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Presidential Documents

Title 3—

The President

Notice of September 10, 2003

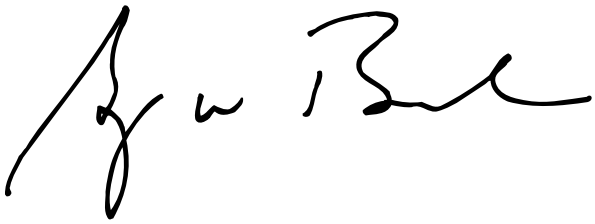
Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency I declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks at the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States.

By Executive Order 13223 of September 14, 2001, and Executive Order 13253 of January 16, 2002, I delegated authority to the Secretary of Defense and the Secretary of Transportation to order members of the Reserve Components to active duty and to waive certain statutory military personnel requirements. By Executive Order 13235 of November 16, 2001, I delegated authority to the Secretary of Defense to exercise certain emergency construction authority. By Executive Order 13286 of February 28, 2003, I transferred the authority delegated to the Secretary of Transportation in Executive Order 13223 to the Secretary of Homeland Security.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the measures taken on September 14, 2001, November 16, 2001, and January 16, 2002, to deal with that emergency, must continue in effect beyond September 14, 2003. Therefore, I am continuing in effect for an additional year the national emergency I declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 10, 2003.

[FR Doc. 03–23511
Filed 9–11–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 575

RIN 3206–AK01

Extended Assignment Incentives

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to implement a recent statutory amendment that authorizes the payment of extended assignment incentives to certain categories of Federal employees in positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. The interim regulations establish the criteria and procedures for the payment of extended assignment incentives.

DATES: *Effective Date:* The interim regulations will become effective on September 12, 2003.

Applicability Date: The interim regulations apply on the 1st day of the first applicable pay period beginning on or after September 12, 2003.

Comment Date: Comments must be received on or before November 12, 2003.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–4264, or e-mail at *pay-performance-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Kara by telephone at (202) 606–2858; by fax at (202) 606–4264; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations on the payment of extended assignment incentives authorized by section 207 of Public Law 107–273 (November 2, 2002). Section 207 adds a new section 5757 to chapter 57 of title 5, United States Code, to permit the head of an Executive agency to pay an extended assignment incentive to certain Federal employees assigned to positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

Public Law 107–273 provides that section 207 will become effective on the 1st day of the first applicable pay period beginning on or after 6 months after the date of enactment of the Act (November 2, 2002). The 6-month period ended on May 2, 2003. Since biweekly pay periods for Federal employees begin on a Sunday, this provision became effective on May 4, 2003, for most employees. However, for the few agencies using an alternative biweekly payroll cycle, the law became effective on May 11, 2003.

Extended Assignment Incentives

Congress provided authority to pay extended assignment incentives to assist agencies in retaining experienced, well-trained employees in a U.S. territory, possession, or commonwealth for a longer period than the employee's initial tour of duty. The interim regulations permit the head of an Executive agency to provide an extended assignment incentive to an employee if (1) the employee has completed at least 2 years of continuous service in one or more civil service positions located in a given territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands; (2) the agency determines that replacing the employee with another employee possessing the required qualifications and experience would be difficult; and (3) the agency determines that it is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in one of the covered locations. An employee must have completed the required 2 years of continuous service immediately before commencement of a service agreement to receive an extended assignment incentive. In determining whether it is in the best interest of the Government to retain the employee in a particular location, an agency may consider how the employee's departure would affect the agency's ability to carry out an activity or perform a function that the agency deems essential to its mission or to operate effectively. By law, the total amount of service an employee may perform in a particular territory, possession, or commonwealth under one or more extended assignment incentive service agreements with an agency may not exceed 5 years.

The interim regulations require the head of the agency to establish an agency plan for authorizing extended assignment incentives. The plan must designate the agency officials with authority to review and approve incentive payments, agency criteria for authorizing extended assignment incentive payments and determining the amount of a payment, requirements governing service agreements, procedures for paying extended assignment incentives, and documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

Subject to the limitations in § 575.506, any employee who meets the definition of ''employee'' under 5 U.S.C. 2105 is eligible to receive an extended assignment incentive, including employees in General Schedule positions, senior-level and scientific or professional positions, Senior Executive Service positions, and prevailing rate positions covered by the Federal Wage System. Any agency-wide limitations or prohibitions regarding the categories of employees that may receive an extended assignment incentive should be documented in the agency plan.

An employee may receive an extended assignment incentive not to exceed the greater of (1) 25 percent of the annual rate of basic pay of the employee at the beginning of the service period times the number of years in the service period; or (2) $15,000 per year in the service period. The service period must begin on the first day of a pay period and end on the last day of a pay period. For example, assume an agency wishes to pay the maximum extended assignment incentive to an employee who signed an extended assignment

incentive service agreement to serve 39 pay periods (546 days) and his or her annual rate of basic pay at the beginning of the service period is $65,335. To determine the maximum extended assignment incentive payments the agency may authorize, the following calculations must be made: (1) $65,335 (annual rate) × .25 (25%) × 1.5 years (546/365) = $24,501; and (2) $15,000 × 1.5 years = $22,500. Thus, the employee may receive extended assignment incentive payments of up to $24,501.

Extended assignment incentives are subject to the aggregate compensation limitation established by 5 U.S.C. 5307 and regulated in 5 CFR part 530, subpart B. They constitute ''other similar payments'' under paragraph (14) of the definition of ''aggregate compensation'' in § 530.202.

Before paying an extended assignment incentive, an agency must require the employee to sign a written service agreement to complete a specified period of additional employment with the agency in one of the covered locations. The service agreement also must specify the amount of the incentive payment, the method of paying the incentive, the conditions under which an agreement may be terminated, the requirements and procedures for the repayment of incentive payments if an employee separates prior to completion of the service period, and any other terms and conditions for receiving and retaining extended assignment incentive payments. The method of paying the incentive may include an initial lump-sum payment, equal installments at the end of specified periods throughout the service period, variable payments at the end of specified periods, a final lump-sum payment, or a combination of payment methods.

If an employee fails to fulfill the terms of the service agreement, he or she generally must reimburse the employing agency for the prorated share of any extended assignment incentive received for service not yet performed. (See § 575.513.) For example, assume an employee signed a 364-day (26 pay period) service agreement and received the full amount of a $15,000 extended assignment incentive as an initial lump-sum payment. If the employee voluntarily separates after 20 pay periods (280 days), he or she would incur a debt equal to 23.1 percent (84/364) of the incentive, or $3,465. The employee may keep 76.9 percent (280/364) of the incentive, or $11,535, unless the agency imposes an additional repayment penalty for not fulfilling the terms of the service agreement, as permitted by § 575.513(e). While the head of an agency may waive any debt owed to the Federal Government under 5 U.S.C. 5584, if warranted, waivers should be rare because the employee agreed to the repayment conditions at the time he or she signed the service agreement.

If an employee fails to complete the agreed-upon service period because of voluntary separation or transfer or another reason covered by § 575.513, and the portion of the extended assignment incentive received to date is less than or equal to the prorated share attributable to the employee's completed service, the employee will have no repayment obligation unless the agency imposes an additional repayment penalty, as permitted under § 575.513(f). However, if provided in the service agreement, the agency may have an obligation to pay an additional amount for service completed by the employee. For example, assume that an employee who signed a 364-day (26 pay period) service agreement will receive a total extended assignment payment of $24,501 in two equal installment payments—i.e., $12,250.50 at the end of 13 pay periods of completed service and $12,250.50 at the end of the required service period. The employee receives the first payment of $12,250.50 and then voluntarily separates after 20 pay periods (280 days). If the service agreement provides that the employee is entitled to receive a prorated share of the planned extended assignment incentive based on the amount of service completed, he or she would receive an additional $6,590.77 (280/364 = 76.9%; 76.9% × $24,501 = $18,841.27; $18,841.27 − $12,250.50 = $6,590.77). On the other hand, if the service agreement provides that the employee would not receive any unpaid incentive amount in the event of voluntary separation from the position, then the employee would keep the $12,250.50 he or she received but would receive no additional payment.

By law, an agency may not require repayment of an extended assignment incentive if an employee is involuntarily separated from his or her position or is involuntarily reassigned to a position stationed outside the particular area involved. Under the regulations, if such an employee has not received incentive payments equal to the prorated share of the planned incentive attributable to completed service, the agency must pay an additional incentive to make up the difference. No other additional payment may be made except as allowed by the service agreement. (See § 575.511.) Parallel rules apply to employees whose service agreement is terminated unilaterally by the agency as described in § 575.512.

The determination to pay an extended assignment incentive must be made on a case-by-case basis for each employee. While an agency may identify targeted groups or organizational units performing functions that are deemed essential to the agency's mission for special consideration, incentive determinations must still be made on a case-by-case basis for each employee. An extended assignment incentive may not be provided to an employee who is fulfilling the requirements of a service agreement for the payment of a recruitment or relocation bonus or to an employee who is receiving a retention allowance. (See 5 CFR part 575, subparts A, B, and C.)

Under 5 U.S.C. 5757(d), OPM must consult with affected agencies and submit a report to Congress assessing the effectiveness of the extended assignment incentive authority as a strategic human resources management tool and make recommendations for any changes necessary to improve the effectiveness of the incentive authority. OPM's report is due no later than May 4, 2006, which is 3 years after the effective date of section 207 of Public Law 107–273. To assist OPM in preparing the report, the interim regulations require agencies to provide data on their use of extended assignment incentives and to evaluate the extent to which these payments improved the retention of employees for longer than their initial tour of duty. In addition, OPM, invites agencies to provide recommendations for changes necessary to improve the effectiveness of extended assignment incentives. The interim regulations require agencies to provide the requested information for the period from May 2, 2003, through December 31, 2005. Agency reports are due to OPM by February 15, 2006.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists to waive the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective upon publication in the **Federal Register**. These regulations implement section 207 of Public Law 107–273, which took effect on the first day of the first pay period beginning on or after May 2, 2003. Certain provisions cannot be applied, however, unless OPM issues implementing regulations. The waiver of the requirements for proposed rulemaking and a delay in the effective date are necessary to ensure

timely implementation of the law as intended by Congress.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 575

Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending part 575 of title 5 of the Code of Federal Regulations as follows:

PART 575—RECRUITMENT AND RELOCATION BONUSES, RETENTION ALLOWANCES, SUPERVISORY DIFFERENTIALS, AND EXTENDED ASSIGNMENT INCENTIVES

■ 1. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, 5755, and 5757; Pub. L. 107–273, 116 stat. 1780; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 2. A new subpart E is added to read as follows:

Subpart E—Extended Assignment Incentives

Sec.

575.501 Purpose.
575.502 Definitions.
575.503 Who may approve the payment of an extended assignment incentive?
575.504 What requirements must an agency satisfy before authorizing the payment of an extended assignment incentive?
575.505 What criteria must an agency use to determine who will receive an extended assignment incentive?
575.506 When is an agency prohibited from paying an extended assignment incentive?
575.507 What is the maximum extended assignment incentive that may be paid for a period of service?
575.508 What is the maximum amount of service that may be covered by an extended assignment incentive?
575.509 Is an extended assignment incentive considered basic pay for any purpose?
575.510 What requirements are associated with service agreements?
575.511 What happens when an employee is involuntarily separated or involuntarily reassigned prior to completion of the service period?
575.512 When may an agency terminate a service agreement?
575.513 What are the agency's and the employee's obligations when an employee fails to fulfill the terms of a service agreement?
575.514 What are an agency's monitoring responsibilities?
575.515 What records and reports are required?

Subpart E—Extended Assignment Incentives

§ 575.501 Purpose.

This subpart contains OPM regulations implementing 5 U.S.C. 5757, which authorizes the payment of extended assignment incentives. Subject to the requirements of this subpart, an agency may pay an extended assignment incentive to eligible Federal employees assigned to positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands who agree to complete a specified additional period of employment with the agency in that location.

§ 575.502 Definitions.

In this subpart:

Agency means an ''Executive agency,'' as defined in 5 U.S.C. 105.

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Employee means an employee of an agency who satisfies the definition of that term in 5 U.S.C. 2105.

Involuntarily reassigned refers to a reassignment initiated by an agency against an employee's will and without he employee's consent for reasons other than cause on charges of misconduct, delinquency, or inefficiency.

Involuntarily separated refers to a separation initiated by an agency against an employee's will and without the employee's consent for reasons other than cause on charges of misconduct, delinquency, or inefficiency. In addition, when an employee is separated because he or she declines to accept reassignment to another geographic area outside one of the covered locations, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside his or her particular territory, possession, or commonwealth, but subsequently declines another reassignment. An employee's separation as a result of disability retirement, a disability that prevents an employee from continuing Federal service or is the basis for separation by the agency as determined by acceptable medical evidence, or the death of an employee is considered to be an involuntary separation.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee before deductions and exclusive of additional pay of any kind. For example, a rate of basic pay may not include nonforeign area cost-of-living allowances under 5 U.S.C. 5941, night shift differentials under 5 U.S.C. 5343(f), or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency in a particular territory, possession, or commonwealth in return for payment of an extended assignment incentive.

Service period means an agreed-upon period of employment an employee is obligated to complete under a service agreement.

Territory, possession, or commonwealth means a territory or a possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

§ 575.503 Who may approve the payment of an extended assignment incentive?

An authorized agency official must review and approve the offer of an extended assignment incentive for an employee, including the amount of such incentive. The authorized agency official must be at a higher level than the official who made the initial decision to offer an extended assignment incentive, unless there is no official at a higher level in the agency.

§ 575.504 What requirements must an agency satisfy before authorizing the payment of an extended assignment incentive?

Before paying an extended assignment incentive under this subpart, an agency must establish an extended assignment incentive plan. This plan must include the following elements:

(a) The designation of authorized agency officials who must review and approve the payment of extended assignment incentives;

(b) The categories of employees which are prohibited from receiving an extended assignment incentive;

(c) The criteria that must be met or considered in authorizing extended assignment incentives, including criteria for determining the size of an incentive;

(d) The requirements governing service agreements, including the obligations of the agency and the employee when the service period is not completed;

(e) The procedures for paying extended assignment incentives; and

(f) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

§ 575.505 What criteria must an agency use to determine who will receive an extended assignment incentive?

(a) An agency must base the payment of an extended assignment incentive on a written determination that—

(1) The eligible employee has completed at least 2 years of continuous service immediately before the commencement of the service agreement in one or more civil service positions located in a particular territory, possession, or commonwealth;

(2) It is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in that location; and

(3) Replacing the employee with another employee possessing the required qualifications and experience would be difficult.

