize the receipt or transportation of explosive materials in interstate or foreign commerce. Holders of limited permits who need to receive explosive materials on more than 6 separate occasions during a 12-month period must obtain a user permit in accordance with this subpart.

(ii) Each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, must file an application for a user permit, with the required fee (*see* § 555.43), with ATF in accordance with the instructions on the form (*see* § 555.45). A user permit will, subject to law, entitle the permittee to transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by this permit. Only one user permit per person is required under this part, irrespective of the number of locations relating to explosive materials operated by the holder of the user permit.

(Approved by the Office of Management and Budget under control number 1140–0083)

Par. 10. Section 555.43 is revised to read as follows:

§ 555.43 Permit fees.

(a) Each applicant must pay a fee for obtaining a permit as follows:

(1) User—$100 for a three-year period.

(2) User-limited (nonrenewable)—$75.

(3) Limited—$25 for a one-year period.

(b)(1) Each applicant for renewal of a user permit must pay a fee of $50 for a three-year period.

(2) Each applicant for renewal of a limited permit must pay a fee of $12 for a one-year period.

Par. 11. Section 555.45 is amended by adding a heading to paragraph (a) and two new sentences at the end of that paragraph; by adding a heading to paragraph (b) and two new sentences at the end of that paragraph; by adding a new paragraph (c); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.45 Original license or permit.

(a) *Licenses issued prior to May 24, 2003.* * * * The Chief, Firearms and Explosives Licensing Center, will not approve an application postmarked on or after March 20, 2003, unless it is submitted with a Responsible Person Questionnaire, ATF Form 5400.28. Form 5400.28 must be completed in accordance with the instructions on the form.

(b) *Permits issued prior to May 24, 2003.* * * * The Chief, Firearms and Explosives Licensing Center, will not approve an application postmarked on or after March 20, 2003, unless it is submitted with a Responsible Person Questionnaire, ATF Form 5400.28. Form 5400.28 must be completed in accordance with the instructions on the form.

(c) *Licenses and permits issued on and after May 24, 2003.* (1) *License.* Any person who intends to engage in the business as an importer of, manufacturer of, or dealer in explosive materials, or who has not timely submitted an application for renewal of a previous license issued under this part, must file an application for License, Explosives, ATF F 5400.13, with ATF in accordance with the instructions on the form. ATF Form 5400.13 may be obtained by contacting any ATF office. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a);

(ii) Include appropriate identifying information concerning each responsible person;

(iii) Include a photograph and fingerprints for each responsible person;

(iv) Include the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials by submitting ATF F 5400.28 for each employee; and

(v) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(2) *User permit and limited permit.* Except as provided in § 555.41(b)(1)(iv), any person who intends to acquire explosive materials in the State in which that person resides or acquire explosive materials from a licensee or holder of a user permit in a State other than the State in which that person resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted an application for renewal of a previous permit issued under this part, must file an application for Permit, Explosives, ATF F 5400.16 or Permit, User Limited Display Fireworks, ATF F 5400.21 with ATF in accordance with the instructions on the form. ATF Form 5400.16 and ATF Form 5400.21 may be obtained by contacting any ATF office. The application must:

(i) Be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a);

(ii) Include a photograph, fingerprints, and appropriate identifying information for each responsible person;

(iii) Include the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials by submitting ATF F 5400.28 for each employee; and

(iv) Include the appropriate fee in the form of money order or check made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) The Chief, Firearms and Explosives Licensing Center, will conduct background checks on responsible persons and employees authorized by the applicant to possess explosive materials in accordance with § 555.33. If it is determined that any responsible person or employee is described in any paragraph of section 842(i) of the Act, the applicant must submit an amended application indicating removal or reassignment of that person before the license or permit will be issued.

(Approved by the Office of Management and Budget under control number 1140–0083)

Par. 12. Section 555.49 is revised to read as follows:

§ 555.49 Issuance of license or permit.

(a) *Issuance of license or permit prior to May 24, 2003.* (1) The Chief, Firearms and Explosives Licensing Center, will issue a license or permit if—

(i) A properly executed application for the license or permit is received; and

(ii) Through further inquiry or investigation, or otherwise, it is found that the applicant is entitled to the license or permit.

(2) The Chief, Firearms and Explosives Licensing Center, will approve a properly executed application for a license or permit, if:

(i) The applicant is 21 years of age or over;

(ii) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom distribution of explosive materials is prohibited under the Act;

(iii) The applicant has not willfully violated any provisions of the Act or this part;

(iv) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;

(v) The applicant has in a State, premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct business or operations;

(vi) The applicant has storage for the class (as described in § 555.202) of explosive materials described on the application, unless he establishes to the satisfaction of the Chief, Firearms and Explosives Licensing Center, that the business or operations to be conducted will not require the storage of explosive materials;

(vii) The applicant has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business; and

(viii) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1341).

(3) The Chief, Firearms and Explosives Licensing Center, will approve or the regional director (compliance) will deny any application for a license or permit within the 45-day

period beginning on the date a properly executed application was received. However, when an applicant for license or permit renewal is a person who is, under the provisions of § 555.83 or § 555.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Director on an application for relief submitted under § 555.142, as the case may be.

(4) The license or permit and one copy will be forwarded to the applicant, except that in the case of a user-limited permit, the original only will be issued.

(5) Each license or permit will bear a serial number and this number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity of renewal in the same region.

(b) *Issuance of license or permit on and after May 24, 2003.* (1) The Chief, Firearms and Explosives Licensing Center, will issue a license or permit if:

(i) A properly executed application for the license or permit is received; and

(ii) Through further inquiry or investigation, or otherwise, it is found that the applicant is entitled to the license or permit.

(2) The Chief, Firearms and Explosives Licensing Center, will approve a properly executed application for a license or permit, if:

(i) The applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in any paragraph of section 842(i) of the Act;

(ii) The applicant has not willfully violated any provisions of the Act or this part;

(iii) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;

(iv) The applicant has in a State, premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct business or operations;

(v) The applicant has storage for the class (as described in § 555.202) of explosive materials described on the application;

(vi) The applicant has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business;

(vii) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1341);

(viii) None of the employees of the applicant who will be authorized by the applicant to possess explosive materials is a person described in any paragraph of section 842(i) of the Act; and

(ix) In the case of an applicant for a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.

(3) The Chief, Firearms and Explosives Licensing Center, will approve or the regional director (compliance) will deny any application for a license or permit within the 90-day period beginning on the date a properly executed application was received. However, when an applicant for license or permit renewal is a person who is, under the provisions of § 555.83 or § 555.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Director on an application for relief submitted under § 555.142, as the case may be.

(4) The license or permit and one copy will be forwarded to the applicant, except that in the case of a user-limited permit, the original only will be issued.

(5) Each license or permit will bear a serial number and this number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity of renewal in the same region.

(Approved by the Office of Management and Budget under control number 1140–0082)

Par. 13. Section 555.51 is revised to read as follows:

§ 555.51 Duration of license or permit.

(a) *Prior to May 24, 2003.* An original license or permit is issued for a period of three years. A renewal license or permit is issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

(b) *On and after May 24, 2003.* (1) An original license or user permit is issued for a period of three years. A renewal license or user permit is also issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

(2) A limited permit is issued for a period of one year. A renewal limited permit is also issued for a period of one year.

Par. 14. Section 555.54 is amended by designating the introductory text as paragraph (a); by redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), respectively; by adding a new paragraph (b); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.54 Change of address.

* * * * *

(b) Licensees and permittees whose mailing address will change must notify the Chief, Firearms and Explosives Licensing Center, at least 10 days before the change.

(Paragraph (b) approved by the Office of Management and Budget under control number 1140–0080)

Par. 15. Section 555.57 is amended by revising the section heading; by redesignating the existing paragraph as paragraph (a); by adding new paragraphs (b), (c), and (d); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.57 Change of control, change in responsible persons, and change of employees.

* * * * *

(b) For all licenses or permits issued on and after May 24, 2003, each person holding the license or permit must report to the Chief, Firearms and Explosives Licensing Center, any change in responsible persons or employees authorized to possess explosive materials. Such report must be submitted within 30 days of the change and must include appropriate identifying information for each responsible person. Reports relating to newly hired employees authorized to possess explosive materials must be submitted on ATF F 5400.28 for each employee.

(c) Upon receipt of a report, the Chief, Firearms and Explosives Licensing Center, will conduct a background check, if appropriate, in accordance with § 555.33.

(d) The reports required by paragraph (b) of this section must be retained as part of a licensee's or permittee's permanent records for the period specified in § 555.121.

(Approved by the Office of Management and Budget under control number 1140–0074)

Par. 16. Section 555.101 is amended by adding the word ''user'' before the

word ''permit'' in the section heading and wherever else it appears.

Par. 17. Section 555.102 is amended by revising paragraph (b) to read as follows:

§ 555.102 Authorized operations by permittees.

* * * * *

(b) *Distributions of surplus stocks.* (1) *Distributions of surplus stocks prior to May 24, 2003.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with § 555.103, and to nonlicensees or to nonpermittees in accordance with § 555.105(a)(4).

(2) *Distributions of surplus stocks on and after May 24, 2003.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with § 555.103 and § 555.105.

Par. 18. Section 555.103 is revised to read as follows:

§ 555.103 Transactions among licensees/permittees and transactions among licensees and holders of user permits.

(a) *Transactions among licensees/permittees prior to May 24, 2003.* (1) *General.* (i) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to a licensee or another permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(ii) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to another licensee or permittee) must verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

(iii) Licensees or permittees desiring to return explosive materials to a licensed manufacturer may do so without obtaining a certified copy of the manufacturer's license.

(iv) Where possession of explosive materials is transferred at the distributor's premises, the distributor must in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a licensee or permittee, or to an employee of a common or contract carrier transporting explosive materials to a licensee or permittee, the distributor delivering explosive materials must obtain an executed ATF F 5400.8, Explosives Delivery Record, from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and required by this part.

Example 1. An ATF F 5400.8 is required when:

a. An employee of the purchaser takes possession at the distributor's premises.

b. An employee of a common or contract carrier hired by the purchaser takes possession at the distributor's premises.

Example 2. An ATF F 5400.8 is not required when:

a. An employee of the distributor takes possession of the explosives for the purpose of transport to the purchaser.

b. An employee of a common or contract carrier hired by the distributor takes possession of the explosives for the purpose of transport to the purchaser.

(2) *License/permit verification of individuals.* (i) The distributee must furnish a certified copy (or, in the case of a user-limited, the original) of the license or permit. The certified copy need be furnished only once during the current term of the license or permit. Also, a licensee need not furnish certified copies of licenses to other licensed locations operated by such licensee.

(ii) The distributor may obtain any additional verification as the distributor deems necessary.

(3) *License/permit verification of business organizations.* (i) A business organization may (in lieu of furnishing a certified copy of a license) furnish the distributor a certified list which contains the name, address, license number and date of license expiration of each licensed location. The certified list need be furnished only once during the current term of the license or permit. Also, a business organization need not furnish a certified list to other licensed locations operated by such business organization.

(ii) A business organization must, prior to ordering explosive materials, furnish the licensee or permittee a current certified list of the representatives or agents authorized to order explosive materials on behalf of the business organization showing the name, address, and date and place of birth of each representative or agent. A licensee or permittee may not distribute explosive materials to a business organization on the order of a person who does not appear on the certified list of representatives or agents and, if the person does appear on the certified list, the licensee or permittee must verify the identity of such person.

(4) *Licensee/permittee certified statement.* (i) A licensee or permittee ordering explosive materials from another licensee or permittee must furnish a current, certified statement of the intended use of the explosive materials, *e.g.*, resale, mining, quarrying, agriculture, construction, sport rocketry, road building, oil well drilling, seismographic research, to the distributor.

(ii) For individuals, the certified statement of intended use must specify the name, address, date and place of birth, and social security number of the distributee.

(iii) For business organizations, the certified statement of intended use must specify the taxpayer identification number, the identity and the principal and local places of business.

(iv) The licensee or permittee purchasing explosive materials must revise the furnished copy of the certified statement only when the information is no longer current.

(5) *User-limited permit transactions.* A user-limited permit issued under the provisions of this part is valid for only a single purchase transaction and is not renewable (see § 555.51). Accordingly, at the time a user-limited permittee orders explosive materials, the licensed distributor must write on the front of the user-limited permit the transaction date, his signature, and the distributor's license number prior to returning the permit to the user-limited permittee.

(b) *Transactions among licensees/permittees on and after May 24, 2003.* (1) *General.* (i) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a holder of a user permit disposing of surplus stock to a licensee; a holder of a user permit; or a holder of a limited permit who is within the same State as the distributor) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to

continue business or operations under this part has been terminated.

(ii) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a holder of a user permit disposing of surplus stock to another licensee or permittee) must verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

(iii) Licensees or permittees desiring to return explosive materials to a licensed manufacturer may do so without obtaining a certified copy of the manufacturer's license.

(2) *Verification of license/user permit.* (i) Prior to or with the first order of explosive materials, the distributee must provide the distributor a certified copy (or, in the case of a user-limited, the original) of the distributee's license or user permit. However, licensees or holders of user permits that are business organizations may (in lieu of a certified copy of a license or user permit) provide the distributor with a certified list that contains the name, address, license or user permit number, and date of the license or user permit expiration of each location.

(ii) The distributee must also provide the distributor with a current list of the names of persons authorized to accept delivery of explosive materials on behalf of the distributee. The distributee ordering explosive materials must keep the list current and provide updated lists to licensees and holders of user permits on a timely basis. A distributor may not transfer possession of explosive materials to any person whose name does not appear on the current list of names of persons authorized to accept delivery of explosive materials on behalf of the distributee. In all instances, the distributor must verify the identity of the person accepting possession of explosive materials on behalf of the distributee by examining an identification document (as defined in § 555.11) before relinquishing possession.

(iii) A licensee or holder of a user permit ordering explosive materials from another licensee or permittee must provide to the distributor a current, certified statement of the intended use of the explosive materials, *e.g.*, resale, mining, quarrying, agriculture, construction, sport rocketry, road building, oil well drilling, seismographic research, etc.

(A) For individuals, the certified statement of intended use must specify the name, address, date and place of birth, and social security number of the distributee.

(B) For business organizations, the certified statement of intended use must specify the taxpayer identification number, the identity and the principal and local places of business.

(C) The licensee or holder of a user permit purchasing explosive materials must revise the furnished copy of the certified statement only when the information is no longer current.

(3) *Delivery of explosive materials by a common or contract carrier.* When a common or contract carrier will transport explosive materials from a distributor to a distributee who is a licensee or holder of a user permit, the distributor must obtain an executed ATF F 5400.8, Explosives Delivery Record, from the common or contract carrier before relinquishing possession of the explosive materials.

(i) The common or contract carrier must complete Section A of Form 5400.8.

(ii) The distributor must verify the identity of the person accepting possession for the common or contract carrier by examining an identification document (as defined in § 555.11) and noting in Section B of Form 5400.8 the type of document presented. The distributor must complete all other information required on Form 5400.8.

(iii) The distributor must maintain Form 5400.8 in his permanent records in accordance with § 555.121.

(4) *User-limited permit transactions.* A user-limited permit issued under the provisions of this part is valid for only a single purchase transaction and is not renewable (see § 555.51). Accordingly, at the time a user-limited permittee orders explosive materials, the licensed distributor must write on the front of the user-limited permit the transaction date, his signature, and the distributor's license number prior to returning the permit to the user-limited permittee.

(Approved by the Office of Management and Budget under control number 1140–0079)

Par. 19. Section 555.105 is revised to read as follows:

§ 555.105 Distributions to nonlicensees, nonpermittees, and limited permittees.

(a) *Distributions to nonlicensees and nonpermittees prior to May 24, 2003.* (1) This section will apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(2) Except as provided in paragraph (a)(3) of this section, a licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee or nonpermittee furnishes to the licensee the explosives transaction record, ATF F 5400.4, required by § 555.126. Disposition of ATF F 5400.4 will be made in accordance with § 555.126.

(3) A licensed importer, licensed manufacturer, or licensed dealer may sell or distribute explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State and the purchaser and the licensee have, prior to the distribution of the explosive materials, complied with all the requirements of paragraphs (a)(2), (a)(5), and (a)(6) of this section applicable to intrastate transactions occurring on the licensee's business premises.

(4) A permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the permittee's place of business or operations are located, and if the requirements of paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) of this section are fully met.

(5) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to a business entity must verify the identity of the representative or agent of the business entity who is authorized to order explosive materials on behalf of the business entity. Each business entity ordering explosive materials must furnish the distributing licensee prior to or with the first order of explosive materials a current certified list of the names of representatives or agents authorized to order explosive materials on behalf of the business entity. The business entity ordering explosive materials is responsible for keeping the certified list current. A licensee may not distribute explosive materials to a business entity on the order of a person whose name does not appear on the certified list.

(6) Where the possession of explosive materials is transferred at the distributor's premises, the distributor must in all instances verify the identity of the person accepting possession on behalf of the distributee before

relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a nonlicensee or nonpermittee, or to an employee of a common or contract carrier transporting explosive materials to a nonlicensee or nonpermittee, the distributor delivering explosive materials must obtain an executed ATF F 5400.8 from the employee before releasing the explosive materials. The ATF F 5400.8 must contain all of the information required on the form and by this part. (*See* examples in § 555.103(a)).

(7) A licensee or permittee disposing of surplus stock may sell or distribute commercially manufactured black powder in quantities of 50 pounds or less to a nonlicensee or nonpermittee if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term ''destructive device'' in 18 U.S.C. 921(a)(4).

(b) *Distributions to holders of limited permits on and after May 24, 2003.* (1) This section will apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(2) A licensed importer, licensed manufacturer or a licensed dealer may distribute explosive materials to a holder of a limited permit if such permittee is a resident of the same State in which the licensee's business premises are located, the holder of the limited permit presents in person or by mail ATF Form 5400.4, Limited Permittee Transaction Report (LPTR), and the licensee completes Form 5400.4 in accordance with § 555.126(b). In no event will a licensee distribute explosive materials to a holder of a limited permit unless the holder presents a Form 5400.4 with an original unaltered and unexpired Intrastate Purchase of Explosives Coupon (IPEC), ATF Form 5400.30, affixed. The coupon must bear the name, address, permit number, and the coupon number of the limited permittee seeking distribution of the explosives.

(3) A holder of a limited permit is authorized to receive explosive materials from a licensee or permittee whose premises are located in the same State of residence in which the premises of the holder of the limited permit are located on no more than 6 separate occasions during the one-year period of the permit. For purposes of this section, the term ''6 separate occasions'' means six deliveries of explosive materials. Each delivery must—

(i) Relate to a single purchase transaction made on one ATF F 5400.4;

(ii) Be referenced on one commercial invoice or purchase order; and

(iii) Be delivered to the holder of the limited permit in one shipment delivered at the same time.

(4) A holder of a user permit may dispose of surplus stocks of explosive materials to a licensee or holder of a user permit, or a holder of a limited permit who is a resident of the same State in which the premises of the holder of the user permit are located. A holder of a limited permit may dispose of surplus stocks of explosive materials to another holder of a limited permit who is a resident of the same State in which the premises of the distributor are located, if the transaction complies with the requirements of paragraph (b)(2) of this section and § 555.126(b). A holder of a limited permit may also dispose of surplus stocks of explosive materials to a licensee or holder of a user permit if the disposition occurs in the State of residence of the holder of the limited permit. (*See* § 555.103.)