(b) In determining whether it is in the best interest of the Government to retain an employee under paragraph (a)(2) of this section, an agency may consider how the employee's departure would affect the agency's ability to operate effectively or to carry out an activity or perform a function which the agency deems essential to its mission.

(c) Any determination to approve an extended assignment incentive must be made on a case-by-case basis for each employee. However, an agency may consider common factors that apply to a category of employees, such as past recruitment and retention problems or the anticipation of such problems in the future.

§ 575.506 When is an agency prohibited from paying an extended assignment incentive?

(a) An extended assignment incentive may not be paid to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(b) An agency may not begin paying an extended assignment incentive to an otherwise eligible employee who is fulfilling the requirements of a service agreement for the payment of a recruitment or relocation bonus or who is receiving a retention allowance. (See 5 CFR part 575, subparts A, B, and C.)

§ 575.507 What is the maximum extended assignment incentive that may be paid for a period of service?

(a) The total amount of extended assignment incentive payments that may be paid for a service period may not exceed the greater of—

(1) An amount equal to 25 percent of the annual rate of basic pay of the employee at the beginning of the service period times the number of years (including fractions of a year) in the service period; or

(2) $15,000 per year (including fractions of a year) in the service period.

(b) For hourly rate employees who do not have a scheduled annual rate of basic pay, the annual rate in paragraph (a) of this section is computed by multiplying the applicable hourly rate in effect at the beginning of the service period by 2,087 hours.

(c) The number of years in the service period is computed by dividing the total number of calendar days in the service period (as established under § 575.510(a)) by 365 and rounding the result to two decimal places. For example, a service period covering 39 biweekly pay periods equals 546 days, and 546 days divided by 365 days equals 1.50 years.

§ 575.508 What is the maximum amount of service that may be covered by an extended assignment incentive?

An employee's total service under one or more extended assignment incentive service agreements with a particular agency for service in a particular territory, possession, or commonwealth may not exceed 5 years. For this purpose, a year is equal to 365 days, resulting in a total service limit of 1,825 days.

§ 575.509 Is an extended assignment incentive considered basic pay for any purpose?

No, an extended assignment incentive is not considered part of an employee's rate of basic pay for any purpose, nor is it included for the purpose of calculating a lump-sum payment for annual leave under 5 CFR 550.1205.

§ 575.510 What requirements are associated with service agreements?

(a) Before paying an extended assignment incentive, the agency must require the employee to sign a written service agreement to complete a specified period of employment with the agency in a particular territory, possession, or commonwealth. The service period must meet the following conditions:

(1) The service period must begin on the first day of a pay period and end on the last day of a pay period; and

(2) The service period must not cause an employee to exceed the 5-year lifetime limitation described in § 575.508.

(b) In addition to the service requirement in paragraph (a) of this section, the service agreement may specify other terms and conditions of employment applicable to the employee. For example, the service agreement may specify the employee's work schedule, type of position, and performance level. In addition, the service agreement may address the extent to which periods of time on a detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

(c) The service agreement must specify the method of payment of an extended assignment agreement. The agency may choose to pay an extended assignment incentive in an initial lump-sum payment at the beginning of the service period, in installments at the end of specified periods throughout the service period (biweekly, monthly, quarterly, etc.), in a lump-sum payment at the end of the entire service period, or through a combination of payment methods.

(d) The service agreement must include the conditions under which the employee would be required to repay an extended assignment incentive under § 575.513.

(e) The service agreement must specify the conditions under which the payment of an extended assignment incentive may be terminated by the agency under § 575.512.

(f) The service agreement must specify the conditions under which the agency may be obligated to pay an additional incentive payment for partially completed service, as provided in § 575.513(d).

(g) The service agreement must specify the conditions under which the agency may impose a repayment penalty under § 575.513(e) for an employee who fails to fulfill the terms of the service agreement.

(h) The service agreement must specify the conditions under which the agency may be obligated to pay an incentive payment attributable to some or all of the employee's *uncompleted* service for employees covered by § 575.511 or § 575.512.

§ 575.511 What happens when an employee is involuntarily separated or involuntarily reassigned prior to completion of the service period?

An employee who is voluntarily separated or is involuntarily reassigned to a position outside the particular territory, possession, or commonwealth involved is not indebted to the Federal Government for any extended assignment incentive payments he or she has received. The employee is entitled to keep all incentive payments received and, if applicable, is entitled to receive any additional amount representing the difference between the amount received and the prorated share of the total incentive attributable to completed service. The employee may receive a portion or all of the incentive payment attributable to uncompleted service only to the extent provided in the service agreement.

§ 575.512 When may an agency terminate a service agreement?

(a) An agency may unilaterally terminate a service agreement based solely on the business needs of the agency. For example, an authorized agency official may terminate a service agreement when the employee's position is affected by a reduction in force or when there are insufficient funds to continue the planned incentive payments.

(b) If an agency terminates a service agreement under paragraph (a) of this section, the employee is entitled to keep all incentive payments received and, if applicable, is entitled to receive any additional amount representing the difference between the amount received and the prorated share of the total incentive attributable to completed service. The employee may receive a portion or all of the incentive payment attributable to uncompleted service only to the extent provided in the service agreement.

§ 575.513 What are the agency's and the employee's obligations when an employee fails to fulfill the terms of a service agreement?

(a) This section does not apply when an employee is involuntarily separated or involuntarily reassigned to a position outside the particular territory, possession, or commonwealth involved, as provided in § 575.511 or when an agency unilaterally terminates a service agreement under § 575.112.

(b) An employee is indebted to the Federal Government and must repay the paying agency for an appropriate portion of an extended assignment incentive received by the employee if—

(1) The employee fails to complete the period of employment required in his or her service agreement; or

(2) The employee violates any other condition specified in the service agreement that would trigger termination of the agreement.

(c)(1) If an employee does not fulfill the terms of a service agreement under the circumstances prescribed in paragraph (b) of this section and has received incentive payments whose value as a percentage of the planned total sum of incentive payments for the entire service period exceeds the percentage reflecting the portion of the service period completed by the employee, he or she must repay the excess payment and any additional repayment penalty imposed by the agency under paragraph (e) of this section.

(2) For example, consider an employee who signed a 364-day (26 pay period) service agreement and received the full amount of the extended assignment incentive as an initial lump-sum payment. If the employee voluntarily leaves after 20 pay periods (280 days), the employee will have received 100 percent of the total extended assignment incentive while completing only 76.9 percent (280/364) of the service period. The excess is 23.1 percent. Therefore, the employee must repay 23.1 percent (84/364) of the incentive. The employee is entitled to keep 76.9 percent of the incentive, unless the agency imposes an additional repayment penalty for failure to fulfill the service agreement under paragraph (e) of this section.

(d)(1) If an employee does not fulfill the terms of the service agreement under the circumstances prescribed in paragraph (b) of this section and has received incentive payments whose value as a percentage of the planned total sum of incentive payments for the entire service period is less than or equal to the percentage reflecting the portion of the service period completed by the employee, the employee has no repayment obligation unless the agency imposes an additional repayment penalty under paragraph (e) of this section. The agency may pay an additional incentive payment for some or all of the service completed by the employee if such additional payment is required by the service agreement. The total amount of incentive payments received by the employee may not exceed the prorated share of the planned incentive attributable to completed service.

(2) For example, consider an employee who signed a 364-day (26 pay period) service agreement to receive a total extended assignment payment of $24,501 in two equal installment payments—i.e., $12,250.50 at the end of 13 pay periods of completed service and $12,250.50 at the end of the required service period. If the employee voluntarily leaves after 20 pay periods (280 days), the employee will have received only 50 percent of the total extended assignment incentive while completing 76.9 percent (280/364) of the service agreement. The agency may pay the employee an additional amount of up to 26.9 percent of the incentive payment that is attributable to completed service, as allowed under the terms of the service agreement, assuming the agency does not impose an additional repayment penalty for failure to fulfill the service period under paragraph (e) of this section.

(e) An agency may impose an additional repayment penalty on an employee who does not fulfill the terms of a service agreement. This repayment penalty is in addition to any repayment required by paragraph (c) of this section. The specific terms and conditions governing the repayment penalty must be included in the service agreement. For example, an agency may adopt a schedule or formula that provides for varying penalty amounts based on the portion of the service period completed by the employee.

(f) If an employee fails to reimburse the paying agency for the full amount owed under this section, the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions for debt collection if the individual is no longer a Federal employee. However, the head of the agency may waive the debt under 5 U.S.C. 5584, if warranted.

§ 575.514 What are an agency's monitoring responsibilities?

Each agency must monitor the use of extended assignment incentives to ensure that the agency's extended assignment incentive plan and the payment of extended assignment incentives are consistent with the requirements and criteria established under 5 U.S.C. 5757 and this subpart.

§ 575.515 What records and reports are required?

(a) Each agency must keep a record of each determination required by this subpart and make such records available for review upon OPM's request.

(b) Each agency must provide any information requested by OPM for its

report to Congress, as required by 5 U.S.C. 5757(d). Before February 15, 2006, each agency must submit a written report to OPM on—

(1) The agency's use of extended assignment incentives by providing the data required in paragraph (c) of this section;

(2) Whether the use of extended assignment incentives influenced employees to stay longer than their initial tour of duty at their current duty stations; and

(3) The agency's recommendations for changes necessary to improve the effectiveness of extended assignment incentives.

(c) Each agency report must contain the following data for the period from May 2, 2003, to December 31, 2005:

(1) The number of extended assignment service agreements that commenced in each fiscal year;

(2) The dollar amount expended on extended assignment incentives in each fiscal year;

(3) The number of employees who declined an extended assignment incentive, by occupational series and geographic location;

(4) The number of employees who signed an extended assignment incentive service agreement, the total amount of the planned incentives, and the total number of years of agreed-upon service, by occupational series and geographic location;

(5) The number of employees whose service agreements were terminated before completion of the agreed-upon service period, with subcounts showing the number covered by § 575.511, § 575.512, and § 575.513, respectively.

(6) The number of employees who incurred a repayment debt under § 575.513 (including any repayment penalty under § 575.513(e)) and the total amount of repayment debt incurred; and

(7) The portion of the repayment debt that, as of December 31, 2005—

(i) Has been recovered;

(ii) Is subject to ongoing collection efforts; and

(iii) Has been waived or written off.

[FR Doc. 03–23132 Filed 9–11–03; 8:45 am]

BILLING CODE 6325–39–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1160]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: On September 2, 2003, the Board of Governors published in the **Federal Register** a final rule amending appendix A of Regulation CC. The rule removed the reference to the Pittsburgh check processing office of the Federal Reserve Bank of Cleveland and reassigned the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Cleveland. The rule also replaced all references to Thomson Financial Publishing Inc., in appendices A and E with more general references to ''an agent of the American Bankers Association.'' This document corrects the amendatory instructions for the removal of the reference to Thomson Financial Publishing Inc., in appendix, E. The original amendatory instruction would have caused the amended sentence in section II.DD. to contain duplicative references to the American Bankers Association agency arrangement.

DATES: The correction is effective on November 1, 2003 (*i.e.*, the effective date of the final rule).

FOR FURTHER INFORMATION CONTACT: Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: In the final rule, FR Doc. 03–22333 published on September 2, 2003, make the following correction:

Appendix E to Part 229—[Corrected]

■ On page 52078, in the first and second columns, correct amendatory language in amendment 3. to read as follows:

3. Appendix E is amended in section II.DD. by removing the phrase ''Thomson Financial Publishing Inc., as agent for'' and adding the phrase ''an agent of'' in its place, and in sections XVIII.A.2.b.ii. and XXII.B.2.b.i. by removing the phrase ''Thomson Financial Publishing Inc.'' and adding the phrase ''an agent of the American Bankers Association'' in its place.

By order of the Board of Governors of the Federal Reserve System, September 8, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–23239 Filed 9–11–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM254; Special Conditions No. 25–246–SC]

Special Conditions: Cessna Model 680 Sovereign; Side-Facing Single-Occupant Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Model 680 Sovereign airplane. This airplane will have a novel or unusual design feature(s) associated with side-facing single-occupant seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 14, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1999, Cessna Aircraft Company, One Cessna Boulevard, Wichita, KS 67277, applied for type certificate for their new Cessna Model 680 Sovereign airplane. The Model 680 Sovereign is a twin-engine pressurized executive jet airplane with standard seating provisions for 12 passenger/crew and allowance for baggage and optional equipment. This airplane will have a maximum takeoff weight of 30,000 pounds with a wingspan of 63.1 feet and will have two aft-mounted Pratt & Whitney 306C engines.

The Cessna Model 680 offers interior arrangements, which include single-occupant side-facing seat installations. These seats are installed on the LH and RH side of the cabin's forward section, forward of and opposite to the entry door respectively. Dynamic testing of all seats approved for occupancy during takeoff and landing is required by 14 CFR 25.562. The pass/fail criteria for the testing developed in Amendment 25–64

to § 25.562 focused primarily on fore/aft-facing seats. Side-facing seating installations were not adequately addressed for transport category airplanes in this Amendment.

These special conditions are applicable to single-occupant side-facing seats only. They are not intended to be used for multiple-occupant side-facing divans or sofas, as they do not account for possible interaction among the occupants.

Type Certification Basis

Under the provisions of 14 CFR 21.17, the Cessna Aircraft Company must show that the Model 680 Sovereign airplane meets the applicable provisions of 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–98; 14 CFR part 34, effective September 10, 1990, as amended by any amendment in effect on the date of certification.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Cessna Model 680 Sovereign airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Cessna Model 680 Sovereign must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Cessna Model 680 offers interior arrangements, which include single-occupant side-facing seat installations. These seats are installed on the LH and RH side of the cabin's forward section, forward and opposite to the entry door respectively. Dynamic testing of all seats approved for occupancy during takeoff and landing is required by § 25.562. The pass/fail criteria for the testing developed in Amendment 25–64 to § 25.562 focused primarily on fore/aft-facing seats. Side-facing seating installations were not adequately addressed for transport category airplanes in this Amendment.

Discussion

The following injury criteria and testing represent the minimum acceptable standards for certification of the Model 680 single-occupant side-facing seats, and are to be included as requirements in these special conditions. However, the existing requirements call for a ''no yaw'' test condition. Cessna will demonstrate values of thoracic trauma index (TTI) and lateral pelvic acceleration (LPA) for a ''10 degree yaw'' for which it has some test data. In this case, Cessna must show the ''10 degree yaw'' yields results that will only differ slightly from the ''no yaw'' condition and that these differences would not be of such magnitude as to exceed the maximum allowable.

Proposed Injury Criteria

(a) Existing Criteria. As referenced by § 25.785(b), all injury protection criteria of §§ 25.562(c)(1) through (c)(6) apply to the occupants of the single-occupant side-facing seats. Head injury criteria (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(b) Body-to-wall/furnishing contact. The seat must be installed aft of a structure such as an interior wall or furnishing that will contact the pelvis, upper arm, chest, or head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) Thoracic Trauma. Testing with a Side Impact Dummy (SID), as defined by 49 CFR Part 572, Subpart F, or its equivalent, must be conducted and TTI injury criteria acquired with the SID must be less than 85, as defined in 49 CFR Part 572, Subpart F. Side Impact Dummy TTI must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5. Rational analysis, comparing an installation with another installation where TTI data were acquired and found acceptable, may also be viable.

(d) Pelvis. Pelvic lateral acceleration must not exceed 130g, pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5

(f) Shoulder Strap Loads. Where upper torso straps (shoulder straps) are used for sofa occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–03–03–SC for the Cessna Model 680 Sovereign airplane was published in the **Federal Register** on May 15, 2003 (68 FR 26237). No comments were received.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 680 Sovereign airplane. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Cessna Model 680 Sovereign airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Aircraft Company Model 680 Sovereign airplane.

The minimum acceptable standards of injury criteria and testing requirements for dynamic certification of the Model 680 side-facing single-occupant seats are as follows:

(a) Existing Criteria. As referenced by § 25.785(b), all injury protection criteria of §§ 25.562(c)(1) through (c)(6) apply to the occupants of the side-facing seats. Head injury criteria (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(b) Body-to-wall/furnishing contact. The seat must be installed aft of a structure such as an interior wall or

furnishing that will contact the pelvis, upper arm, chest, or head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure must be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) Thoracic Trauma. Testing with a Side Impact Dummy (SID), as defined by 49 CFR Part 572, Subpart F, or its equivalent, must be conducted and TTI injury criteria acquired with the SID must be less than 85, as defined in 49 CFR Part 572, Subpart F. SID TTI must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5. Rational analysis, comparing an installation with another installation where TTI data were acquired and found acceptable, may also be viable.

(d) Pelvis. Pelvic lateral acceleration must not exceed 130g, pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5

(f) Shoulder Strap Loads. Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

Issued in Renton, Washington, on September 3, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–23293 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16026; Airspace Docket No. 03–ACE–70]

Modification of Class D Airspace; and Modification of Class E Airspace; St. Joseph, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed to serve Rosecrans Memorial Airport, St. Joseph, MO. Also, several existing SIAPs serving Rosecrans Memorial Airport have been amended. An examination of controlled airspace for St. Joseph, MO revealed discrepancies in the legal descriptions for the St. Joseph, MO Class D and Class E airspace areas.

The intended effect of this rule is to provide controlled airspace for appropriate dimensions to protect aircraft executing SIAPs to Rosecrans Memorial Airport. It also corrects discrepancies in the legal descriptions of St. Joseph, MO Class D and Class E airspace areas and brings the airspace areas and legal descriptions into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before October 23, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16026/ Airspace Docket No. 03–ACE–70, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class D airspace area, the Class E airspace area designated as an extension to the Class D airspace area and the Class E airspace area extending upward from 700 feet above the surface of the earth at St. Joseph, MO. RNAV (GPS) RWY 35, ORIGINAL SIAP; RNAV (GPS) RWY 17, ORIGINAL SIAP; VOR/DME or TACAN RWY 35, ORIGINAL SIAP; ILS or LOC RWY 35, AMENDMENT 31 SIAP; VOR or TACAN RWY 17, AMENDMENT 14 SIAP; LOC BC RWY 17, AMENDMENT 9 SIAP and NDB RWY 35, AMENDMENT 28F SIAP have been developed to serve Rosecrans Memorial Airport, St. Joseph, MO. The St. Joseph, MO controlled airspace areas must be tailored to contain aircraft executing the approach procedures. An examination of controlled airspace for St. Joseph, MO revealed discrepancies in the legal descriptions for the St. Joseph, MO Class D and Class E airspace areas. This action corrects the discrepancies and brings the airspace areas and their legal descriptions into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas designated as an extension to a Class D or Class E surface area and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6004 and 6005 respectively of the same FAA Order. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16026/Airspace Docket No. 03–ACE–70.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ACE MO D St. Joseph, MO

St. Joseph, Rosecrans Memorial Airport, MO
(Lat. 39°46′19″N., long. 94°54′35″W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.3-mile radius of Rosecrans Memorial Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE MO E4 St. Joseph, MO

St. Joseph, Rosecrans Memorial Airport, MO
(Lat. 39°46′19″N., long. 94°54′35″W.)
St. Joseph VORTAC
(Lat. 39°57′38″N., long. 94°55′31″W.)
TARIO LOM
(Lat. 39°40′33″N., long. 94°54′25″W.)
St. Joseph LOC
(Lat. 39°47′16″N., long. 94°54′25″W.)

That airspace extending upward from the surface within 1.8 miles each side of the St. Joseph ILS localizer south course extending from the 4.3-mile radius of Rosecrans Memorial Airport to the TARIO LOM and within 1.4 miles each side of the St. Joseph VORTAC 175° radial extending from the 4.3-mile radius of the airport to 4.7 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE MO E5 St. Joseph, MO

St. Joseph, Rosecrans Memorial Airport, MO
(Lat. 39°46′19″N., long. 94°54′35″W.)
St. Joseph VORTAC
(Lat. 39°57′38″N., long. 94°55′31″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Rosecrans Memorial Airport and within 3.8 miles each side of the St. Joseph VORTAC 176° radial extending from the 6.8-mile radius of the airport to 12.1 miles south of the airport.

* * * * *

Issued in Kansas City, MO on August 29, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–23298 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15459; Airspace Docket No. 03–ACE–57]

Modification of Class E Airspace; West Union, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at West Union, IA.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2003 (68 FR 44453). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on September 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–23299 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15460; Airspace Docket No. 03–ACE–58]

Modification of Class E Airspace; Aurora, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Aurora, MO.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2003 (68 FR 44454) and subsequently published a correction to the direct final rule in the **Federal Register** on August 18, 2003 (68 FR 49350). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on September 2, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 03–23300 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15458; Airspace Docket No. 03–ACE–56]

Modification of Class E Airspace; Webster City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Webster City, IA.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2003 (68 FR 44452). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 29, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–23297 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15457; Airspace Docket No. 03–ACE–55]

Modification of Class E Airspace; Waterloo, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Waterloo, IA.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 29, 2003 (68 FR 44451). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 29, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–23296 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–236F]

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule; reinstatement of exemptions.

SUMMARY: The DEA is withdrawing the suspension of the interim rule published on June 13, 2003 and reinstating the order published on January 15, 2003 designating two pharmaceutical preparations as exempt anabolic steroid products under the Controlled Substances Act (CSA). The current action is being taken after reconsidering the application for exemption in light of the comments and objections filed and other relevant information. This action is part of the ongoing implementation of the Anabolic Steroids Control Act (ASCA) of 1990.

EFFECTIVE DATE: September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The ASCA of 1990 (Title XIX of Public Law 101–647) placed anabolic steroids into Schedule III of the CSA (21 U.S.C. 812). Section 1903 of the ASCA provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the CSA (21 U.S.C. 801 *et seq.*) if the products have no significant potential for abuse. The authority to exempt these products was delegated from the Attorney General to the Administrator of the Drug Enforcement Administration (28 CFR 0.1009b), who, in turn, redelegated this authority to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (28 CFR appendix to subpart R, Section 7, paragraph (g)). The procedure for implementing this section of the ASCA is found in § 1308.33 of Title 21 of the Code of Federal Regulations.

In conformance with § 1308.33 of Title 21 of the Code of Federal Regulations, an application was received from Syntho Pharmaceuticals, Inc. to exempt two of their anabolic steroid products, Syntest H.S. and Syntest D.S. This application was forwarded to the Assistant Secretary for Health, Department of Health and Human Services (HHS) for her evaluation. Upon the recommendation of HHS and other relevant information, the DEA published an interim rule and request for comments (68 FR 1964, January 15, 2003) in which the Deputy Assistant Administrator ordered the products to be added to the list of exempt anabolic steroids.

DEA received two comments from interested persons that raised issues regarding findings of fact or conclusions of law upon which this order was based. As set forth in 21 CFR 1308.33(d), the Deputy Assistant Administrator immediately suspended the effectiveness of this order until she reconsidered the application in light of the comments and objections filed.

Reinstatement of Order To Add Anabolic Steroid Products to the List of Products Exempted From Application of the CSA

A preparation containing an anabolic steroid may be exempted from the requirements of the CSA if it has no significant potential for abuse. Accordingly, the DEA is responding only to those aspects of the comments received that raise the issue of abuse potential of Syntest H.S. and Syntest D.S. One commenter made reference to the abuse of anabolic steroids, in general. Although the abuse of anabolic steroids is of great concern to the DEA, no information was presented to alter the initial findings that the products do not possess a significant potential for abuse. The second commenter alleged that Syntho Pharmaceutical, Inc. distributed the products as exempt preparations prior to the exemptions being granted; however, there is no evidence of any abuse or significant potential for abuse of the products as a result of this activity by the company. Thus, after a thorough review and investigation of the two comments DEA received, and all other relevant information, the DEA found no indication that there is a significant potential for abuse of either Syntest H.S. or Syntest D.S. Therefore, in compliance with 21 CFR 1308.33(d), the Deputy Assistant Administrator reinstates her original order to add the products to the list of exempt anabolic steroids.

Dated: September 8, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–23287 Filed 9–11–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–022]

RIN 1625–AA00

Security and Safety Zone; Protection of Large Passenger Vessels, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In order to maintain an increased maritime security posture, the Coast Guard is establishing regulations for the security and safety of large passenger vessels in the navigable waters of the Portland, OR Captain of the Port zone. This security and safety zone, when enforced by the Captain of the Port Portland, will provide for the regulation of vessel traffic in the vicinity of large passenger vessels in the navigable waters of the United States.

DATES: This rule is effective September 12, 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 docket [CGD13–03–022] and are available for inspection or copying at Marine Safety Office Portland between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT(jg) Tad Drozdowski, c/o Captain of the Port Portland, 6767 N. Basin Ave., Portland, OR 97217 at 503–240–9370.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 28, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Security and Safety Zone; Protection of Large Passenger Vessels, Portland, OR'' in the **Federal Register** (68 FR 44256). We received no comments during the comment period. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal**

Register. The security and safety zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for large passenger vessels. Similar protection is currently being provided by a temporary final rule (TFR), but that temporary section, 33 CFR T13–006, will expire September 12, 2003 (68 FR 23390, May 2, 2003). Continuous protection from the threats posed by hostile entities is necessary for the protection of large passenger vessels in the COTP Portland, OR zone. For these reasons, it would be impracticable, unnecessary, and contrary to the public interest to wait 30 days to enforce the regulation after publication in the **Federal Register**.

Background and Purpose

Hostile entities continue to operate with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 et seq.), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Upon the expiration of the temporary security zone under 33 CFR 165.T13–006, through this final rule the Coast Guard will continue to assist large passenger vessels by establishing a permanent security and safety zone that when enforced by the Captain of the Port will exclude persons and vessels from the immediate vicinity of all large passenger vessels. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM proposing this final rule. In our NPRM, however, we did address a comment received in response to the TFR when we drafted our proposed final rule (68 FR 44257, July 28, 2003). We have not made any changes from the proposed rule to the final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). Although this rule will restrict access to the regulated area, the effect of this rule will not be significant because: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of large passenger vessels in the navigable waters of the United States.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will 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 will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR INFORMATION CONTACT**.

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

Collection of Information

This 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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this rule to accommodate the special needs of mariners in the vicinity of large passenger vessels and the Coast Guard's commitment to working with the Tribes, we have determined that passenger vessel security and fishing rights protection need not be incompatible and therefore have determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Environment

The Coast Guard's review indicates this rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34 (g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination has been prepared and will be available in the docket for inspection and copying where indicated under **ADDRESSES**. All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and 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 NAVIATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1318 to read as follows:

§ 165.1318 Security and Safety Zone Regulations, Large Passenger Vessel Protection, Portland, OR Captain of the Port Zone

(a) *Notice of enforcement or suspension of enforcement.* The large passenger vessel security and safety zone established by this section will be enforced only upon notice by the Captain of the Port Portland. Captain of the Port Portland will cause notice of the enforcement of the large passenger vessel security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Portland will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the large passenger vessel security and safety zone is suspended.

(b) *Definitions.* As used in this section—

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

Large Passenger Vessel means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels.

Large passenger vessel security and safety zone is a regulated area of water, established by this section, surrounding large passenger vessels for a 500 yard radius that is necessary to provide for the security and safety of these vessels.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Navigation Rules means the Navigation Rules, International-Inland.

Official Patrol means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels with in the zone and take other actions authorized by the Captain of the Port. Persons authorized as Federal Law Enforcement Officers to enforce this section are designated as the Official Patrol.

Oregon Law Enforcement Officer means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or

Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security and safety zone.* There is established a large passenger vessel security and safety zone extending for a 500 yard radius around all large passenger vessels in the navigable waters of the United States, in Portland, OR at the Columbia River Bar ''C'' buoy and extending eastward on the Columbia River to Kennewick, WA and upriver through Lewiston, ID on the Snake River.

(d) *Compliance.* The large passenger vessel security and safety zone established by this section remains in effect around large passenger vessels at all times, whether the large passenger vessel is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Portland, the Coast Guard will enforce the large passenger vessel security and safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Portland, all persons and vessels are authorized to enter, transit, and exit the large passenger vessel security and safety zone, consistent with the Navigation Rules.

(e) *Navigation Rules.* The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(f) *Restrictions based on distance from large passenger vessel.* When within a large passenger vessel security and safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the on-scene official patrol or large passenger vessel master.

(g) *Requesting authorization to operate within 100 yards of large passenger vessel.* To request authorization to operate within 100 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13.

(h) *Maneuver-restricted vessels.* When conditions permit, the on-scene official patrol or large passenger vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing large passenger vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of an anchored large passenger vessel.

(i) *Stationary vessels.* When a large passenger vessel approaches within 100 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains with in the large passenger vessel's security and safety zone unless it is either ordered by, or given permission by the Captain of the Port Portland, his designated representative or the on-scene official patrol to do otherwise.

(j) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), and (i), of this section.