(5) Each holder of a limited permit ordering explosive materials must furnish the distributing licensee prior to or with the first order of the explosive materials a current list of the names of employees authorized to accept delivery of explosive materials on behalf of the limited permittee. The distributee ordering explosive materials must keep the list current and provide updated lists to licensees and holders of user permits on a timely basis. A licensed importer, licensed manufacturer, licensed dealer, or permittee, selling or otherwise distributing explosive materials to a holder of a limited permit must, prior to delivering the explosive materials, obtain from the limited permittee a current list of persons who are authorized to accept deliveries of explosive materials on behalf of the limited permittee. A licensee or permittee may not deliver explosive materials to a person whose name does not appear on the list.

(6)(i) *Delivery at the distributor's premises.* Where possession of explosive materials is transferred directly to the distributee at the distributor's premises, the distributor must obtain an executed Form 5400.4 in accordance with § 555.126(b) and must in all instances verify the identity of the person accepting possession on behalf of the distributee by examining an identification document (as defined in § 555.11) before relinquishing possession.

(ii) *Delivery by distributor.* Where possession of explosive materials is transferred by the distributor to the distributee away from the distributor's premises, the distributor must obtain an executed Form 5400.4 in accordance with § 555.126(b) and must in all instances verify the identity of the person accepting possession on behalf of the distributee by examining an identification document (as defined in § 555.11) before relinquishing possession.

(iii) *Delivery by common or contract carrier hired by the distributor.* Where a common or contract carrier hired by the distributor will transport explosive materials from the distributor to a holder of a limited permit, the limited permittee will, prior to delivery of the explosive materials, complete the appropriate section on Form 5400.4, affix to the Form 5400.4 one of the six IPECs he has been issued, and provide the form to the distributor in person or by mail. Before the delivery at the distributor's premises of explosive materials to the common or contract carrier who will transport explosive materials to a limited permittee, the distributor must obtain an executed ATF Form 5400.8, Explosives Delivery Record, from the common or contract carrier before releasing the explosive materials. Form 5400.8 must contain all of the information required on the form and by this part. At the time of delivery the common or contract carrier, as agent for the distributor, must verify the identity of the person accepting delivery on behalf of the distributee, note the type and number of the identification document and provide this information to the distributor. The distributor will enter this information in the appropriate section on Form 5400.4. Form 5400.8 must be attached to the distributor's copy of the Form 5400.4 and retained in his permanent records in accordance with § 555.121.

(iv) *Delivery by common or contract carrier hired by the distributee.* Where a common or contract carrier hired by the distributee will transport explosive materials from the distributor to the holder of a limited permit, the holder of the limited permit will, prior to delivery of the explosive materials, complete the appropriate section on Form 5400.4, affix to the Form 5400.4 one of the six IPECs he has been issued, and provide the form to the distributor in person or by mail. Before the delivery at the distributor's premises to the common or contract carrier who will transport explosive materials to the holder of a limited permit, the distributor must obtain an executed ATF Form 5400.8, Explosives Delivery Record, from the common or contract carrier before releasing the explosive materials. Form 5400.8 must contain all of the

information required on the form and by this part. Form 5400.8 must be attached to the distributor's copy of the Form 5400.4 and retained in his permanent records in accordance with § 555.121.

(7) A licensee or permittee disposing of surplus stock may sell or distribute commercially manufactured black powder in quantities of 50 pounds or less to a holder of a limited permit, nonlicensee, or nonpermittee if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices as exempted from the term ''destructive device'' in 18 U.S.C. 921(a)(4).

(Approved by the Office of Management and Budget under control number 1140–0075)

Par. 20. Section 555.106 is amended by:

a. Revising paragraph (a);

b. Removing the word ''or'' at the end of paragraph (c)(3);

c. Removing the period at the end of paragraph (c)(4) and adding in its place a semicolon;

d. Adding new paragraphs (c)(5), (c)(6), and (c)(7); and by removing ''§ 555.105(g)'' in paragraph (d) and adding in its place ''§ 555.105(a)(7) or (b)(7)'' to read as follows:

§ 555.106 Certain prohibited distributions.

(a) A licensee or permittee may not distribute explosive materials to any person except—

(1) A licensee;

(2) A holder of a user permit; or

(3) A holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.

* * * * *

(c) * * *

(5) Is an alien, other than an alien who—

(i) Is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101));

(ii) Is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

(A) Is a foreign law enforcement officer of a friendly foreign government, as determined by the Attorney General in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

(B) Is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

(C) Is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Attorney General in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

(D) Is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

(6) Has been discharged from the armed forces under dishonorable conditions; or

(7) Having been a citizen of the United States, has renounced citizenship.

* * * * *

Par. 21. Section 555.108 is amended by removing the word ''permittee'' wherever it appears in paragraph (a) and adding in its place the phrase ''holder of a user permit.''

Par. 22. Section 555.110 is added to subpart F to read as follows:

§ 555.110 Furnishing of samples (Effective on and after January 24, 2003).

(a) *In general.* Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate must, when required by letter issued by the Director, furnish—

(1) Samples of such explosive materials or ammonium nitrate;

(2) Information on chemical composition of those products; and

(3) Any other information that the Director determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

(b) *Reimbursement.* The Director will reimburse the fair market value of samples furnished pursuant to paragraph (a) of this section, as well as reasonable costs of shipment.

(Approved by the Office of Management and Budget under control number 1140–0073)

Par. 23. Section 555.121 is amended by removing the word ''subpart'' in paragraph (a)(2) and adding in its place the word ''part'' and by revising paragraph (b) to read as follows:

§ 555.121 General.

* * * * *

(b) ATF officers may enter the premises of any licensee or holder of a user permit for the purpose of examining or inspecting any record or document required by or obtained under this part (see § 555.24). Section 843(f) of the Act requires licensees and holders of user permits to make all required records available for examination or inspection at all reasonable times. Section 843(f) of the Act also requires licensees and permittees (including holders of limited permits) to submit all reports and information relating to all required records and their contents, as the regulations in this part prescribe.

* * * * *

Par. 24. Section 555.125 is revised to read as follows:

§ 555.125 Records maintained by permittees.

(a) *Records maintained by permittees prior to May 24, 2003.* (1) Each permittee must take true and accurate physical inventories that will include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee must take a special inventory—

(i) At the time of commencing business, which is the effective date of the permit issued upon original qualification under this part;

(ii) At the time of changing the location of his premises to another region;

(iii) At the time of discontinuing business; and

(iv) At any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance) and the duplicate retained by the permittee. If a special inventory required by paragraphs (a)(1)(i) through (iv) of this section has not been taken during the calendar year, a permittee is required to take at least one physical inventory. However, the record of the yearly inventory, other than a special inventory required by paragraphs (a)(1)(i) through (iv) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (*See* also § 555.127.)

(2) Each permittee must, not later than the close of the next business day following the date of acquisition of

explosive materials, enter the following information in a separate record:

(i) Date of acquisition;

(ii) Name or brand name of manufacturer;

(iii) Manufacturer's marks of identification;

(iv) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.);

(v) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc., and size (length and diameter or diameter only of display fireworks)); and

(vi) Name, address, and license number of the persons from whom the explosive materials are received.

(3) Each permittee must, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 555.124(c).

(4) Each permittee must maintain separate records of disposition of surplus stocks of explosive materials to nonlicensees or nonpermittees as prescribed in § 555.126.

(5) The regional director (compliance) may authorize alternate records to be maintained by a permittee to record his acquisition of explosive materials, when it is shown by the permittee that alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records must submit a letter application to the regional director (compliance) and must describe the proposed alternate records and the need for them. Alternate records are not to be employed by the permittee until approval is received from the regional director (compliance).

(b) *Records maintained by permittees on and after May 24, 2003.* (1) Each holder of a user permit must take true and accurate physical inventories that will include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee must take a special inventory—

(i) At the time of commencing business, which is the effective date of the permit issued upon original qualification under this part;

(ii) At the time of changing the location of his premises;

(iii) At the time of discontinuing business; and

(iv) At any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance) and the duplicate retained by the permittee. If a special inventory required by paragraphs (b)(1)(i) through (iv) of this section has not been taken during the calendar year, a permittee is required to take at least one physical inventory. The record of the yearly inventory, other than a special inventory required by paragraphs (b)(1)(i) through (iv) of this section, will remain on file for inspection instead of being sent to the regional director (compliance). (*See* also § 555.127.)

(2) Each holder of a limited permit must take true and accurate physical inventories, at least annually, that will include all explosive materials on hand required to be accounted for in the records kept under this part.

(3) Each holder of a user permit or a limited permit must, not later than the close of the next business day following the date of acquisition of explosive materials, enter the following information in a separate record:

(i) Date of acquisition;

(ii) Name or brand name of manufacturer;

(iii) Manufacturer's marks of identification;

(iv) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, *etc.*);

(v) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc., and size (length and diameter or diameter only of display fireworks)); and

(vi) Name, address, and license number of the persons from whom the explosive materials are received.

(4) Each holder of a user permit or a limited permit must, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 555.124(c).

(5) When a record book is used as a permittee's permanent record the permittee may delay entry of the required information for a period not to exceed seven days if the commercial record contains all of the required information prescribed by paragraphs (b)(3) and (b)(4) of this section. However, the commercial record may be used instead of a record book as a permanent record provided that the record contains all of the required information prescribed by paragraphs (b)(3) and (b)(4) of this section.

(6) Each holder of a user permit or a limited permit must maintain separate records of disposition of surplus stocks of explosive materials to holders of a limited permit as prescribed in § 555.126.