(k) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(l) *Waiver.* The Captain of the Port Portland may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: September 3, 2003.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–23303 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AB22

NARA Facilities; Hours of Operation for the Exhibition Halls

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is modifying the extended hours that the exhibition halls in the National Archives Building in Washington, DC, are open from April 1 through the Friday before Memorial Day. The exhibition halls will close at 7 p.m. instead of 9 p.m. during this period. We are limiting the extended hours during this period to be more cost-effective and because this is when attendance is the lightest. NARA's exhibition halls will still have the longest hours of any Washington museum on the National Mall. The change does not affect the research room hours stated in Part 1253 in any manner. This final rule affects the public.

EFFECTIVE DATE: October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the June 17, 2003, **Federal Register** (68 FR 35829) for a 60-day comment period. NARA did not receive any comments.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, I certify that this final rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Federal buildings and facilities.

■ For the reasons set forth in the preamble, NARA amends part 1280 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

■ 1. The authority citation for Part 1280 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Revise § 1280.62 to read as follows:

§ 1280.62 When are the exhibition halls open?

(a) The exhibition halls are open to the public during the following hours:

(1) The day after Labor Day through March 31, hours are 10 a.m. to 5:30 p.m.

(2) April 1 through the Friday before Memorial Day, hours are 10 a.m. to 7 p.m.

(3) Memorial Day weekend through Labor Day, hours are 10 a.m. to 9 p.m.

(b) The Archivist of the United States reserves the authority to close the exhibition halls to the public at any time for special events or other purposes. The building is closed on December 25.

Dated: September 4, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–23201 Filed 9–11–03; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ85

Board of Veterans' Appeals: Rules of Practice—Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error: Advancement on the Docket

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) relating to challenges to Board decisions on the grounds of ''clear and unmistakable error'' (CUE). The amendment provides for advancing CUE motions on the docket.

DATES: *Effective date:* September 12, 2003.

Comments: Comments must be submitted by October 14, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1064, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AJ85.'' All written comments will be available for public inspection at the above address in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 54 Board members (Veterans Law Judges), who collectively decide on average approximately 35,000 such appeals per year.

Advancement on the Docket

On January 13, 1999, the Department of Veterans Affairs (VA) published a final rule in the **Federal Register**, 64 FR 2134, implementing the provisions of section 1(b) of Pub. L. No. 105–111 (Nov. 21, 1997), which permits challenges to decisions of the Board on the grounds of CUE.

As published, the rules relating to CUE motions require that such motions be decided in accordance with their place on the Board's docket. 38 CFR 20.1405(a) (Rule 1405(a)). While appeals are subject to the same requirement, 38 U.S.C. 7107(a)(1), both section 7107(a)(2) and its implementing regulation provide for the earlier consideration of appeals in some circumstances, *id.* 7107(a)(2); 38 CFR 20.900(c) (Rule 900(c)). Generally, Rule 900(c) provides that a case may be advanced on the docket if it involves an interpretation of law of general application affecting other claims or for other good cause. Examples of such good cause in Rule 900(c) include serious illness, extreme financial hardship which might be relieved in whole or in part if the benefits sought on appeal were granted, and administrative error which results in significant delay in docketing the appeal. That rule also provides specific filing requirements.

However, because CUE motions are not appeals, and thus not subject to the various rules relating to appeals, 38 CFR 20.1402 (Rule 1402), we realized that there was no regulatory provision for advancing CUE motions on the docket.

Because we believe that circumstances may warrant advancing a motion on the docket, we have amended Rule 1405(a), relating to the disposition of CUE motions, by redesignating paragraph (2) as paragraph (3), and adding a new paragraph (2), which provides that a CUE motion may be advanced on the docket subject to the substantive and procedural requirements of Rule 900(c).

VA will consider public comment submitted to the address above, but it has not published a notice of proposed rulemaking on the amendment to this regulation, as allowed by 5 U.S.C. 553(b)(A) and (B). The affected regulation is a rule of agency procedure and practice. In addition, the agency for good cause finds that notice and public procedure thereon would be unnecessary. The substantive rules (subpart O of 38 CFR) were effective February 12, 1999. To avoid delay in the application of this liberalizing benefit, this amendment is effective immediately.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects only the processing of claims by VA and does not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans, Authority delegations (government agencies).

Approved: August 4, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

■ 2. In § 20.1405, paragraph (a) is amended by redesignating paragraph (a)(2) as paragraph (a)(3), and adding a new paragraph (a)(2) to read as follows:

§ 20.1405 Rule 1405. Disposition.

(a) * * *

(2) *Advancement on the docket.* A motion may be advanced on the docket subject to the same substantive and procedural requirements as those applicable to an appeal under Rule 900(c) (§ 20.900(c) of this part).

* * * * *

[FR Doc. 03–23260 Filed 9–11–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL08

Board of Veterans' Appeals: Speeding Appellate Review for Aging Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends a Board of Veterans' Appeals (Board) Rule of Practice to provide that a case may be advanced on the Board's docket because of the appellant's advanced age. The change is necessary to speed the appellate process for the large group of aging veterans.

DATES: Effective Date: September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. An agency of original jurisdiction (AOJ), typically one of the Department of Veterans Affairs (VA)'s 57 regional offices, makes the initial decision on the claim. A claimant who is dissatisfied with an AOJ's decision may appeal to the Board. The Board's 55 Members decide about 35,000 to 40,000 cases per year.

Generally, the law requires that the Board consider and decide appeals in the order in which they were filed. 38 U.S.C. 7107(a). However, the law also permits the Board, on motion, to advance cases for earlier consideration and determination under certain circumstances such as serious illness, severe financial hardship, and other sufficient cause shown. 38 U.S.C. 7107(a)(2). VA's implementing regulation, 38 CFR 20.900(c), currently specifies that ''other sufficient cause'' includes ''administrative error resulting in a significant delay in docketing the case.''

On June 12, 2002, VA published a proposed rule with request for comments, which would amend the Board of Veterans' Appeals Rule of Practice 900(c) (38 CFR 20.900(c)) to provide that a case may be advanced on the Board's docket because of the appellant's advanced age, defined as 75 or more years old. 67 FR 40255. The purpose of the proposed rule is to speed the appellate process for the cohort of aging veterans.

We received comments from seven individuals. The commenters urged VA to either amend or rescind the rule. Their concerns fell into three categories: (1) The ineffectiveness of defining ''advanced age'' as 75 or more years of age in advancing the claims of older veterans; (2) a conflict with the instructions set forth by the Secretary of Veterans Affairs on expediting, at VA's regional offices, the claims of older veterans; and (3) the inequality of allowing one case to be advanced over another.

We will address these concerns in turn.

1. *The ineffectiveness of defining ''advanced age'' as 75 years or older in advancing the claims of older veterans.* One commenter argued that an individual who met the requirements of the proposed rule for advanced age, 75 or more years of age, would ''likely have died by the time the case runs its course.'' The commenter asserted that a claim remanded by the Board to the AOJ often remained active for another three to five years, and that a case appealed to the United States Court of Appeals for Veterans Claims takes 12 to 18 months to adjudicate. The commenter suggested lowering the threshold for ''advanced age'' from 75 to 70 years.

In the proposed rule, we explained our reasons for defining ''advanced age'' as 75 or more years of age. We seek to strike a balance between the statutory command that the Board consider appeals in docket order and the need to move some cases to the front of the line. We observed that approximately 18 percent of the total veteran population is age 75 or older whereas 27 percent of the veteran population is age 70 or over, and that 75 is also an age at which a veteran is very near to his or her life expectancy. 67 FR at 40255–56.

In sum, 75 or more years of age represents a segment of the veteran population large enough to provide meaningful relief, but not so large as to dilute the general rule of ''first come, first served.'' We have made no changes based on this comment.

2. *A conflict with the instructions set forth by the Secretary of Veterans Affairs on expediting, at VA's regional offices, the claims of older veterans.* One commenter asserted that defining ''advanced age'' as 75 or more years of age is in conflict with the Secretary's plan to expedite the processing of claims filed by older veterans. The commenter contended that the proposed rule does not show the same level of concern and stated that there should be uniformity in the way VA handles the cases of older veterans.

There are, however, significant differences between the factors facing the regional offices and the factors facing the Board.

In November 2001, the Secretary formed a ''Tiger Team'' at the Cleveland Regional Office for the purpose of processing the oldest claims in the Veterans Benefits Administration (VBA) and to focus on claims from veterans age 70 and older that had been pending over one year. Under Secretary for Benefits Daniel L. Cooper, Statement before the House Committee on Veterans' Affairs Subcommittee on Benefits (June 6, 2002) (transcript available at *http://www.va.gov/OCA/testimony/06je0220_usa.htm*). The emphasis was to process the claims of World War II and Korean War veterans whose claims were ''mired in the system.'' *Id.*

The problem experienced by VBA is an increasing inventory of cases '' original, reopened, and remanded—waiting for a decision and the lengthening time it takes to render a decision. The number of regional office cases awaiting decision in 2001 was nearly double that awaiting decision in 1996. 2003 Budget of the President, Department of Veterans Affairs at 281, available at *http://www.whitehouse.gov/omb/budget/fy2003/pdf/bud23.pdf.* By the end of 2001, claims awaiting decision exceeded 640,000. Id. VA projected that in 2002 it would take VBA in excess of 200 days to process a disability compensation claim. *Id.* at 282. In contrast, the Board has experienced neither an increased inventory nor any significant increase in the number of days it takes to adjudicate an appeal.

Further, this rule deals with appeals before the Board, rather than with claims at regional offices. The rule simply recognizes that it would be worthwhile to give the possibility of priority to appellants who statistically may not be with us much longer. Finally, the Secretary has approved this amendment. Any conflict between the proposed rule and the priorities of the Secretary has been resolved. No changes have been made based on this comment.

3. *The inequality of allowing one case to be advanced over another.* One commenter asserted that all veterans' claims should be processed quickly, and that no claim should be advanced on the docket over another. Another commenter argued that the proposed rule fails to take into consideration the negative effect of advancing one case over another. The commenter felt allowing one claim to advance over another was fundamentally unfair.

As noted above, 38 U.S.C. 7107 provides us with the statutory authority to advance a case on the Board's docket. Further, the number of exceptions to the general rule of ''first come, first served'' has been kept to a minimum. By defining ''advanced age'' as 75 or more years old, the narrow application of the advance on docket exception remains intact. We therefore make no change based on these comments.

A need for clarification of the proposed rule has become apparent. As proposed, the rule could be interpreted to require the Board to advance a case on the docket if the appellant has reached ''advanced age,'' in the absence of a motion of a party to the case or the party's representative. VA does not intend such an interpretation. Rather, VA intends to permit the Board to advance such a case on the motion of the Chairman or Vice Chairman, but not require the Board to advance the case in the absence of a motion of a party to the case or the party's representative. Accordingly, we have added a sentence to § 20.900(c) to clarify that intent. The resulting paragraph (c) is so long that, for clarity and readability, we have divided it into three paragraphs separately addressing grounds for advancement on the docket, the requirements for a motion to advance, and disposition of such motions. If a party to the case moves for advancement and sufficient cause is shown, the Board will advance the case on the docket.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule revised as described.

Administrative Procedure Act

This final rule is effective on the date of publication. The 30-day delayed effective date required under the Administrative Procedure Act (APA) is inapplicable pursuant to 5 U.S.C. 553(d)(1), which excepts from the delayed-effective-date requirement a substantive rule that ''grants or recognizes an exemption or relieves a restriction.'' The amendment adopted in this final rule permits a case to be advanced on the Board's docket because of an appellant's advanced age, which grants an exception from the rule that normally requires the Board to consider and decide appeals in the order in which they were filed. Consequently, the amendment in this final rule meets the requirements for exception set forth in the APA.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 202) requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

The Secretary hereby certifies that this final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 20

Administrative practice and procedure; Claims; Veterans.

Dated: Approved: July 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble 33 CFR part 20 is amended as set forth below.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart J—Action by the Board

■ 2. Section 20.900(c) is revised to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(c) *Advancement on the docket.* (1) *Grounds for advancement.* A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. ''Other sufficient cause'' shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case or the advanced age of the appellant. For purposes of this Rule, ''advanced age'' is defined as 75 or more years of age. This paragraph does not require the Board to advance a case on the docket in the absence of a motion of a party to the case or the party's representative.

(2) *Requirements for motions.* Motions for advancement on the docket must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (*e.g.*, a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(3) *Disposition of motions.* If a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will

be noted in the Board's decision when rendered.

* * * * *

(Authority: 38 U.S.C. 7107, Pub. L. 103–446, Sec. 302)

[FR Doc. 03–23261 Filed 9–11–03; 8:45 am]

BILLING CODE 8320–01–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–3 and 51–4

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee is changing the dates by which the annual certifications by participating nonprofit agencies are due to the central nonprofit agencies and the Committee.

EFFECTIVE DATE: October 14, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–0665. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is revising 41 CFR §§ 51–3.2(m) and 51–4.3(a) to change the dates on which the Annual Certifications (Committee Form 403 or 404) submitted at the end of each Federal fiscal year by nonprofit agencies participating in the Committee's program are due to the central nonprofit agencies and the Committee. The purpose of this change is to ensure that the data is received in a more timely manner than is currently the case. The Committee is proposing to change the date the certification forms are due to the central nonprofit agencies from November 15 of each year to November 1, and the date the forms are due to the Committee from December 15 to December 1.

Notice of proposed rulemaking was published on August 1, 2003 (68 FR 45195). In addition, the central nonprofit agency which represents the great majority of nonprofit agencies participating in the Committee's program circulated the proposed regulatory changes to its participating nonprofit agencies.

Twenty-one public comments were received, all from nonprofit agencies participating in the Committee's program. Sixteen comments objected to the change as placing an undue burden on the nonprofit agencies' ability to report fiscal year-end numbers when required. Two nonprofit agencies expressed only minor inconvenience in meeting the new deadline of November 1, and three others indicated that they would be able to meet the new deadline. The nonprofit agencies objecting to the deadline changes represent less than three percent of the over 600 nonprofit agencies participating in the Committee's program. The Committee does not believe that possible inconvenience to a small percentage of its participating nonprofit agencies justifies frustrating the needed improvements in its data reporting system.

Neither central nonprofit agency objected to the change in its reporting deadline from December 15 to December 1. The Committee does not believe the change, which shortens the reporting deadlines by only 15 days, will unduly impact nonprofit agencies participating in the Committee's program. These nonprofit agencies already submit quarterly data reports to their central nonprofit agencies 30 days after the close of each quarter, so their fiscal year-end report merely requires them to combine and update the totals they have already reported, and to provide the annual report at the same time they provide the fourth quarter data to the central nonprofit agencies. As this data is now generally compiled and reported on an electronic basis, the 45-day period which the regulations previously allowed between the close of a fiscal year and the submission of the annual report by nonprofit agencies can no longer be justified. The Committee does not believe that the requirement to have the report signed by the nonprofit agency's chief executive officer and an officer of the board of directors should cause nonprofit agencies to miss the new filing deadline, particularly as most of the participating nonprofit agencies are small community organizations whose executives and board officers are readily available.

The Committee believes it has a compelling need to accelerate the data reporting contained in the annual reports, in order to identify and take corrective action on nonprofit agencies which are falling short of meeting statutory requirements to remain in the Committee's program. The regulatory changes the Committee is making are a part of an initiative which will allow the Committee to conduct this corrective process earlier than is currently the case, and to restore more participating nonprofit agencies to good standing in its program, thus furthering the Committee's statutory mission of increasing employment of people with severe disabilities.

These reporting deadline changes will also allow the Committee to meet its own statutory and regulatory oversight responsibilities in a more timely manner.

However, to help those nonprofit agencies which may experience difficulty adjusting to the new deadline, the Committee is willing to allow those nonprofit agencies which cannot meet the new filing deadline for their Fiscal Year 2003 reports to file them no later than the previous deadline of November 15, 2003. These nonprofit agencies will be required to meet the new deadline when filing their Fiscal Year 2004 annual reports, if they are to maintain their good standing within the Javits-Wagner-O'Day Program.

Regulatory Flexibility Act

I certify that this revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this final rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Part 51–3

Government procurement, Handicapped.

41 CFR Part 51–4

Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Parts 51–3 and 51–4 of Title 41, Chapter 51 of the Code of Federal Regulations are amended as follows:

■ 1. The authority citations for Parts 51–3 and 51–4 continue to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–3—CENTRAL NONPROFIT AGENCIES

■ 2. Section 51–3.2 is amended by revising paragraph (m), to read as follows:

§ 51–3.2 Responsibilities under the JWOD Program.

* * * * *

(m) Review and forward to the Committee by December 1 of each year a completed original copy of the appropriate Annual Certification (Committee Form 403 or 404) for each of its participating nonprofit agencies covering the fiscal year ending the preceding September 30.

* * * * *

PART 51–4—NONPROFIT AGENCIES

■ 3. Section 51–4.3 is amended by revising the second sentence of paragraph (a), to read as follows:

§ 51–4.3 Maintaining qualification.

(a) * * * In addition, each such nonprofit agency must submit to its central nonprofit agency by November 1 of each year, two completed copies of the appropriate Annual Certification (Committee Form 403 or 404) covering the fiscal year ending the preceding September 30.

* * * * *

Dated: September 8, 2003.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 03–23325 Filed 9–11–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 082503A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #3 - Closure and Reopening of the Recreational Fishery from Cape Falcon, Oregon to Humbug Mountain, Oregon

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

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational selective fishery for marked hatchery coho salmon in the area from Cape Falcon, OR to Humbug Mountain, OR, was closed at midnight on August 19, 2003. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that the quota of 88,000 marked hatchery coho had been reached. The recreational fishery for all salmon except coho then reopened on August 20, 2003, as scheduled in the 2003 annual management measures. This action was necessary to conform to the 2003 management goals.

DATES: Closure of the selective fishery for marked hatchery coho in the area from Cape Falcon to Humbug Mountain effective 2359 hours local time (l.t.), August 19, 2003, until the effective dates of the 2004 management measures, which will be published in the **Federal Register** for the West Coast salmon fisheries. Reopening the recreational fishery for all salmon except coho in the area from Cape Falcon to Humbug Mountain effective 0001 hours l.t., August 20, 2003 through October 31, 2003. Comments will be accepted through September 29, 2003.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator closed the recreational selective fishery for coho in the area from Cape Falcon, OR to Humbug Mountain, OR effective at midnight on Tuesday, August 19, 2003. Information provided on August 14, 2003, estimated that the quota of 88,000 marked coho salmon would be reached by August 19, 2003. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1). The recreational fishery for all salmon except coho reopened on August 20, 2003, as scheduled in the 2003 annual management measures.

In the 2003 annual management measures for ocean salmon fisheries (68 FR 23913, May 6, 2003), NMFS announced that the recreational selective fishery for marked hatchery coho in the area from Cape Falcon, OR to Humbug Mountain, OR would open on June 21 through the earlier of August 24 or the attainment of a 88,000–marked coho quota, and the all salmon except coho season would then reopen the earlier of August 25 or the attainment of the marked hatchery coho quota.

On August 14, 2003, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the coho catch rate, and effort data indicated that it was likely that the quota would be reached by August 19, 2003. As a result, the State of Oregon recommended, and the Regional Administrator concurred, that the recreational selective fishery for marked hatchery coho in the area from Cape Falcon, OR to Humbug Mountain, OR close effective at midnight on Tuesday, August 19, 2003, with the all salmon except coho fishery reopening on August 20, 2003. All other regulations that apply to this fishery remain in effect as announced in the 2003 annual management measures and subsequent inseason actions.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the ODFW. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (68

FR 23913, May 6, 2003), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: August 28, 2003.

John H.Dunnigan,

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

[FR Doc. 03–23204 Filed 9–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 090803B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Prohibition of retention

SUMMARY: NMFS is prohibiting retention of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific cod in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 9, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 amount of the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area (Statistical Areas 620 and 630, between 147 degrees and 159 degrees W. longitudes) of the GOA was established as 20,421 metric tons by the Final 2003 Harvest Specifications of Groundfish for the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2003 TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of Pacific cod caught by vessels catching Pacific Cod for processing by the inshore component of the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

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 prohibition of retention of Pacific cod by vessel catching Pacific cod for processing by the inshore component, lead to exceeding the TAC, 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: 16 U.S.C. 1801 *et seq.*

Dated: September 8, 2003.

Dean Swanson,

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

[FR Doc. 03–23292 Filed 9–9–03; 3:22 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 177
Friday, September 12, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–140930–02]

RIN 1545–BB15

Testimony or Production of Records in a Court or Other Processing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information.

DATES: This correction is effective July 9, 2003.

FOR FURTHER INFORMATION CONTACT: David Fish (202) 622–4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 301 of the Internal Revenue Code.

Need for Correction

As published on July 9, 2003 (68 FR 40850), the notice of proposed rulemaking (REG–140930–02) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–140930–02), which was the subject of FR Doc. 03–17230, is corrected as follows:

On page 40851, column 1, in the preamble, under the subject heading ''Paperwork Reduction Act'', third paragraph from the bottom, last line of the paragraph, the language ''responses: 1,400.'' is corrected to read ''responses: On occasion.''

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 03–23318 Filed 9–11–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter 1

[FRL–7556–5]

Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Meeting of Negotiated Rulemaking Committee on all appropriate inquiry.

SUMMARY: The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing the date and location of an upcoming meeting of the Negotiated Rulemaking Committee on All Appropriate Inquiry.

DATES: A meeting of the Federal Advisory Committee on Regulatory Negotiation on All Appropriate Inquiry is scheduled for October 14 and October 15, 2003. The location for the meeting is provided below. Dates and locations of subsequent meetings will be announced in later documents.

ADDRESSES: The meeting will take place at the EPA East Building, 1201 Constitution Avenue NW., Washington, DC 20460. The meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. on both October 14 and October 15.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. At its meeting on October 14 and 15, 2003, the Committee's agenda will include a continuation of substantive deliberations on the proposed rulemaking including discussions on recommendations for proposed regulatory language for addressing each of the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (101)(35)(B)(iii).

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend or make comments at the meeting. Opportunity for the general public to address the Committee will be provided starting at 2:30 p.m. on both October 14 and October 15, 2003.

Dated: September 4, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, EPA Office of Solid Waste and Emergency Response.

[FR Doc. 03–23273 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7553–9]

Ocean Disposal; Proposed Designation of Dredged Material Disposal Sites in the Central and Western Portions of Long Island Sound, CT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate two dredged material disposal sites; Central Long Island Sound (CLIS) and Western Long Island Sound (WLIS) located offshore from New Haven and Stamford, Connecticut, respectively, for the disposal of suitable dredged material removed from the central and western

portions of the Long Island Sound region of Connecticut, New York and other nearby harbors or dredging sites. This action is necessary to provide long-term dredged material disposal sites for the current and future disposal of this material. The proposed site designations are for an indefinite period of time. The sites are subject to continuing monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The proposed action is described in the Draft Environmental Impact Statement (DEIS), and the monitoring plans are described in the CLIS and WLIS Site Management and Monitoring Plans (SMMPs). The SMMPS are provided as appendix J of the DEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site is subject to project—specific reviews and authorization and still must satisfy the criteria for ocean dumping.

DATES: Comments must be received by 5 p.m. on October 27, 2003. Public hearings dates:

1. September 30, 2003 in NY from 1 p.m.—5 p.m. and 6 p.m.—10 p.m.

1. October 1, 2003 in CT from 1 p.m.—5 p.m. and 6 p.m.—10 p.m.

ADDRESSES: Written comments should be sent to: Ms. Ann Rodney, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023 or electronically to *Rodney.Ann@epa.gov*.

The Public Hearing locations are:

1. September 30, 2003—New York SUNY at Stony Brook, Stony Brook, NY 11794–1603. The meeting will be held inside the ''Charles B. Wang Asian-American Center''.

2. October 1, 2003—Westin Stamford, One First Stamford Place, Stamford, CT 06902.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Rodney, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023, telephone (617) 918–1538, electronic mail: *Rodney.Ann@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public Review of Documents: The file supporting this proposed designation is available for inspection at the following locations:

1. In person. The Proposed Rule and the Draft Environmental Impact Statement (DEIS) which includes the SMMPs (Appendix J), are available for inspection at the following locations: A. EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023. For access to the documents, call Peg Nelson at (617) 918–1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. B. Mamaroneck Public Library Inc., 136 Prospect Ave., Mamaroneck, NY. C. Port Jefferson Free Library, 100 Thompson Street, Port Jefferson, NY. D. Bridgeport Public Library, 925 Broad Street, Bridgeport, CT. E. Milford City Library, 57 New Haven Ave., Milford, CT. F. New Haven Free Public Library, 133 Elm Street, New Haven, CT. G. New London Public Library, 63 Huntington Street, New London, CT. H. Norwalk Public Library, 1 Belden Ave., Norwalk, CT. I. Acton Public Library, 60 Old Boston Post Road, Old Saybrook, CT. J. Ferguson Library, 752 High Ridge Road, Stamford, CT.

2. Electronically. You also may review and/or obtain electronic copies of these documents and various support documents from the EPA home page at the **Federal Register** *http://www.epa.gov/fedrgstr/*, or on the EPA New England Region's homepage at *http://www.epa.gov/region1/eco/lisdreg/*

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The CLIS and WLIS sites are located within New England (EPA New England); therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean dumping sites (ODMDS) by promulgation in 40 CFR part 228. Designated ocean dumping sites are codified at 40 CFR 228.15. This rule proposes to designate two sites for open water disposal of dredged materials. These sites are currently being used under the authority of MPRSA Section 103 and are located in the western and central regions of Long Island Sound.

The primary authorities that govern the aquatic disposal of dredged material in the United States are the CWA and the MPRSA. All dredged material disposal activities in Long Island Sound, whether from Federal or non-Federal projects of any size, are subject to the requirements of section 404 of the CWA, 33 U.S.C. 1344. In 1980, the MPRSA was amended to add Section 106(f) to the statute. 33 U.S.C. 1416(f). This provision is commonly referred to as the ''Ambro Amendment,'' named after Congressman Jerome Ambro. MPRSA section 106(f), 33 U.S.C. 1416(f), was itself amended in 1990. As a result of this provision, the disposal of dredged material in Long Island Sound from both Federal projects (projects carried out under the Corps civil works program or the actions of other Federal agencies or from non-Federal projects involving more than 25,000 cubic yards (19,114 cubic meters) of material must satisfy the requirements of both CWA section 404 and the MPRSA. Disposal from non-Federal projects involving less than 25,000 cubic yards (19,114 cubic meters) of material, however, are subject to CWA section 404 only.

The two dredged material disposal sites in Long Island Sound being proposed in this action are necessary to provide long-term disposal options for the Corps to maintain deep-draft, international commerce and navigation through authorized federal navigation projects and to ensure safe navigation for public and private entities. One of the proposed sites is in the central portion of the sound, while the other is in the western portion of the sound.

The sites will be subject to continuing site management and monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The management of the sites is further described in the draft Site Monitoring and Management Plans (SMMPs) for CLIS and WLIS (appendix J of the DEIS). Documents being made available for public comment by EPA at this time include this proposed rule, DEIS, and Draft SMMPS (appendix J of DEIS).

The designations are being proposed in accordance with 40 CFR 228.4(e) of the Ocean Dumping Regulations, which allow EPA to designate ocean sites for disposal of dredged materials.

B. Regulated Entities

Entities potentially regulated by the proposed rule are persons, organizations, or government bodies seeking to dispose of dredged material in waters of Long Island Sound, under the MPRSA and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the Corps to transport dredged material for the purpose of disposal into the waters of the central and western regions of Long Island Sound, and (b) to the Corps itself for its own dredged material

disposal projects. Potentially regulated categories and entities that may seek to use the proposed dredged material disposal sites and would be subject to this Rule may include:

Category	Examples of potentially regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, and Other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table lists the types of entities that could potentially be regulated should the proposed rule become a final rule. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decision-making process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations. (See 63 FR 58045 (October 29, 1998), ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.'') Consistent with this policy, EPA, in cooperation with the U.S. Army Corps of Engineers, has prepared a DEIS entitled, ''Draft Environmental Impact Statement for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York, dated August 2003'' which considers the environmental aspects of site designation in central and western LIS. A Notice of Availability of the DEIS for public review and comment is being published concurrently with this Proposed Rule in today's **Federal Register**. Anyone wishing to review a copy of the DEIS may do so in one of the ways described above (see **ADDRESSES**). The public comment period for this DEIS will close on October 27, 2003. The public comment period on the Proposed Rule Publication will also close on October 27, 2003. Comments may be submitted by one or more of the methods described above.

The purpose of the proposed action is to designate open water disposal sites that will meet long-term dredged material disposal needs in LIS. The appropriateness of open water disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit/authorization process governing the open water disposal of dredged material.