(7) The regional director (compliance) may authorize alternate records to be maintained by a holder of a user permit or a limited permit to record his acquisition of explosive materials, when it is shown by the permittee that alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records must submit a letter application to the regional director (compliance) and must describe the proposed alternate records and the need for them. Alternate records are not to be employed by the permittee until approval is received from the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1140–0030)

Par. 25. Section 555.126 is amended by:

a. Revising the section heading;

b. Adding a new heading to paragraph (a);

c. Redesignating paragraphs (a) through (f) as (a)(1) through (a)(6);

d. Removing ''§ 555.105(c)'' in redesignated paragraph (a)(2) and adding in its place ''§ 555.105(a)(3)'';

e. Removing ''paragraph (d)'' in redesignated paragraph (a)(3) and adding in its place ''paragraph (a)(4)'';

f. Adding a new paragraph (b); and

g. Revising the parenthetical text at the end of the section to read as follows:

§ 555.126 Explosives transaction record for distribution of explosive materials prior to May 24, 2003 and Limited Permittee Transaction Report for distribution of explosive materials on and after May 24, 2003.

(a) *Explosives transaction record for distribution of explosive materials prior to May 24, 2003.*

* * * * *

(b) *Limited Permittee Transaction Report for distribution of explosive materials on and after May 24, 2003.* (1) A licensee or permittee may not distribute explosive materials to any person who is not a licensee or permittee. A licensee or permittee may not distribute explosive materials to a limited permittee unless the distributor records the transaction on ATF Form 5400.4, Limited Permittee Transaction Report.

(2) Before distributing explosive materials to a limited permittee, the licensee or permittee must obtain an executed Form 5400.4 from the limited permittee with an original unaltered and unexpired Intrastate Purchase of Explosives Coupon (IPEC) affixed. Except when delivery of explosive materials is made by a common or

contract carrier who is an agent of the limited permittee, the licensee, permittee, or an agent of the licensee or permittee, must verify the identity of the of the holder of the limited permit by examining an identification document (as defined in § 555.11) and noting on the Form 5400.4 the type of document presented. The licensee or permittee must complete the appropriate section on Form 5400.4 to indicate the type and quantity of explosive materials distributed, the license or permit number of the seller, and the date of the transaction. The licensee or permittee must sign and date the form and include any other information required by the instructions on the form and the regulations in this part.

(3) One copy of Form 5400.4 must be retained by the distributor as part of his permanent records in accordance with paragraph (b)(4) of this section and for the period specified in § 555.121. The distributor must mail the other copy of Form 5400.4 to the Bureau of Alcohol, Tobacco, Firearms and Explosives in accordance with the instructions on the form.

(4) Each Form 5400.4 must be retained in chronological order by date of disposition, or in alphabetical order by name of limited permittee. A licensee may not, however, use both methods in a single recordkeeping system. Where there is a change in proprietorship by a limited permittee, the forms may continue to be filed together after such change.

(5) The requirements of this section are in addition to any other recordkeeping requirement contained in this part.

(Approved by the Office of Management and Budget under control number 1140–0078)

Par. 26. Section 555.128 is amended by adding the phrase ''or new permittee'' after the phrase ''new licensee'' in the first sentence.

Par. 27. Section 555.141 is amended by adding two new sentences at the end of paragraph (a)(1) to read as follows:

§ 555.141 Exemptions.

(a) * * *

(1) * * * For example, regulations issued by the Department of Transportation addressing the security risk of aliens transporting explosives by commercial motor or railroad carrier from Canada preclude the enforcement of 18 U.S.C. 842(i)(5) against persons shipping, transporting, receiving, or possessing explosives incident to and in connection with the commercial transportation of explosives by truck or rail from Canada into the United States. Questions concerning this exception should be directed to ATF's Public Safety Branch in Washington, DC.

* * * * *

Par. 28. Section 555.142 is amended by revising the section heading; by revising paragraphs (a) through (d); by adding a new paragraph (f); and by adding a parenthetical text at the end of the section to read as follows:

§ 555.142 Relief from disabilities (effective January 24, 2003).

(a) Any person prohibited from shipping or transporting any explosive in or affecting interstate or foreign commerce or from receiving or possessing any explosive which has been shipped or transported in or affecting interstate or foreign commerce may make application for relief from disabilities under section 845(b) of the Act .

(b) An application for relief from disabilities must be filed with the Director by submitting ATF Form 5400.29, Application for Restoration of Explosives Privileges, in accordance with the instructions on the form. The application must be supported by appropriate data, including the information specified in paragraph (f) of this section. Upon receipt of an incomplete or improperly executed application for relief, the applicant will be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application will be considered abandoned.

(c)(1) The Director may grant relief to an applicant if it is established to the satisfaction of the Director that the circumstances regarding the disability and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

(2) Except as provided in paragraph (c)(3) of this section, the Director will not grant relief if the applicant—

(i) Has not been discharged from parole or probation for a period of at least 2 years;

(ii) Is a fugitive from justice;

(iii) Is a prohibited alien;

(iv) Is an unlawful user of or addicted to any controlled substance;

(v) Has been adjudicated a mental defective or committed to a mental institution, unless the applicant was subsequently determined by a court, board, commission, or other lawful authority to have been restored to mental competency, to be no longer suffering from a mental disorder, and to have had all rights restored; or

(vi) Is prohibited by the law of the State where the applicant resides from receiving or possessing explosive materials.

(3)(i) The Director may grant relief to aliens who have been lawfully admitted to the United States or to persons who have not been discharged from parole or probation for a period of at least 2 years if he determines that the applicant has a compelling need to possess explosives, such as for purposes of employment.

(ii) The Director may grant relief to the persons identified in paragraph (c)(2) of this section in extraordinary circumstances where the granting of such relief is consistent with the public interest.

(d) A person who has been granted relief under this section is relieved of all disabilities imposed by the Act for the disabilities disclosed in the application. The granting of relief will not affect any disabilities incurred subsequent to the date the application was filed. Relief from disabilities granted to aliens will be effective only so long as the alien retains his or her lawful immigration status.

* * * * *

(f)(1) Applications for relief from disabilities must include the following information:

(i) In the case of a corporation, or of any person having the power to direct or control the management of the corporation, information as to the absence of culpability in the offense for which the corporation, or any such person, was indicted, formally accused or convicted;

(ii) In the case of an applicant who is an individual, two properly completed FBI Forms FD–258 (fingerprint card), and a written statement from each of three references who are not related to the applicant by blood or marriage and have known the applicant for at least 3 years, recommending the granting of relief;

(iii) Written consent to examine and obtain copies of records and to receive statements and information regarding the applicant's background, including records, statements and other information concerning employment, medical history, military service, immigration status, and criminal record;

(iv) In the case of an applicant having been convicted of a crime punishable by imprisonment for a term exceeding one year, a copy of the indictment or information on which the applicant was convicted, the judgment of conviction or record of any plea of *nolo contendere* or plea of guilty or finding of guilt by the court;

(v) In the case of an applicant under indictment, a copy of the indictment or information;

(vi) In the case of an applicant who has been adjudicated a mental defective or committed to a mental institution, a copy of the order of a court, board, commission, or other lawful authority that made the adjudication or ordered the commitment, any petition that sought to have the applicant so adjudicated or committed, any medical records reflecting the reasons for commitment and diagnoses of the applicant, and any court order or finding of a court, board, commission, or other lawful authority showing the applicant's discharge from commitment, restoration of mental competency and the restoration of rights;

(vii) In the case of an applicant who has been discharged from the Armed Forces under dishonorable conditions, a copy of the applicant's Certificate of Release or Discharge from Active Duty (Department of Defense Form 214), Charge Sheet (Department of Defense Form 458), and final court martial order;

(viii) In the case of an applicant who, having been a citizen of the United States, has renounced his or her citizenship, a copy of the formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state or before an officer designated by the Attorney General when the United States was in a state of war (*see* 8 U.S.C. 1481(a)(5) and (6)); and

(ix) In the case of an applicant who is an alien, documentation that the applicant is an alien who has been lawfully admitted to the United States; certification from the applicant including the applicant's INS-issued alien number or admission number, country/countries of citizenship, and immigration status, and certifying that the applicant is legally authorized to work in the United States, or other purposes for which possession of explosives is required; certification from an appropriate law enforcement agency of the applicant's country of citizenship stating that the applicant does not have a criminal record; and, if applicable, certification from a Federal explosives licensee or permittee or other employer stating that the applicant is employed by the employer and must possess explosive materials for purposes of employment. These certifications must be submitted in English.

(2) Any record or document of a court or other government entity or official required by paragraph (f)(1) of this section must be certified by the court or other government entity or official as a true copy.

(Approved by the Office of Management and Budget under control number 1140–0076)

Par. 29. Section 555.165 is amended by designating the existing paragraph as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 555.165 Failure to report theft or loss.

* * * * *

(b) On and after January 24, 2003, any licensee or permittee who fails to report a theft of explosive materials in accordance with § 555.30 will be fined under title 18 U.S.C., imprisoned not more than 5 years, or both.

Signed: March 14, 2003.

Bradley A. Buckles,

Director.

[FR Doc. 03–6573 Filed 3–19–03; 8:45 am]

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Federal Register

Thursday,
March 20, 2003

Part III

Department of Education

34 CFR Part 200

Title I—Improving the Academic Achievement of the Disadvantaged; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810—AA95

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing programs administered under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)—referred to in these proposed regulations as the Title I programs. These proposed regulations would clarify statutory provisions regarding State, LEA, and school accountability for the academic achievement of students with the most significant cognitive disabilities and are needed to implement changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: We must receive your comments on or before May 19, 2003.

ADDRESSES: Address all comments about these proposed regulations to Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, FB–6, Washington, DC 20202–6132. The Fax number for submitting comments is (202) 260–7764.