Designation of an open water disposal site under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean open water disposal activity is permitted under 40 CFR part 227, then such disposal should normally be consolidated at the designated sites (see 33 U.S.C. 1413(b)). Designation of open water disposal sites does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for open water disposal under the applicable regulatory criteria. Nevertheless, EPA has determined that it is appropriate to designate open water disposal sites for dredged materials in the central and western Long Island Sound now, because it appears unlikely that feasible alternative means of managing dredged material will be available to accommodate the projected dredged material of this region in the future.

Proposals for the open water disposal of dredged materials from individual projects are evaluated by EPA New England and the Corps' New England District on a case-by-case basis, taking into account all the alternatives available at the time of permitting. Beneficial reuse alternatives will be preferred over open water disposal whenever they are practicable.

The DEIS describes the purpose and need for the proposed action and evaluates a number of alternatives to this action. EPA's analysis of alternatives considered several different potential open water disposal sites for dredged material from Connecticut and surrounding harbors, as well as potential alternative means of managing these dredged materials other than open water disposal. As described in the DEIS, the initial screening effort was established to consider the most environmentally sound, economically and operationally feasible area site designation. Alternatives evaluated included various marine sites, upland disposal, beneficial uses, and the no action alternative.

In addition to considering reasonable distances to transport dredged material, the open water disposal analysis considered areas of critical resources as well as areas of incompatibility for use as a disposal site. This included but was not limited to such factors as the sensitivity and value of natural resources, geographically limited habitats, fisheries and shellfisheries, natural resources, shipping and navigation lanes, physical and environmental parameters, and economic and operational feasibility. The analysis was carried out in a tiered process. The final tier involved further analysis of the no action alternative and the following four open water alternative sites: Central LIS (CLIS), Milford, Bridgeport and Western LIS (WLIS). These sites were evaluated and two sites were selected as preferred alternatives for potential site designation. Management strategies were developed for the preferred alternatives and are described in the SMMPs.

To obtain public input during the process, EPA and the Corps held public workshops and scoping meetings, as well as convened an EIS working group.

The purpose of the working group was to assist in identifying and evaluating the best long-term dredged material disposal options for Long Island Sound. Representatives from state, local, tribal and federal agencies were invited to participate in the working group as well as individuals representing other interests. The working group assembled for a series of five meetings between July 2000 and November 2002. Comments received were factored into the development of the DEIS. The NEPA process led to the current proposal that CLIS and WLIS be designated as open water dredged material disposal sites.

D. Proposed Sites Descriptions

The two sites, CLIS and WLIS, are proposed for designation. Draft SMMPS have been prepared for the two proposed open water disposal sites and are available for review and comment by the public. (Copies may be obtained by request from the **FURTHER INFORMATION CONTACT** listed in the introductory section to this proposed rule.) Use of newly-designated open water disposal sites would be subject to any restrictions included in the site designation and the approved SMMPs. These restrictions will be based on a thorough evaluation of the proposed sites pursuant to the Ocean Dumping Regulations and potential disposal activity as well as consideration of public review and comment.

Central Long Island Sound (CLIS). The CLIS site proposed for long-term designation by EPA is currently in operation under the Corps' short-term site selection authority. It has been one of the most active dredged material disposal sites in New England. Overall, CLIS has received close to 14 million cubic yards (11 million cubic meters) since 1941. The site was used prior to enactment of MPRSA in 1972 and continued to be used thereafter. Between 1982 and 2001 CLIS received approximately 7 million cubic yards (5.4 million cubic meters), with an average annual volume of 350,000 cubic yards (268,000 cubic meters). The site is a rectangular area, approximately 2 nautical miles by 1 nautical mile, located 5.6 nautical miles south of South End Point near East Haven, Connecticut, in water depths from 59 to 74 feet (18 to 22.5 meters). The sediments at the site are predominately uniform clayey silt with an area of mixed sand, clay and silt. These sediments are typical of those found in fine-grained depositional environments of the central basin of Long Island Sound. This proposed rule would designate the CLIS site with boundaries slightly changed from the current site. The CLIS boundary was reconfigured so that the northern boundary was moved by 700 feet (215 meters) and the eastern boundary was moved by 1,230 feet (375 meters) in order to include two previously used disposal mounds (FVP, CS2) which are currently outside of the existing site boundaries. This reconfiguration will allow for management and monitoring of the FVP and CS2 mounds. The coordinates (North American Datum 1983: NAD 83) for the proposed CLIS site, are as follows:

CLIS

41° 09′5″ N., 72° 54′4″ W.
41° 09′5″ N., 72° 51′5″ W.
41° 08′4″ N., 72° 54′4″ W.
41° 08′4″ N., 72° 51′5″ W.

Western Long Island Sound (WLIS). The WLIS site proposed for long-term designation by EPA is currently in operation under the Corps' short-term site selection authority.

The site is a rectangular area, 1.2 by 1.3 square nautical miles (2.2 by 2.4 kilometers) that has been used for dredged material disposal since 1982. After completion of an EIS, the site was established in 1982 as a regional dredged material disposal site to serve the needs of the western area of Long Island Sound. Between 1982 and 2001, WLIS received 1.7 million cubic yards (1.3 million cubic meters), with an average annual volume of 85,000 cubic yards (65,000 cubic meters). The site is located 2.7 nautical miles north of Lloyd Point, New York and 2.5 nautical miles (4.6 kilometers) south of Long Neck Point near Noroton, Connecticut, in water depths of 79 to 118 feet (24 to 30 meters). The sediments at the site are heterogeneous, with clay silt in the northeast corner and a mixture of sand-silt-clay in the center and southeast corner. These sediments are typical of those found in fine-grained depositional environments of the western basin of Long Island Sound. In addition to the ambient silts from this region, there are deposits of material of mixed grain sizes dredged from harbors and navigation channels throughout the western basin. This proposed rule would designate the WLIS site with boundaries which have been slightly reconfigured. The WLIS boundaries have been shifted to the west by approximately 1,106 feet (337 meters) and to the north by 607 feet (185 meters). This shift move will relocate the WLIS site out of a rapidly shoaling area. The coordinates (North American Datum 1983: NAD 83) for the proposed WLIS site, are as follows:

WLIS

41° 00′1″ N., 73° 29′8″ W.
41° 00′1″ N., 73° 28′0″ W.
41° 58′9″ N., 73° 29′8″ W.
41° 58′9″ N., 73° 28′1″ W.

E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements

Five general criteria are used in evaluating possible dredged material disposal sites for long-term use under the MPRSA (*see* 40 CFR 228.5).

General Criteria (40 CFR 228.5)

1. *Minimize interference with other activities, particularly avoiding fishery areas or major navigation areas.* The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this proposed rule, a determination was made to overlay individual uses and resources over GIS bathymetry and disposal site locations. This process was used to visually determine the maximum and minimum interferences with other uses of the marine environment that could be expected to occur. Both the CLIS and WLIS disposal sites showed minimum interference with other activities. The proposed sites do not interfere with lobster or fishing activities, although the areas surrounding the disposal sites provide good lobster habitat. The two proposed sites are also not located in shipping lanes or major navigation areas and otherwise have been selected to minimize interference with fisheries, shellfisheries and regions of commercial or recreational navigation.

2. *Minimize Changes in Water Quality. Temporary water quality perturbations (during initial mixing) caused by disposal operations would be reduced to normal ambient levels before reaching areas outside of the disposal site.* The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically limited fisheries or shellfisheries. The proposed sites will be used only for dredged material disposal of suitable sediments as determined by application of MPRSA sediment quality criteria. No significant contaminant or suspended solids releases are expected. Based on data evaluated as part of the DEIS, disposal of either sandy or fine-grained material

would have no long-term impact on water quality at the proposed sites. In addition, dredged material deposited at the sites and water quality perturbations are not expected to reach any marine sanctuary, beach, or other important natural resource area.

3. *Interim Sites Which Do Not Meet Criteria.* There are no interim sites to be considered under this criterion. The CLIS and WLIS proposed sites are not interim sites as defined under the Ocean Dumping regulations. 0

4. *Size of sites.* The fourth general criterion requires that the size of open water disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration and location is to be determined as part of the disposal site evaluation. For this proposed rule, EPA has determined, based on the information presented in the DEIS, that the sites have been sized to provide sufficient capacity to accommodate material dredged from the harbors and channels of Long Island Sound. The existing site boundaries of the CLIS site have been reconfigured to include two previously used disposal (FVP and CS2) mounds that were outside of the existing boundary. Inclusion of these mounds within the CLIS disposal site boundary will allow for management and monitoring of the mounds. The WLIS site has also been reconfigured. The WLIS boundaries were moved to the north west to avoid a rapidly shoaling area. The management and monitoring plans are described in the CLIS and WLIS SMMPs (Appendix J of the DEIS).

5. *EPA must, wherever feasible, designate dumping sites beyond the edge of the continental shelf and where historical disposal has occurred.* The fifth criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and at other such sites that have historically been used. Sites beyond the edge of the continental shelf are not economically feasible due to the extended travel time and associated expense. In addition, the proposed sites, if designated, encompass the footprint of historically used sites. Thus, the proposed disposal sites are consistent with this criterion.

As discussed briefly above, EPA has found that the CLIS and WLIS disposal sites satisfy the five general criteria described in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. More detailed information relevant to these criteria can be found in the DEIS and SMMPs.

In addition to the general criteria discussed above, 40 CFR 228.6(a) lists eleven specific factors to be used in evaluating a proposed disposal site under the MPRSA to assure that the five general criteria are met. The CLIS and WLIS sites, as discussed below, are also acceptable under each of the 11 specific criteria. The evaluation of the preferred disposal sites relevant to the 5 general and 11 specific criteria is discussed in substantially more detail in the DEIS.

Specific Criteria (40 CFR 228.6)

1. *Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)).* The proposed CLIS site is a rectangular area approximately 2 nautical miles by 1 nautical mile, located 5.6 nautical miles south of South End Point near East Haven, Connecticut, in water depths from 59 to 74 feet (18 to 22.5 meters). The sediments at the site are predominately uniform clayey silt with an area of mixed sand, clay and silt. The seafloor at CLIS slopes from northwest to southeast. The proposed WLIS site is a rectangular area, of approximately 1 square nautical mile. The site is located 2.7 nautical miles north of Lloyd Point, New York and 2.5 nautical miles (4.6 kilometers) south of Long Neck Point near Noroton, Connecticut, in water depths of 79 to 118 feet (24 to 30 meters). The sediments at the site are heterogeneous, with clay silt in the northeast corner and a mixture of sand-silt-clay in the center and southeast corner. These sediments are typical of those found in fine-grained depositional environments of the western basin of Long Island Sound. The seafloor at WLIS is a gentle downward sloping plane from north to south and is bisected by an axial depression that runs from east to west, dipping to 118 feet (36 meters) in one quarter of the site in the southern half. EPA anticipates that disposal of dredged material placed at either of these sites would adhere to mound configuration. Each site will be managed based on its unique environmental conditions.

2. *Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).* The Corps and EPA has initiated ESA and EFH consultation with publication of the DEIS in coordination with the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS). Through coordination with the New York Department of Environmental Conservation, the Connecticut Department of Environmental Protection, NMFS and USFWS, data has been obtained on current threatened or endangered species in Long Island Sound. The many organisms at the proposed sites include zooplankton (copepods, tintinnids) and phytoplankton. These organisms display a range of abundance by season. The populations at or near the proposed sites are not unique to the sites and are present over most of the sound. It is expected that although small, short-term entrainment losses may occur immediately following disposal, no long term, adverse impacts to organisms in the water column will occur.

The benthic community at these sites is comprised primarily of Annelida, Mollusca, and Crustacea. Abundance was greater at the WLIS site. It is expected that short-term reduction in abundance and diversity at the sites may occur immediately following disposal, but long term, adverse impacts to benthic organisms are not expected to occur.

The sites are located off shore in a semi-enclosed estuary that is occupied by more than 83 fish species. Species richness did not vary change significantly among sites. Some fish species found to dominate the areas include winter flounder, windowpane flounder and scup. The American lobster is a primary shellfish resource in the sound. At the CLIS site, longfin squid were also abundant. It is expected that impacts to finfish resources will consist of short-term, local disruptions and the potential loss of some individual fish of certain non-migratory species. Most of the finfish species are migratory. It is expected that impacts to lobster will be short-term and associated with disposal, burial and loss of habitat or food.

The coast supports a large number of resident and migratory marine and coastal birds. Dozens of marine and coastal birds migrate through Long Island Sound annually. In addition, LIS provides limited habitat for most marine mammals and reptiles. The species that are frequent or occasional visitors to the sound are harbor porpoises, long-finned pilot whales, seals and sea turtles (Kemp's ridley , loggerhead, leatherback and hawksbill).

The federally listed threatened and endangered species or species of ''special concern'' which may occur within the area of the proposed sites include: humpback, fin, and right whales; loggerhead, green, Kemp's ridley, and hawksbill sea turtles; Atlantic and Shortnose sturgeons. No endangered birds are expected to occur in the area of the proposed sites.

Occurrence of these species varies by season. Use of the sites by whales and endangered birds would be incidental. The presence of sea turtles may occur in this area of the proposed sites during the summer and fall. It is not expected that dredging activities would have any significant adverse effect on these species or their critical habitat. Disposal at both of the proposed sites is expected to result in the mortality of benthic organisms as an immediate result of material burying organisms on the seafloor. However, recolonization at the disposal sites is expected to occur within a year or more after a disposal event. With respect to the other living resources that use the proposed CLIS and WLIS sites, the sites are not being located in areas that provide limited or unique breeding, spawning, nursery, feeding, or passage areas.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)). The CLIS and WLIS disposal sites are within the semi-enclosed Long Island Sound estuary. The closest beaches, refuges, sanctuaries or areas of special concern are at least two nautical miles from either disposal site. The CLIS and WLIS disposal sites are approximately 6 nautical miles (11 kilometers) from the closest beaches (Short Beach and Calf Pasture Beach, respectively). For the CLIS disposal site, the closest refuge or sanctuary (approximately seven nautical miles) is the Outer Island Unit of the Stewart B. McKinney National Wildlife Refuge. Areas of special concern at the CLIS site include Quinnipiac River Marsh Wildlife Management Area, Great Harbor, Wildlife Management Area and Wild wood State Park. For the WLIS disposal site, the closest refuge or sanctuary is the Stewart B. McKinney National Wildlife Refuge, Caumsett State Park and Target Rock National Wildlife Refuge. It is expected that impacts would not occur to beaches, areas of special concern, parks, natural resources, sanctuaries or refuges since they are either land-based or further than two nautical miles from either proposed disposal site. Therefore, EPA has determined that dredged material disposal at the preferred disposal site locations should not have any adverse effect on beaches or other amenity areas, including wildlife refuges or other areas of biological or recreational significance.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)). The typical composition of dredged material to be disposed at the sites is expected to range from predominantly ''clay-silt'' to ''mostly sand.'' This expectation is based on data from historical projects from the Central and Western Regions of Long Island Sound. The disposal of this material shall occur at designated buoys and would be expected to be placed so as to concentrate material from each disposal. This placement is expected to help minimize bottom impacts to benthic organisms. Suitability determinations will be made before authorization for disposal under MPRSA section 103 and CWA section 404 will be issued. The sites that are proposed to be designated will receive dredged materials determined to be suitable for ocean disposal that are transported by either government or private contractor hopper dredges or ocean-going bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface.

Furthermore, it should be emphasized that these disposal sites are being proposed for designation only to receive dredged material; disposal of other types of material at these sites will not be allowed. It should also be noted that the disposal of certain other types of material is expressly prohibited by the MPRSA and EPA regulations (*e.g.*, industrial waste, sewage sludge, chemical warfare agents). *See, e.g.*, 33 U.S.C. 1414b; 40 CFR 227.5(b). For these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed of at the sites.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)). Monitoring and surveillance are expected to be feasible at both proposed sites. Both sites are readily accessible for bathymetric surveys and have undergone monitoring, including side-scan sonar. If field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, a management decision will be made by EPA New England and the Corps' New England District who share the responsibilities of managing and monitoring the disposal sites. Once the proposed sites are designated, monitoring shall be completed in accordance with the then-current SMMPs. It is expected that revisions to the SMMPS may be made periodically; revisions will be circulated for review, coordinated with the affected states and become final when approved by EPA New England Region in conjunction with the Corps' New England District. See 33 U.S.C. 1413 (c)(3).

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)). The interactions of bathymetry, wind-generated waves, and river and ocean currents are complex. Tidal currents are the dominant source of water movement in LIS. Tidal currents generally run east-west parallel to the axis of the Sound and are substantially stronger in the eastern portion of the sound. At the CLIS site, average peak ebb and peak flood currents run 20 to 30 centimeters/ second (depth-averaged), with the spring tides 20 to 40 percent stronger. The dominant flow direction is east-west. Also observed is a net west-southwestward flow of approximately 2.5 centimeters/second. The wind fetch at both sites is limited by the semi-enclosed nature of LIS and wave height was recorded in the spring of 2001 at 5 feet. However, wave heights can be developed at the site by winds from storms. A northeast storm with a return period of 2 years will generate waves of 8 feet. Storms with a return period of 10 years will generate waves of 10 feet. At the WLIS site, average peak ebb and peak flood currents run 20 to 30 centimeters/second (depth-averaged), with the spring tides 20 to 30 percent stronger. Based on studies conducted historically, flows directed to the west-southwest run from 30 to 45 centimeters/ second 5 percent of the time. The wind fetch is limited at this site, however wave height was recorded in the spring of 2001 at 6.5 feet. A northeast storm with a return period of 2 years will generate waves of 9 feet. Storms with a return period of 10 years will generate waves of 11 feet.

It is expected that peak wave induced bottom orbital velocities are not sufficient to cause significant erosion of dredged material at either of the proposed sites. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics, and current velocities and directions at the CLIS and WLIS sites are appropriate for designation as a dredged material disposal sites.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)). The CLIS and WLIS disposal sites are currently being used for disposal activity pursuant to the Corps' short-term site selection authority under section 103(b) of the MPRSA. 33 U.S.C. 1413(b). These sites have also been used historically under prior legal regimes. These past disposal operations at these sites have been managed and material disposal has been monitored. Past use of these sites generally makes them preferable to more pristine sites that have either not been

used or have been used in the more distant past. *See* 40 CFR 228.5(e). Beyond this, however, EPA's evaluation of data and modeling results indicates that these past disposal operations have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no significant adverse cumulative environmental effects from continuing to use these sites on a long-term basis.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)). In evaluating whether disposal activity at the sites could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom at the proposed sites and the indirect effects associated with increased vessel traffic that will result from transportation of dredged material to the disposal sites. Commercial fishing activities occur throughout LIS. Commercial fish trawling occurs in the vicinity of the CLIS proposed site and is the only area within the western and central Sound that fishermen can trawl successfully due to the abundance of lobster pots in other areas of the Sound. Commercial fishing is not affected at the WLIS site since it is not currently used due to harvesting restrictions. While lobstering occurs at both proposed sites, WLIS is a more active lobstering site than CLIS. Recreational fishing most frequently occurs from spring to fall in areas with reefs and other areas of high relief. Recreational fishing occurs at several reefs in LIS that are within two to five nautical miles of the proposed disposal sites. Fish and shellfish areas, occur in nearshore areas and, therefore, are not impacted by this action. A USCG lightering area overlays the northeast corner of the CLIS site. The Corps will coordinate with the USCG to shift the designated anchorage boundary to ensure that existing mounds and future disposed dredged material is not disturbed. The proposed sites are not located in shipping lanes. Energy resources are located near the proposed sites, but no pipelines or cables are within their boundaries. While at the time of this evaluation only three pipelines were in place, development of several new pipelines is anticipated.

Furthermore, neither site is an area of special scientific importance, desalination, fish and shellfish culture or mineral extraction. Accordingly, depositing dredged material at the sites will not interfere with any of the activities mentioned in this criterion. Increased vessel traffic involved in the transportation of dredged material to the proposed disposal sites should not impact shipping or activities discussed above.

9. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9)). Water and sediment quality analyses conducted in the site areas and experience with past disposal in this region have not identified any adverse water quality or ecological impacts from ocean disposal of dredged material. Baseline data is further described in the DEIS.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10)). Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. However, no recruitment of nuisance species or species capable of harming human health or the marine ecosystem is expected to occur at the sites.

11. Existence at or in Close Proximity to the Sites of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)). Due to the location of the proposed sites in LIS, the cultural resource that has the greatest potential for impact would be shipwrecks. A review of the existing NOAA and Warren C. Reiss Marine shipwrecks databases illustrated a total of 39 shipwrecks in LIS. Although none of the known shipwrecks of historical significance are located within the boundaries of the proposed sites, the Central LIS region is known to have at least twelve shipwrecks and the western LIS region is known to have at least four shipwrecks. Undiscovered shipwrecks could occur in the area. As additional sidescan sonar surveys are conducted in the future, and if potential shipwrecks are identified, EPA New England and the Corps' New England District will take appropriate action.

The Connecticut State Historic Preservation Officer has determined there are no known historic shipwrecks nor any known aboriginal artifacts at the CLIS and WLIS disposal sites. Two of the region's Indian tribes were included as cooperating agencies during the development of the EIS. The Indian tribes have not identified natural or cultural features of historical significance at either site proposed for designation in this rule.

E. Proposed Action

The DEIS concludes that the proposed sites may appropriately be designated for long-term use as open water dredged material disposal sites. The proposed sites are compatible with the general and specific factors used for site evaluation.

EPA is publishing this Proposed Rule to propose the designation of the CLIS and WLIS disposal sites as EPA-approved open water disposal sites. The monitoring and management of requirements that will apply to these sites is described in the draft SMMPs. Management of these sites will be carried out by EPA New England in conjunction with the Corps' New England District.

It should be emphasized that, if an ocean disposal site is designated, such a site designation does not constitute or imply Corps or EPA's approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove of the actual disposal, if it determines that environmental requirements under the MPRSA or the CWA have not been met.

F. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is not a ''significant regulatory action'' under E.O. 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This final rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

3. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the proposed open water disposal site designation will only have the effect of providing long term environmentally-acceptable disposal options for dredged materials. This action also provides options which are safe for marine traffic (navigation hazards) on a continuing basis. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal Mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 *FR* 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule addresses the designation of open water sites in Long Island Sound for the potential disposal of dredged materials. This proposed action neither creates new obligations nor alters existing authorizations of any state, local or governmental entities. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule.

In addition, and consistent with Executive Order 13132 and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 *FR* 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

The proposed action does not have Tribal implications. If finalized, the proposed action would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This proposed rule designates open water dredged material disposal sites and does not establish any regulatory policy with tribal implications. EPA specifically solicits additional comment on this proposed rule from tribal

officials. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 (62 *FR* 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 *FR* 28355 (May 22, 1001)) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule will have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

11. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, section 4321 *et seq*, (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be ''functionally equivalent'' to NEPA, EPA has a voluntarily policy to follow NEPA procedures when designating ocean dumping sites. See, 63 FR 58045 (Oct. 29, 1998). In addition to the Notice of Intent published in the **Federal Register** in June 1999 (64 FR 29865 (1999)), EPA and the Corps published legal notices in local newspapers and issued a press release inviting the public to participate in DEIS scoping meetings. Three formal scoping meetings were conducted in June 1999. In addition EPA and the Corps have held public workshops and several working group meetings. As discussed above, EPA is issuing a DEIS for public review and comment in conjunction with publication of this proposed rule.

In addition, EPA and the Corps will submit Coastal Zone Consistency determinations to the states of New York and Connecticut for publication in the Final EIS. Coordination efforts with NMFS and USFWS for ESA and EFH consultation was initiated during the DEIS process.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Robert W. Varney,

Regional Administrator, EPA New England.

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by removing and reserving paragraphs (b) (1), and (b) (2); and adding paragraphs (b) (3) and (b) (4) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(b) * * *

(1) [Reserved]

(2) [Reserved]

(3) Central Long Island Sound Dredged Material Disposal Site (CLIS):

(i) *Location:* Corner Coordinates (NAD 1983) 41° 09′5″ N., 72° 54′4″ W.; 41° 09′5″ N., 72° 51′5″ W.; 41° 08′4″ N., 72° 51′5″ W.; 41° 08′4″ N., 72° 54′4″ W.

(ii) *Size:* 2 square nautical miles.

(iii) *Depth:* range from 18 to 23.5 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from Long Island Sound and vicinity.

(4) Western Long Island Sound Dredged Material Disposal Site (WLIS)

(i) *Location:* Corner Coordinates (NAD 1983) 41° 00′1″ N., 73° 29′8″ W.; 41° 00′1″ N., 73° 28′0″ W.; 41° 58′9″ N., 73° 29′8″ W.; 41° 58′9″ N., 73° 28′1″ W.

(ii) *Size:* 1.2 by 1.3 nautical mile rectangular area.

(iii) *Depth:* range from 24 to 30 meters.

(iv) *Primary use:* Dredged material disposal.

(v) *Period of use:* Continuing use.

(vi) *Restriction:* Disposal shall be limited to dredged material from Long Island Sound and vicinity.

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[FR Doc. 03–22645 Filed 9–11–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WT Docket No. 03–187; FCC 03–205]

Effects of Communications Towers on Migratory Birds

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (''Commission'') initiates an inquiry to gather comment and information on the impact that communications towers may have on migratory birds. The Commission seeks information that is supported by evidence concerning the number of migratory bird collisions with communications towers and the role that specific factors associated with communications towers may have in increasing or decreasing the incidence of such collisions. The Commission further requests information on whether any current or proposed research may provide useful data regarding the subjects of this inquiry, and what other actions may be necessary to spur additional, necessary research. The Commission also seeks comment on whether certain measures might minimize any adverse impacts of communications tower siting and construction on migratory birds, whether any such measures are supported by adequate and reliable empirical and/or scientific evidence, and how the use of such measures may affect the ability of licensees and other parties to provide efficient and reliable communications services.

DATES: Comments are due on or before November 12, 2003 and reply comments are due on or before December 11, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: G. William Stafford at (202) 418–0563.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Inquiry (''NOI'') in WT Dkt. No. 03–187, FCC 03–205, adopted August 8, 2003, and released August 20, 2003. The NOI seeks comment and information on the impact that communications towers may have on migratory birds. The full text of the NOI is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The Notice of Inquiry may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. To request the NOI in accessible formats for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (tty).

I. Introduction

1. The Commission is initiating the inquiry to gather comment and information on the impact that communications towers may have on migratory birds. As explained, we seek information that is supported by evidence concerning the number of migratory bird collisions with communications towers and the role that specific factors associated with communications towers may have in increasing or decreasing the incidence of such collisions. Such factors may include lighting, height, and particular type of antenna structure (including guyed and unguyed structures), meteorological conditions, location, physiographic features of sites, and known migratory bird migration corridors. We further request information on whether any current or proposed research may provide useful data regarding the subjects of this inquiry, and what other actions may be necessary to spur additional, necessary research. We also seek comment on whether certain measures might minimize any adverse impacts of communications tower siting and construction on migratory birds, whether any such measures are supported by adequate and reliable empirical and/or scientific evidence, and how the use of such measures may affect the ability of licensees and other parties to provide efficient and reliable communications services. Depending on the record developed in this proceeding, the Commission will consider whether the current state of research would support further action by the Commission in this area, including possible amendments of its environmental rules. *See* 47 CFR 1.1301–1.1319.

2. This inquiry is designed to gather comments on scientific research and other related data relevant to migratory bird collisions with communications towers, and on whether such research would support changes within the structure of our current rules and processes specifically related to protection of migratory birds.

II. Background

3. Communications towers and other structures that support antennas provide the infrastructure for services licensed by the Commission, including broadcast television and radio, cellular, Personal Communications Service (PCS), Specialized Mobile Radio (SMR), and other advanced and emerging services. Communications towers also are used for the provision of private radio services used by business and government, and for public safety purposes.

4. Migratory birds breed throughout the United States and Canada and, in the fall of each year, migrate to the southern United States, Mexico, and Central and South America for the winter. Currently, 836 species are on the list of migratory birds maintained by the United States Fish and Wildlife Service (FWS). Birds that have been documented as vulnerable to collisions with communications towers include approximately 350 species of neotropical migratory songbirds, which generally migrate at night and may be most susceptible to collisions with lit towers on nights with low visibility due to fog, rain, or low cloud ceilings. At least one researcher has suggested that an estimated four to five million birds or more may be killed each year due to collisions with communications towers. Reports of bird deaths at single locations on a single day have included instances involving hundreds or even thousands of birds. However, to our knowledge there have been no studies sufficient to support a reliable estimate of the number of migratory birds that may have died as a result of collisions with an extensive number of communications towers located, for example, over wide geographic areas. In addition, while some literature suggests that certain factors—such as tower height, lighting systems, type of antenna support structure, and location—may increase or decrease the hazards that towers pose to migratory birds, there does not appear to be systematic research on an adequate scale regarding exactly how and to what extent, if at all, these factors contribute to any risk to migratory birds.