If you prefer to send your comments through the Internet, use the following address: *TitleIrulemaking@ed.gov.*

You must include the term ''proposed rule'' in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. We are specifically interested in your comments on the following:

(1) Whether, in proposed § 200.13(c)(1), existing scientific research, State/LEA or national data, and the current state of knowledge support setting the cap at 1.0 percent for students with the most significant cognitive disabilities whose achievement can be measured against alternate achievement standards for determining adequate yearly progress (AYP) at the LEA and State levels.

(2) What, if any, significant implementation issues pertaining to the definition of ''students with the most significant cognitive disabilities'' in proposed § 200.1(d)(2) would arise at the State, LEA, and school levels. Specifically, the Department requests comments on what current recordkeeping and reporting requirements would States and LEAs use to comply with this provision and whether additional information or data will be necessary for compliance.

(3) Compliance with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

(4) How the Department should review these regulations once finalized to monitor regulatory compliance and invite more research and analysis to potentially fine-tune program implementation.

In addition, we invite you to submit additional comments on § 200.20(c)(3) of the Title I regulations published on December 2, 2002 (67 FR 71710, 71717). This regulation provides that, if a student takes a State assessment for a particular subject or grade level more than once, the State must use the student's results from the first administration to determine AYP. We included this provision in the regulations in response to comments requesting clarification on the proposed regulations. Although there may be very sound reasons for permitting a student to take high-stakes assessments multiple times, we believe that a student's performance on the first administration best reflects the performance of the school in preparing the student to take the assessment, and school accountability is the focus of Title I. Several States have suggested that their practice of administering multiple assessments in certain situations and counting the scores on these assessments for school accountability purposes better reflects both student and school performance than does § 200.20(c)(3). We invite you to comment on whether § 200.20(c)(3) should be amended and, if so, how.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W242, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

These proposed regulations implement statutory provisions regarding State, LEA, and school accountability for the academic achievement of students with the most significant cognitive disabilities. They would amend final regulations published in the **Federal Register** (67 FR 45038) by the Secretary on July 5, 2002 for the standards and assessment provisions of Title I, part A of the ESEA and on December 2, 2002 (67 FR 71710) for the remaining provisions of Title I, parts A and C. These regulations implement the ESEA as reauthorized under the NCLB Act (Pub. L. 107–110), enacted January 8, 2002, which incorporated major educational reforms proposed by President George W. Bush in his No Child Left Behind initiative and significant changes to Title I of the ESEA, which is designed to help disadvantaged children meet high academic standards.

In the notice of proposed rulemaking (NPRM) published in the **Federal Register** (67 FR 50986) on August 6, 2002, the Secretary proposed in § 200.13

allowing the use of alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States, LEAs, and schools, provided that use at the State and LEA levels did not exceed 0.5 percent of all students. Numerous comments were received on this proposal. Many of them reflected a misunderstanding on the part of commenters who thought that the number of students with disabilities who could take an alternate assessment was being limited. Instead, the NPRM proposed to allow the use of alternate achievement standards to determine proficiency for a limited group of students with disabilities, and the use of those assessment results in the calculation of AYP. It did not propose limiting the number or percentage of students taking an alternate assessment but did propose limiting the percentage of students who take an alternate assessment that is evaluated against alternate achievement standards that may be included in the calculation of AYP.

Section 200.13 as adopted in the final regulations published in the **Federal Register** (67 FR 71710) on December 2, 2002 did not allow any use of alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States and LEAs. Based on the comments in response to the earlier NPRM and departmental review, we are proposing to amend the final regulations to provide for this use of alternate achievement standards. We are seeking public comment in this NPRM regarding their appropriate use in determining AYP for students with the most significant cognitive disabilities.

Proposed Regulations

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Statute: Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called ''student performance standards''). Each State must have the same academic content standards for all schools and all children in the State in mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science. In developing challenging student academic achievement standards, aligned with the State's content standards, States must describe at least three levels of achievement: advanced, proficient, and basic.

Current Regulations: Section 200.1 describes the State's obligation to develop challenging academic content and student academic achievement standards in at least mathematics, reading/language arts, and, beginning in 2005–2006, science that apply to all public schools and public school students in the State. It requires that the State's academic achievement standards be aligned with the State's academic content standards and apply to every grade assessed.

Proposed Regulations: The proposed regulations would allow States to use a documented and validated standards-setting process to define academic achievement standards for students with the most significant cognitive disabilities, as defined in proposed § 200.1(d)(2), who take an alternate assessment. These standards must be aligned with the State's academic content standards and reflect professional judgment of the highest learning standards possible for those students.

Reasons: In proposing these amendments to § 200.1, we acknowledge that, while all children can learn challenging content standards, evaluating that learning by alternate achievement standards is appropriate for some small, limited percentage of students whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean.

Section 200.6 Inclusion of All Students

Statute: Section 1111(b)(1)(B) of the ESEA requires States to provide all public schools and all public school students in the State with the same challenging academic content standards and student academic achievement standards. Section 1111(b)(3)(C) further stipulates that a State's academic assessments must measure the achievement of all children; be aligned with the State's challenging academic content and academic achievement standards; and provide for reasonable adaptations and accommodations for students with disabilities, as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA).

Current Regulations: Current § 200.6 clarifies that the State's academic assessment system must include accommodations for students with disabilities as defined under section 602(3) of the IDEA and for students covered under section 504 of the Rehabilitation Act of 1973 (Section 504) to allow the State to measure the academic achievement of these students relative to the State's academic content and achievement standards for the grades in which they are enrolled. In addition, the regulations require States to provide one or more alternate assessments for students with disabilities, as defined under section 602(3) of the IDEA, who cannot participate in all or part of the State assessment, even with appropriate accommodations. These alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

Proposed Regulations: Section 200.6 would be amended to allow the alternate assessments of students with the most significant cognitive disabilities, as defined in proposed § 200.1(d)(2), to measure the achievement of those students against alternate academic achievement standards defined by the State under § 200.1(d)(1). Proposed § 200.6 would also require States to establish guidelines to ensure that alternate assessments measured against alternate achievement standards are used only for students with the most significant cognitive disabilities. States would also be required to report separately on the percentage of students with disabilities taking alternate assessments that are measured against alternate academic achievement standards and the percentage of students with disabilities taking alternate assessments that are measured against the regular achievement standards.

Reasons: Proposed amendments to § 200.6 acknowledge the appropriateness of allowing the alternate assessments of a small percentage of students—those with the most significant cognitive disabilities—to be measured against alternate achievement standards aligned with the State's academic content standards. (Alternate assessment of other students with disabilities must be measured against grade-level achievement standards.) Proper implementation of the requirements that States establish guidelines and report on the percentages of students with disabilities taking alternate assessments that are measured against alternate academic achievement standards will ensure that all students with disabilities are appropriately included in State assessment systems. The proposed amendment does not limit the number or percentage of students taking alternate assessments measured against achievement standards as defined in § 200.1(c), as determined appropriate by their Individualized Education Program (IEP) teams, but does limit the percentage of

those students with the most significant cognitive disabilities taking an alternate assessment measured against alternate achievement standards as defined in § 200.1(d).

Section 200.13 Adequate Yearly Progress in General

Statute: Under section 1111(b)(2)(B), each State must define what constitutes AYP of the State, and of all public elementary and secondary schools and LEAs in the State, toward enabling all students to meet the State's student academic achievement standards. This definition must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments.

To make AYP, a school must: meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup; test at least 95 percent of all students and of the students in each subgroup enrolled in the school; and make progress on the other academic indicators determined by the State.

Current Regulations: The current regulations governing AYP implement the statutory provisions in section 1111 of the ESEA. They require that each State demonstrate what constitutes AYP of the State and of all public schools and LEAs in the State, in a manner that applies the same high standards of achievement to all public school students; is statistically valid and reliable; results in continuous and substantial academic improvement for all students; measures the progress of all public schools, LEAs and the State based primarily on the State's academic assessment system; measures progress separately for reading/language arts and for mathematics; is the same for all public schools and LEAs in the State; and applies the same annual measurable objectives for all students and for all identified subgroups as defined in § 200.13(b)(7)(ii).

Proposed Regulations: The proposed regulations specify the acceptable use of alternate achievement standards identified in § 200.1(d) for students with the most significant cognitive disabilities. Specifically, proposed § 200.13(c)(1) would permit States to use those standards for students with the most significant cognitive disabilities in calculating AYP for schools, provided that the percentage of students with the most significant cognitive disabilities at the LEA and State levels, separately, does not exceed 1.0 percent of all students in the grades assessed. Nationally, 1.0 percent of students in the grades assessed represents approximately nine percent of students with disabilities, but the actual percent varies across States. The 1.0 percent limitation applies only at the LEA and State levels. Proposed § 200.13(c)(2) allows States to request from the Secretary—and LEAs to request from the State'an exception to the 1.0 percent limitation. This request for an exception by the State or LEA must document that the incidence of students with the most significant cognitive disabilities in the State or LEA exceeds that limit and that circumstances exist that could explain the higher percentages such as a school, community or health program that has drawn families of students with the most significant cognitive disabilities into the area or a very small overall population in which case a very few students with the most significant cognitive disabilities could cause the State or LEA to exceed the 1.0 percent limitation.

Students included under § 200.13(c) who take an alternate assessment that measures alternate achievement standards would be counted as ''participating'' in the State's assessment system and thus would be included in determining whether 95 percent of students with disabilities enrolled in a school at the time of testing are, in fact, assessed.

Reasons: Under the Title I accountability system, alternate assessments based on alternate achievement standards are an appropriate way to measure the progress of only that very limited portion of students with the most significant cognitive disabilities. Moreover, holding schools accountable for students with the most significant cognitive disabilities achieving grade-level academic achievement standards may subvert the intended benefits of NCLB for these students and have undesired effects on the services they are provided.

Based on current prevalence rates of students with the most significant cognitive disabilities, and allowing for reasonable local variation in prevalence, proposed § 200.13(c)(2) would set the number of students with disabilities who may be included in accountability measures using alternate achievement standards at not more than 1.0 percent of all students assessed in a State or LEA. For accountability purposes, the performance of all other students with disabilities (including any other students with disabilities who take an alternate assessment) must be assessed against the academic achievement standards established under § 200.1(c). This is not a limit on the number or type of students with disabilities who can take an alternate assessment.

Section 200.13 of the NPRM, published in the **Federal Register** (67 FR 50986) on August 6, 2002, proposed allowing the use of alternate achievement standards for students with the most significant cognitive disabilities for determining AYP of States and LEAs, provided that use did not exceed 0.5 percent of all students. Many comments regarding this proposal misinterpreted it to mean that the number of students with disabilities who could take an alternate assessment was being limited; rather, it proposed the flexibility of allowing the use of alternate achievement standards to determine proficiency for calculating AYP for a limited group of students with disabilities. Numerous commenters expressed concern that the 0.5 percent limit on assessments using alternate standards in the calculation of AYP ignored the incidence rate of students with the most significant cognitive disabilities, which they estimated at 2 to 5 percent. Recommended alternatives included elimination of the limit, a phase-in of the 0.5 percent limit, higher limits, permitting States to set their own limits, or using such limits for reporting purposes only and not in the calculation of AYP.

Several commenters expressed the view that the 0.5 percent limit was ''especially unreasonable'' for small rural districts, where a very small number of students with the most significant cognitive disabilities might cause the LEA to exceed the limit. Others wrote that the provision would be unfair to districts with large populations of students with disabilities and to schools with programs specifically designed to serve students with disabilities. Many commenters perceived the proposed limit to be in conflict with the requirement of the IDEA that all students with disabilities must be offered an alternate assessment when the regular assessment does not adequately measure their achievement.

Finally, two commenters expressed support for the 0.5 percent limit on assessments using alternate achievement standards in the calculation of AYP, while one supported the Secretary's effort to establish a realistic limit as an important step in preventing inappropriate use of alternate assessments to ''hide'' low-performing students in general.

The 0.5 percent of total population figure was derived based on converging scientific evidence from multiple

sources. The Metropolitan Atlanta Developmental Disabilities Surveillance Program (MADDSP) sponsored by the Centers for Disease Control (CDC) has assessed the prevalence of the moderate, severe and profound groups of mental retardation in that community at a prevalence rate of 2.9 per 1,000 for students 3 to 10 years of age, or about one-third of those with mental retardation (Boyle C, Holmgreen N, Schednel D. Prevalence of Selected Developmental Disabilities in Children 3–10 Years of Age: the Metropolitan Atlanta Developmental Disabilities Surveillance Program, 1991, MMWR Surveillance Summaries, 1996). Thus, the estimate of students is for those with an IQ of less than 50.

A later study by Roeleveld and colleagues provided a similar rate of 3.8 per 1,000 (Roeleveld N, Zielhuis GA, Gabreels F. The prevalence of mental retardation: a critical review of recent literature. Dev Med Child Neurol. 1997;39:125–32.). Another study indicates that students with severe to profound mental retardation are estimated at somewhat less than 0.13 percent of the total population (Beirne-Smith M, Patton J, Ittenbach R, Mental Retardation (6th Ed.) Upper Saddle River: Prentice-Hall Career and Technology, 2001), while 0.22 percent of the population is considered to have multiple disabilities (IDEA Annual Report to Congress, 2001). The American Association on Mental Retardation (AAMR) defines mental retardation as a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. (AAMR, Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition, 2002).

In general, mild mental retardation, which we are excluding from the definition of students with the most significant cognitive disabilities, is considered to be two or more standard deviations below the mean. Thus, for purposes of the Title I program, the term 'students with the most significant cognitive disabilities' is defined as covering students with intellectual functioning and adaptive behavior three or more standard deviations below the mean.

However, these numbers are generally seen as reflecting national rates, and, as a number of commenters on the earlier NPRM pointed out, may not account for more localized differences, caused by a number of factors, in the prevalence of students with the most significant cognitive disabilities. Several commenters indicated that in their experience the prevalence of students with the most significant cognitive disabilities exceeded the 0.5 percent proposal and suggested that a limit of 1.0 percent would be more appropriate.

While not specifically comparable, because they include all students with disabilities who participate in State assessment programs through alternate assessments, and not just those students with the most significant cognitive disabilities, State data reported to the Department under the IDEA may be illustrative. Of the 38 States for which sufficient data were provided to calculate a participation rate, in 21 States 5 percent or less of students with disabilities who participated in the State assessment program took an alternate assessment. (Five percent of students with disabilities is roughly equivalent to 0.5 percent of all students.) In 14 other States, between 5 and 10 percent of students with disabilities participated in State assessment programs through an alternate assessment. (Analysis of 2000–2001–Biennial Performance Reports, National Center for Educational Outcomes) In these States, students with disabilities comprise approximately 8 to 12 percent of the total student population. (IDEA Annual Report to Congress, 2001).

In addition, national prevalence rates provide an average, but the actual numbers in a jurisdiction may be higher or lower than that average. Factors beyond the control of a school, school district, or even a State may cause the number of students with the most significant cognitive disabilities to exceed 0.5 percent of the total student population at the grades assessed. For example, in small schools, a single student may be more than that limit would allow. Moreover, certain schools, districts, or States may have disproportionate numbers of students with the most significant cognitive disabilities because of proximity to special facilities or services.

In addition, imposing a limit on the number and type of students with disabilities who can take an alternate assessment that is evaluated based on alternate academic achievement standards does not prohibit other students with disabilities from taking an alternate assessment or an assessment with appropriate accommodations when deemed necessary by the Individualized Education Program (IEP) team under the IDEA. Decisions about how an individual student participates in a State assessment remain the responsibility of the student's IEP team and must be made on an individualized basis for each student. However, only the alternate assessment of students with the most significant cognitive disabilities may be evaluated against alternate academic achievement standards.

In sum, even though the 0.5 percent figure was based on the best available data, those data are limited. We are persuaded by the comments of a number of stakeholders who said that 0.5 percent did not reflect their experience; rather, a one percent limitation would allow for normal State and LEA variations in the occurrence of students with the most significant cognitive disabilities.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of the governmental functions.

Summary of Potential Costs and Benefits

These proposed regulations would not add significantly to the costs of implementing the Title I programs authorized by the ESEA or alter the benefits that the Secretary believes will be obtained through successful implementation.

As noted elsewhere, the proposed regulations would clarify the statute and facilitate a better understanding of its accountability requirements regarding students with the most significant cognitive disabilities. Both the statute and existing regulations require States to develop assessment systems that include alternate assessments. These proposed regulations clarify how alternate assessment results based on alternate achievement standards for a small percentage of students are to be included in the calculation of AYP within the State accountability system.

States and LEAs will benefit by receiving more accurate achievement information regarding students with the most significant cognitive disabilities.

Most implementation costs and benefits will stem from the underlying legislation. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources. For purposes of the Unfunded Mandates Reform Act of 1995, these regulations do not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more that $100 million in any one year.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 200.13 Adequate yearly progress in general.)
- Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

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

These provisions require States and LEAs to take certain actions to improve student academic achievement. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

Section 200.6 contains an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review as part of the paperwork collection titled ''State educational agency, local educational agency, and school data collection and reporting under ESEA, Title I, Part A''.

This provision of the Title I, part A regulations requires States to establish guidelines to ensure that the alternate academic achievement standards defined under § 200.1(d) are used only for students who have the most significant cognitive disabilities. In addition, it requires schools and LEAs to annually report, separately, the percentage of students with disabilities taking alternate assessments measured against alternate achievement standards defined in § 200.1(d) and the percentage of students with disabilities taking alternate assessments measured against the academic achievement standards defined under § 200.1(c).

The total estimated reporting and record keeping burden hours for SEA activity covered by the paperwork requirement is 56,264 hours for 52 SEAs. The total estimated reporting and record keeping burden hours for LEA activities covered by the paperwork requirement is 1,159,505 hours for 13,335 LEAs. The total estimated reporting and record keeping burden hours for school-level activities is 1,506,222 hours.

The Office of Management and Budget is currently reviewing the information collection pertaining to this regulation. We invite comments on the information collection in this proposed regulation by April 21, 2003. If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education,

Eligibility, Family-centered education, Grant programs—education, Indians education, Institutions of higher education, Local educational agencies, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: March 14, 2003.

Rod Paige,

Secretary of Education.

The Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. In § 200.1, redesignate paragraphs (d) and (e) as (e) and (f), revise paragraph (a)(1), and add paragraph (d) to read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) * * *

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as provided in paragraph (d) of this section;

* * * * *

(d) *Alternate academic achievement standards.* (1) For students with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated standards-setting process, define achievement standards that—

(i) Are aligned with the State's academic content standards; and

(ii) Reflect professional judgment of the highest learning standards possible for those students.

(2) For purposes of subpart A of this part, the term ''students with the most significant cognitive disabilities'' means students who have been identified as students with disabilities under the Individuals with Disabilities Education Act and whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean.

* * * * *

3. In § 200.6, revise paragraph (a)(2)(ii) and add paragraph (a)(2)(iii) to read as follows:

§ 200.6 Inclusion of all students.

* * * * *

(a) * * *

(2) * * *

(ii)(A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science, except as provided in paragraph (a)(2)(ii)(B) of this section.

(B) For students with the most significant cognitive disabilities, alternate assessments may yield results that measure the achievement of those students against the achievement standards the State has defined under § 200.1(d).

(iii) The State must—

(A) Establish guidelines to ensure that the alternate academic achievement standards defined under § 200.1(d) are used only for students who have the most significant cognitive disabilities; and

(B) Require schools and LEAs to report separately the percentage of students with disabilities taking alternate assessments measured against—

(*1*) The alternate academic achievement standards defined under § 200.1(d); and

(*2*) The academic achievement standards defined under § 200.1(c).

* * * * *

4. In § 200.13, redesignate paragraph (c) as paragraph (d), revise the introductory text of paragraph (b) and paragraph (b)(1), and add paragraph (c) to read as follows:

§ 200.13 Adequate yearly progress in general.

* * * * *

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Except as provided in paragraph (c) of this paragraph, applies the same high standards of academic achievement to all public school students in the State;

* * * * *

(c)(1) In calculating adequate yearly progress for schools, a State may use the alternate academic achievement standards in § 200.1(d) for students with the most significant cognitive disabilities provided that the percentage of those students at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed.

(2) If an LEA or State can document that the incidence of students with the most significant cognitive disabilities in the LEA or the State exceeds the limitation in paragraph (c)(1) of this section, and that circumstances exist that could explain the higher percentages such as a school, community, or health program in the area that has drawn families of students with the most significant cognitive disabilities, or such a small overall student population that only a very few students with the most significant cognitive disabilities exceed the 1.0 percent limitation, the LEA may request from the State, or the State may request from the Secretary, respectively, an exception to exceed the 1.0 percent limitation.

(3) In calculating adequate yearly progress for the State and each LEA, the State must apply grade-level academic content and achievement standards established under § 200.1(b) and (c) to assessment results of any students taking alternate assessments that exceed the percentage limitations under paragraphs (c)(1) and (2) of this section.

* * * * *

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Vol. 68, No. 54

Thursday, March 20, 2003

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Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, MARCH

9851–10140 3
10141–10344 4
10345–10650 5
10651–10952 6
10953–11310 7
11311–11462 10
11463–11732 11
11733–11966 12
11967–12282 13
12283–12568 14
12569–12796 17
12797–13218 18
13219–13614 19
13615–13802 20

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
Memorandum of March 11, 2003 12569
Memorandum of March 12, 2003 12281
Presidential Determinations:
No. 2003–15 of February 13, 2003 10651
Notices:
Notice of March 12, 2003 12563

Proclamations:
7648 10641
7649 10643
7650 10645
7651 10647
7652 10649
7653 13217

Executive Orders:
4601 (Amended by: 13286) 10619
10977 12567
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; See: 13289) 10619, 12567
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
12752 (See Memorandum of March 11, 2003) 12569
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
12957 (See Notice of March 12, 2003) 12563
12959 (See Notice of March 12, 2003) 12563
12977 (Amended by: 13286) 10619
12978 (Amended by: 13286) 10619
12982 (Amended by: 13286) 10619
12985 (Amended by: 13286; See: 13289) 10619, 12567
12989 (Amended by: 13286) 10619
13011 (Amended by: 13286) 10619
13059 (See Notice of March 12, 2003) 12563
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: 13286, 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
13288 11457
13289 12567

5 CFR

Ch. XIV 10953
110 10666
2416 10953
2424 10953
2429 10953
2471 10953
2472 10953

6 CFR

9 10912
15 10886
17 10892
21 10904

7 CFR

301 11311
318 11967
319 9851
911 10345
944 10345
959 11463
982 11733
984 10347
989 ..... 13219, 13615
1000 13617
1001 13617
1005 13617
1006 13617
1007 13617
1030 13617
1032 13617
1033 13617
1124 13617
1126 13617
1131 13617
1135 13617

Proposed Rules:

340 11337
770 12309
930 ..... 9944, 13636
932 11340
985 11751
1205 12310
1218 11756
1219 12881
1230 11996
1405 9944
1499 9944

8 CFR

1 10922
2 10922
103 10922
217 10954
235 10143
239 10922
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

1 12283
50 10361
92 10667

Proposed Rules:

94 11998
317 11008
327 11008

10 CFR

40 10362
50 12571
150 10362
430 10957

Proposed Rules

40 10411
150 10411
430 11009
490 10320

11 CFR

111 12572

12 CFR

202 13144

Proposed Rules:

203 11010
225 12316
915 13238

14 CFR

Ch. 1 10145
25 ..... 9854, 10365, 12581
39 ..... 10147, 10149, 10152, 10154, 10156, 10583, 10653, 11467, 11469, 11967, 11971, 12285, 12797, 12799, 12802, 12806, 12809, 12812, 13221, 13618
47 10316
71 ..... 10367, 10369, 10654, 11736, 11738, 12582, 12814, 13225
91 12542
97 ..... 10962, 10963, 13619, 13621
121 12542
135 12542
145 12542

Proposed Rules:

21 ..... 11475, 11759
39 ..... 9947, 9950, 9951, 9954, 10185, 10188, 10413, 10416, 11014, 11015, 11342, 11476, 11479, 11760, 11762, 11764, 11999, 12318, 12614, 12615, 12618, 13239
43 ..... 11475, 11759
71 12621
121 12882
145 ..... 11475, 11759
255 ..... 12622, 12883
399 ..... 12622, 12883

15 CFR

740 10586
743 10586
772 10586
774 10586
902 12814

16 CFR

304 9856

17 CFR

4 12583
200 12780
240 12780

Proposed Rules:

1 12319
4 ..... 12001, 12622

18 CFR

375 9857
388 9857

19 CFR

4 13623
113 13623
178 13623

Proposed Rules:

12 13636
24 13636
113 13638
181 12011

20 CFR

625 10932

Proposed Rules:

404 12639
416 12639

21 CFR

165 9873
201 12584
510 13225
520 13626
610 10157
1310 11471

Proposed Rules:

1 10668
111 ..... 10418, 12158
112 12158
165 9955
201 12500
310 12406
312 12406
314 12406
320 12406
600 12406
601 12406
606 ..... 12406, 12500
610 12500
878 13639

22 CFR

41 13627
42 ..... 13627, 13628

Proposed Rules:

211 9944

24 CFR

25 12766

28 12766
30 12766
81 12766
92 10160
180 12766
207 12792
906 11714
3282 12766
3500 12766
Proposed Rules:
203 11730
3285 11448
3286 11452

26 CFR

1 ....10161, 10655, 11313, 12287, 12815, 12817, 13226
20 10161
25 10161
31 10161
53 10161
54 10161
56 10161
301 ....10161, 11739
602 ....10161, 11739, 12287, 12817
Proposed Rules:
1 ....10190, 12324, 13242

27 CFR

4 10076
5 10076
7 10076
555 13768

28 CFR

540 10656
Proposed Rules:
28 11481

29 CFR

1404 10659
1910 12301
4022 12303
4044 12303

30 CFR

18 10965
948 10178
Proposed Rules:
70 ....10784, 12641
72 ....10940, 12641
75 ....10784, 11770, 12641
90 ....10784, 12641
206 12643
950 10193

31 CFR

1 12584
103 10965
560 11741
575 11741
Proposed Rules:
103 12155

32 CFR

171 11633
199 11973

33 CFR

52 9882
100 13628
110 13629
117 ....9890, 13226, 13227, 13228
165 ....12304, 13228, 13231, 13233
401 11974
Proposed Rules:
117 ....13242, 13641
165 ....13244, 13643, 13647, 13649
402 12644

34 CFR

Proposed Rules:
200 13796

36 CFR

704 11974
Proposed Rules:
7 11019
219 ....10421, 12155

37 CFR

Proposed Rules:
201 13652

38 CFR

17 ....11977, 13590
20 13235
61 13590

39 CFR

3001 12588

40 CFR

9 13608
52 ....9892, 10966, 10969, 11316, 11977, 12590, 12825, 12827, 12829, 12831, 13630
62 ....10659, 10661, 10663, 11472, 11978
63 ....11745, 12590
70 10969
82 10370
122 ....11325, 13608
123 13608
124 13608
130 13608
180 ....10370, 10377, 10972, 10983, 11330
228 12592
271 11981
300 13633
439 12266
Proposed Rules:
Ch. I 10675, 12013
51 12014
52 ....11022, 11023, 12014, 12886, 12887, 13247, 13653
62 ....10680, 10681, 11483, 11484, 12015
63 12645
70 11023
81 13653
125 13522
136 ....11770, 11791
194 12887
228 11488
271 12015
439 12776

41 CFR

300–2 12602
Ch. 304 12602

42 CFR

50 12306
412 10987
Proposed Rules:
83 11924
412 ....10421, 11234

43 CFR

Proposed Rules:
4 13657
4100 ....9964, 11345

44 CFR

61 9895
64 9897
152 12544
206 9899

45 CFR

162 11445

47 CFR

0 11747
1 ....
2 ....10179, 11986, 12744
25 11986
73 ....10388, 10664, 10665, 11335, 11993, 12610, 12744
74 12744
76 13236
78 12744
90 10179
95 9900
101 12744
Proposed Rules:
15 12015
54 ....10430, 12020
73 ....10681, 10682, 10683, 11345, 12023, 12024
74 12652

48 CFR

Ch. 1 ....13200, 13208
12 ....13201, 13202
16 13201
29 13204
32 ....13202, 13206
47 13202
52 ....13202, 13204, 13206
1817 13634
1825 11747
Proposed Rules:
501 13212
538 13212
552 13212

49 CFR

1 ....10988, 12833
107 11748
190 11748
191 11748
192 11748
193 11748
195 11748
198 11748
199 11748
219 10108
225 10108
240 10108
1540 9902
Proposed Rules:
192 ....9966, 13249
397 13250

50 CFR

17 ....10388, 12611, 12834, 12863, 12982, 13370, 13498
226 13370
300 10989
622 ....10180, 11003
648 ....9905, 10181, 12612, 12814
660 11182
679 ....9902, 9907, 9924, 9942, 11004, 11994, 13635
Proposed Rules:
17 ....12326, 12336, 13662, 13663
21 12653
223 13662
229 10195
600 ....9967, 11501, 11793
622 11794
648 ....9968, 11023, 11346
660 12888

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 20, 2003

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Rasins produced from grapes grown in California; published 3-19-03

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pollock; published 3-21-03

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Mississippi; published 3-20-03

New Jersey; published 2-18-03

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; published 3-20-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Pyrantel pamoate paste; published 3-20-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Alabama; published 2-28-03

JUSTICE DEPARTMENT

Alcohol, Tobacco, Firearms, and Explosives Bureau

Safe Explosives Act; implementation; published 3-20-03

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Interagency acquisitions; use authority; published 3-20-03

STATE DEPARTMENT

Visas; immigrant documentation:

Hong Kong residents; extended visa validity benefits; published 3-20-03

Immediate relatives, definition; widows and children of victims of September 11, 2001 terrorist attacks; published 3-20-03

New or replacement visas issuance; published 3-20-03

Visas; nonimmigrant documentation:

Members of observer missions to United Nations; visa fees waived; published 3-20-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Niagara Falls, NY; special flight rules in vicinity—

Canadian flight management procedures; published 2-28-03

Class D airspace; published 1-22-03

Class D and Class E airspace; published 1-17-03

Class E airspace; published 1-2-03

Class E2 and Class E5 airspace; correction; published 1-27-03

Class E5 airspace; published 12-2-02

Federal airways; published 1-16-03

Standard instrument approach procedures; published 3-20-03

COMMENTS DUE NEXT WEEK

Immigration and Naturalization Service

Immigration:

Immigration Examinations Fee Account; fee schedule adjustment; comments due by 3-25-03; published 1-24-03 [FR 03-01853]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Downer cattle and dead stock of cattle and other species; potential bovine spongiform encephalopathy pathways; risk reduction strategies; comments due by 3-24-03; published 1-21-03 [FR 03-01210]

Pork and pork products imported from regions affected with swine vesicular disease; pork-filled pasta; comments due by 3-24-03; published 1-21-03 [FR 03-01213]

Hawaiian and territorial quarantine notices; and plant-related quarantine, foreign:

Fruits and vegetables; movement and importation; comments due by 3-24-03; published 1-21-03 [FR 03-01211]

Interstate transportation of animals and animal products (quarantine):

Blood and tissue collection at slaughtering establishments; comments due by 3-28-03; published 1-27-03 [FR 03-01752]

Exotic Newcastle disease; quarantine area designations—

Nevada; comments due by 3-25-03; published 1-24-03 [FR 03-01608]

Plant-related quarantine, domestic:

Mexican fruit fly; comments due by 3-24-03; published 1-21-03 [FR 03-01214]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (Subsistence priority):

Fish and shellfish; subsistence taking; comments due by 3-28-03; published 2-12-03 [FR 03-02397]

National Forest System lands:

Special use authorizations; comments due by 3-24-03; published 1-22-03 [FR 03-01291]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat, poultry, and egg products inspection services; fee changes; comments due by 3-28-03; published 2-26-03 [FR 03-04393]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 3-27-03; published 3-12-03 [FR 03-05898]

Magnuson-Stevens Act provisions—

Domestic fisheries; exemption fishing permit applications; comments due by 3-27-03; published 3-12-03 [FR 03-05903]

Northeastern United States fisheries—

Monkfish; comments due by 3-24-03; published 3-7-03 [FR 03-05172]

Northeast multispecies; comments due by 3-27-03; published 2-25-03 [FR 03-04332]

Spiny dogfish; comments due by 3-25-03; published 3-10-03 [FR 03-05719]

Marine mammals:

Incidental taking—

Southern California; drift gillnet fishing prohibition; loggerhead sea turtles; comments due by 3-24-03; published 2-12-03 [FR 03-03494]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack; procurements of supplies or services; comments due by 3-28-03; published 1-27-03 [FR 03-01687]

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:

Background checks for EPA contractors performing services on-site; comments due by 3-24-03; published 1-22-03 [FR 03-01361]

Air pollution; standards of performance for new stationary sources:

Volatile organic liquid storage vessels (including those for petroleum); comments due by 3-26-03; published 2-24-03 [FR 03-04245]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 3-28-03; published 2-26-03 [FR 03-04382]
Kansas; comments due by 3-28-03; published 2-26-03 [FR 03-04627]
Michigan; comments due by 3-26-03; published 2-24-03 [FR 03-04260]
Pennsylvania; comments due by 3-27-03; published 2-25-03 [FR 03-04256]
Endangered and threatened species; pesticide regulation; comments due by 3-25-03; published 3-13-03 [FR 03-06188]

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
Arkansas and West Virginia; comments due by 3-24-03; published 2-19-03 [FR 03-03951]
Florida; comments due by 3-24-03; published 2-19-03 [FR 03-03950]
Oklahoma and California; comments due by 3-24-03; published 2-19-03 [FR 03-03953]
Texas; comments due by 3-24-03; published 2-19-03 [FR 03-03955]
Various States; comments due by 3-24-03; published 2-19-03 [FR 03-03952]
Television broadcasting:
Cable television systems—
Navigation devices; commercial availability; compatibility between cable systems and consumer electronics equipment; comments due by 3-28-03; published 1-16-03 [FR 03-00948]
Television stations; table of assignments:
Virgin Islands; comments due by 3-24-03; published 1-28-03 [FR 03-01837]

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:
Candidates opposing self-financed candidates; increased contribution and coordinated party expenditure limits; comments due by 3-28-03; published 1-27-03 [FR 03-01546]

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:
Federal supply schedule contracts; State and local governments information technology acquisition; comments due by 3-24-03; published 1-23-03 [FR 03-01536]
Federal Acquisition Regulation (FAR):
Defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack; procurements of supplies or services; comments due by 3-28-03; published 1-27-03 [FR 03-01687]

GOVERNMENT ETHICS OFFICE

Privacy Act; implementation; comments due by 3-24-03; published 1-22-03 [FR 03-01100]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:
Willamette River, Portland, OR; security zone; comments due by 3-24-03; published 1-22-03 [FR 03-01286]

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Alien holders of and applicants for FAA certificates; threat assessments; comments due by 3-25-03; published 1-24-03 [FR 03-01683]
Citizens of United States who hold or apply for FAA certificates; threat assessments; comments due by 3-25-03; published 1-24-03 [FR 03-01682]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

Safety and soundness:
Federal National Mortgage Association and Federal Home Loan Mortgage Corporation—
Financial and other information; public disclosure; comments due by 3-24-03; published 1-23-03 [FR 03-01298]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (Subsistence priority):
Fish and shellfish; subsistence taking; comments due by 3-28-03; published 2-12-03 [FR 03-02397]
Endangered and threatened species:
Critical habitat designations—
Vernal pool crustaceans and plants in California and Oregon; comments due by 3-28-03; published 3-14-03 [FR 03-06370]

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 3-25-03; published 1-24-03 [FR 03-01575]

LABOR DEPARTMENT

Labor-Management Standards Office

Labor-management standards:
Labor organization annual financial reports; comments due by 3-27-03; published 2-25-03 [FR 03-04400]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:
Underground mines—
Belt entry use as intake air course to ventilate working sections and areas where mechanized equipment is being installed or removed; safety standards; comments due by 3-28-03; published 1-27-03 [FR 03-01307]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack; procurements of supplies or services; comments due by 3-28-03; published 1-27-03 [FR 03-01687]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Involuntary liquidation regulation—
Swap agreements; treatment as qualified financial contracts in liquidation or conservatorship; comments due by 3-28-03; published 2-26-03 [FR 03-04444]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; comments due by 3-24-03; published 2-21-03 [FR 03-04107]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
Enhanced flight vision systems; comments due by 3-27-03; published 2-10-03 [FR 03-03265]
Airmen certification:
Ineligibility for airmen certificate based on security grounds; comments due by 3-25-03; published 1-24-03 [FR 03-01681]
Airworthiness directives:
Aerospatiale; comments due by 3-24-03; published 2-21-03 [FR 03-04168]
Bell; comments due by 3-25-03; published 1-24-03 [FR 03-01304]
Eurocopter France; comments due by 3-24-03; published 1-21-03 [FR 03-01191]
Gulfstream Aerospace; comments due by 3-24-03; published 2-21-03 [FR 03-04166]
Israel Aircraft Industries, Ltd.; comments due by 3-24-03; published 2-21-03 [FR 03-04167]
Pilatus Aircraft Ltd.; comments due by 3-26-03; published 2-19-03 [FR 03-03871]
Rolls-Royce plc; comments due by 3-28-03; published 1-27-03 [FR 03-01676]
Class D and Class E airspace; comments due by 3-25-03; published 2-10-03 [FR 03-03267]
Class E airspace; comments due by 3-25-03; published 2-19-03 [FR 03-03967]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Rearview mirrors—
Convex mirrors on commercial trucks and other vehicles; comments due by 3-24-03; published 1-22-03 [FR 03-01353]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:

Alexandria Lakes, MN; comments due by 3-24-03; published 1-23-03 [FR 03-01527]

Alcoholic beverages:

Labeling and advertising; organic claims; comments due by 3-27-03; published 12-27-02 [FR 02-32614]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Controlled foreign partnerships; filing requirements; cross-reference; comments due by 3-24-03; published 12-23-02 [FR 02-32151]

Principal residence sale or exchange; reduced maximum exclusion of gain; cross-reference; comments due by 3-24-03; published 12-24-02 [FR 02-32279]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

Bank Secrecy Act; implementation—

Suspicious transactions; mutual funds reporting requirements; comments due by 3-24-03; published 1-21-03 [FR 03-01174]

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*.

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H.R. 395/P.L. 108–10

Do-Not-Call Implementation Act (Mar. 11, 2003; 117 Stat. 557)

Last List March 10, 2003

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