A. Licensing and Regulation of Radio Communications Services and Antenna Structures

5. The Commission was created to regulate communications by wire and radio in the United States. *See* 47 U.S.C. 151. Section 1 of the Communications Act, as amended (Act), requires the Commission to regulate commerce in communications to ''make available, so far as possible, to all people of the United States * * * a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities * * *.'' 47 U.S.C. 151. When Congress amended the Communications Act in the Omnibus Budget Reconciliation Act of 1993, it directed ''the development and rapid deployment of new technologies, products, and services for the benefit of the public * * * [and] efficient and intensive use of the electromagnetic spectrum.'' *See id.* § 309(j)(3)(A), (D). The Telecommunications Act of 1996 was intended ''to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunication consumers and encourage the rapid deployment of new telecommunications technologies.'' Congress also has provided that all television broadcasting in the United States will be by digital technology by the end of the transition to digital television (DTV) on December 31, 2006. *See* 47 U.S.C. 309(j)(14)(A)–(B). In addition, the Commission is authorized to assign frequencies to classes of stations, and has designated spectrum for public safety use. The Wireless Communications and Public Safety Act of 1999 (911 Act) directs the Commission to make 911 the universal emergency number for wireless and wireline telephone service and, among other matters, to encourage and support the development of comprehensive emergency communications throughout the United States so that all jurisdictions offer seamless networks for prompt emergency service.

6. As part of its responsibilities, the Commission issues licenses and permits relating to communications services and, pursuant to statute, requires antenna structures to conform to painting and lighting requirements. Section 301 of the Act requires the issuance of a license for radio communications, 47 U.S.C. 301, and construction permits from the Commission are required for certain services. See 47 U.S.C. 319. Section 307(b) of the Act charges the Commission with the duty to distribute broadcast licenses ''among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.'' 47 U.S.C. 307(b). Section 303(q) of the Act provides that the Commission shall have ''authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation.'' 47 U.S.C. 303(q). Section 303(q) further provides that the ''permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section.'' To implement Section 303(q), the Commission has provided in its rules that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) must register the structure with the Commission prior to construction. 47 CFR 17.4(a). Specifically, such notification and registration is required for antenna structures that meet certain height and location criteria (generally towers more than 60.96 meters (200 feet) in height or located within certain distances of an airport, as specified in the Commission's rules). As of June 1, 2003, approximately 92,454 antenna structures were registered with the Commission. The Commission's rules further require that tower owners paint and light their antenna structures in accordance with the FAA's advisory specifications for air navigation safety purposes. 47 CFR 17.6(a), 17.22, 17.23, and note preceding 47 CFR 17.45.

B. Environmental Statutes and Regulations

7. The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment, and requires federal agencies to establish procedures to identify and account for the environmental impact of projects they undertake or authorize. NEPA provides that ''to the fullest extent possible * * * all agencies of the Federal Government shall * * * include in every recommendation or report on * * * major Federal actions significantly affecting the quality of the human environment'' a detailed statement on the environmental impact of the proposed action and any adverse environmental impacts that cannot be avoided if the proposal is implemented. 42 U.S.C. 4332(2)(c). The Council on Environmental Quality's (CEQ) regulations provide that ''human environment'' shall be ''interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.'' 40 CFR 1508.14. NEPA also requires all Federal agencies to consult with and obtain the comments of expert Federal agencies before taking any major action significantly affecting the quality of the human environment. 42 U.S.C. 4332(2)(c).

8. The Endangered Species Act (ESA) prohibits the taking of any endangered species by any person unless authorized by FWS. 16 U.S.C. 1538(a)(1)(B). The ESA also provides that ''[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary [of the Department of the Interior], insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence'' of any endangered species or threatened species or result in the ''destruction or adverse modification of habitat of such species which is determined by the Secretary * * * to be critical * * *.'' *Id.* § 1536(a)(2). The Migratory Bird Treaty Act (MBTA) makes it ''unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture or kill * * * any migratory bird'' unless permitted by FWS. *See* 16 U.S.C. 703, 704(a). Although certain species of migratory birds are protected under the ESA, many additional species are protected under the MBTA and not the ESA.

C. The Commission's Environmental Rules

9. The Commission has implemented subpart I of NEPA pursuant to 42 U.S.C. 4321–4335, in part 1, subpart I of its rules. *See* 47 CFR 1.1301. Under these rules, any Commission action deemed to have a significant effect upon the quality of the human environment requires the preparation of an Environmental Impact Statement (EIS). 47 CFR 1.1305. Any action deemed potentially to have a significant environmental effect under categories specified in section 1.1307(a)(1) through (8) and (b) of the rules requires the preparation of an Environmental Assessment (EA). *Id.* 1.1307(a)(1) through (8), (b). In addition, the Commission will require the preparation of an EA if it is determined that a particular action, which is otherwise categorically excluded under the rules, may have a significant environmental impact. *Id.* 1.1307(c), (d). Actions that are deemed individually and cumulatively to have no significant effect on the quality of the human environment are categorically excluded from environmental processing, and do not require the preparation of an EA by

the applicant or the preparation of an EIS by the agency.

10. Prior to construction, all tower owners are required to evaluate whether towers that require registration fall within one of the specified categories of facilities with potential significant environmental impact, to file an EA if they do, and to certify compliance with the environmental rules on the Antenna Structure Registration application form. Similarly, license and certain other permit applicants are required to certify compliance with the environmental rules on the appropriate application form, depending on the particular service. If an EA is not required, the party may proceed with the project without providing any environmental documentation to the Commission. However, if there would be such a potential impact, an EA must be submitted and a Finding of No Significant Impact or Environmental Impact Statement issued before construction.

11. Section 1.1307(a)(3) provides that an EA is required for proposed facilities that may affect listed threatened or endangered species or designated critical habitats, or are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the ESA. 47 CFR 1.1307(a)(3). Thus, applicants and licensees are routinely required to evaluate their construction projects for potential adverse effects on birds that are endangered, threatened, or otherwise subject to § 1.1307(a)(3), and to file an EA if the terms of § 1.1307(a)(3) are met. The Commission's rules require the solicitation and consideration of comments of the Department of Interior with respect to actions specified in § 1.1307(a)(3) of our rules. *Id.* 1.1308 note; *see id.* (a)(3). With respect to other birds, routine evaluation is not required, but an EA shall be required under § 1.1307(c) or (d) if the relevant Bureau finds, in response to a petition or on its own motion, that the proposed construction may have a significant environmental impact other than impacts specified under §§ 1.1307(a)(1) through (8) and (b) of the Commission's rules. The Commission has acted under § 1.1307(c) to consider the impact that proposed construction would have on migratory birds.

D. Developments Relating to Migratory Birds and the Construction of Communications Towers

12. A Communication Tower Working Group (CTWG) consisting of representatives from the scientific, federal and state agency, environmental, consulting, and industry communities was formed under the auspices of FWS to help develop research on the effect that communications facilities may have on migratory birds. The research issues include the roles that certain factors associated with communications towers, including lighting, height, and the type of tower, may have on migratory birds. The CTWG also has sought to examine the potential for research into measures that may minimize migratory bird collisions with towers. On September 14, 2000, FWS issued its ''Service Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers,'' which includes voluntary, interim guidelines to be used by FWS personnel and recommended for use by the communications tower industry in considering proposed tower sitings for their impacts on endangered species and migratory birds. The guidelines are to be used by FWS personnel until the CTWG's research is ''completed, or until research efforts uncover significant new mitigation measures.'' The guidelines are based on research conducted in several Eastern, Midwestern, and Southern states, and refined through FWS regional review.

III. Request for Comments

A. Current State of Scientific Information

13. The impact that communications towers may have on migratory birds has been the subject of study or other analysis for decades, and several reports have shown bird deaths at individual locations during a single day or over multiple years. Nevertheless, it appears that current knowledge about both the extent to which towers kill migratory birds and the specific factors that may contribute to any danger is limited. For example, a March 2000 review of recent literature and research in progress that was prepared for FWS, Office of Migratory Bird Management, found, among other matters, that: (a) For the 5-year period 1995–1999, very little research was published or conducted that is relevant to the bird-communications tower collision issue; (b) since certain ''major reviews'' of the late 1970s and early 1980s, there has been little research on the subject; and (c) for the period before 1985, there is a body of literature on the issue, but most of it is anecdotal and the literature itself has not been examined analytically.

14. We seek comment on and analysis of existing scientific research and studies relating to the impact that communications towers may have on migratory birds. As discussed, at least one source suggests that an estimated four to five million birds may be killed each year due to collisions with communications towers, and another suggests that the number may be higher. In addition, there are reports of bird deaths at individual locations during one day or over time. We seek comment on the extent of migratory bird deaths that may be attributable to collisions with communications towers, the species and geographic locations involved, and what the raw numbers mean in terms of survival of species or in other relevant contexts. We ask that comments thoroughly discuss the methods that are used to quantify any information provided on this matter.

15. We also seek comment on the adequacy and reliability of scientific research on the impact of towers on migratory birds, including whether the parties that conducted the research are considered to be experts in the field, and whether the research was conducted in a scientifically-acceptable and rigorous manner. Comments should address whether the research was performed over an adequate period of time. Specifically, how many years and migration seasons were studied, and why is the length of time either adequate or inadequate to support the empirical conclusion? With respect to the scope of the study and research, was it conducted in a manner that allowed all relevant variables to be considered? We generally expect that variables affecting the impact that towers may have on migratory birds are likely to fall within two categories: (a) Those that may be within the control of the tower owner or licensee, such as tower lighting, height, type of tower structure, and location; and (b) those that are the result of natural phenomena, such as weather, low cloud ceilings, and fog. We seek comment on the extent to which research has considered these or other variables, and whether the research has considered the appropriate combination of variables in order to achieve reliable results. For example, were a sufficient number of towers studied in order to provide an adequate sampling and a reliable indication of the impact of towers on migratory birds? Were the towers located at different sites, and did they include a range of different towers with different variables including: height; location in different geographic

settings, including proximity to migratory bird flyways; different lighting systems; and different tower structures, including the use of guy wires? Have studies used Geographic Information Systems (GIS), radar, acoustical monitoring, or other methods to assess migratory bird presence, help conduct risk assessments, and determine high bird density areas or areas of critical importance to birds? On the other hand, is it necessary for research to examine different towers in order to reflect these and other variables? For example, does a study that is conducted at a single location over a long period of time provide reliable scientific results for the Commission to use to propose changes in its rules and processes, or is it necessary for numerous towers at different locations to be studied?

16. We also seek comment on whether the research included effective protocols to account for the actual numbers of birds killed at specific towers. Specifically, did the research employ standard metrics to count dead birds at individual towers in order to provide a uniform analysis of results from all towers for comparative purposes, or was some other method used? How often and at what times of day were searches conducted, and what other methods were used to promote searcher efficiency and control scavenger removal (*e.g.,* clearing of areas around the base of the tower or use of netting)? Comments should also address any other measures that were or were not used to account or control for other relevant variables, such as whether efforts were made to reduce lighting located near but not on the towers that otherwise could attract migratory birds. We seek a critical analysis of the research, which examines both the adequacies and inadequacies of the research, its methodologies, findings, and conclusions.

1. Tower Lighting

17. Lighting may be an important factor in attracting and/or disorienting migratory birds at communications towers. Particularly in inclement weather, including cloudy nights, birds entering an illuminated area may be reluctant to leave and may be susceptible to colliding with lighted towers, their supporting guy wires, or each other. It has been suggested that the color of tower lights, such as white, white with ultraviolet, or a specific color like red, and the duration of any pulse in the lights, such as strobe, slow flash, or steady pulse, may be factors that can alter the attraction of lighting to migratory birds. The intensity of light, *e.g.,* in lumens, also may play a role. Some reports suggest that white strobe lights may be less attractive to neotropical migratory species than steady or flashing red incandescent lights, while the attraction of red strobe lights to migratory birds is currently unknown.

18. We seek comment on whether and why lighted towers attract birds, and whether different lighting systems increase the potential for migratory bird collisions with communications towers. We seek information on whether studies document any difference in risk posed by lighting systems that use lights of different color or different rates of flash, pulse, or strobe (including red or white strobe). Comments also should address the effects of lighting color, duration, intensity, and type (*e.g.*, incandescent, strobed, neon, or laser) on bird attraction, especially at night during inclement weather and during spring and fall migrations. In addition, we ask that commenters take into consideration, where appropriate, the impact of different tower lighting systems on human communities. Further, are particular lighting systems or colors more or less attractive to migratory birds based on differing tower heights? We also ask that commenters recommend specific lighting systems to minimize migratory bird collisions with towers, to the extent supported by scientific findings.

19. Air safety and navigation issues are related to the painting and lighting of towers. The FAA has established painting and lighting advisory specifications for air safety and navigation purposes, and our rules require that the owners of communications towers paint and light their antenna structures in accordance with those advisory specifications. We seek comment on the impact, if any, that our painting and lighting requirements may have on migratory bird collisions with towers. Comments should address and suggest solutions to any conflicts that may exist between the advisory specifications and other related rules on the one hand, and causes of migratory bird collisions on the other. Comments and suggestions also should consider air safety and navigation concerns relating to towers and their lighting and marking (*e.g.*, towers are marked and lighted to be visible by pilots), and the obligations of the Commission with respect to air safety and navigation.

2. Tower Height

20. The height of towers may contribute to the extent of their impact on migratory birds. One report suggests that an important analysis would be to compare towers of different heights, that there have been relatively few studies of towers less than 400 feet in height, and that certain literature, although perhaps only suggestive, does not generally implicate such shorter towers in a significant number of bird deaths. Research conducted at two specific locations suggests that taller towers, and the structures associated with them, may increase avian mortality at those sites. However, it has been suggested that these and other studies do not definitively establish that tall towers are responsible for more bird deaths than shorter towers, and the apparent lack of mortality studies at short towers may make it premature to assume that short towers cause fewer bird deaths than tall towers.

21. We seek comment on the role of tower height as a cause of collisions by migratory birds with communications towers. Are there reliable scientific studies that compare the impacts on migratory birds of towers of different heights, and do they control for other variables such as geographic location, proximity to bird movement corridors, and prevailing weather conditions? If there are such studies, what are the results and the significance, if any, for determining the height of tower that may pose the greatest or least risk to migratory birds? Do studies examine whether short towers have less impact on migratory birds than tall towers, and do they identify the heights of the towers that were studied? The comments should consider and document, to the extent possible, whether there is a height threshold at which avian mortality becomes significant to an avian population, and any other factors that may lead to a determination of critical tower height for purposes of minimizing migratory bird collisions with towers, including whether the critical height threshold may be different in different geographic locations or weather conditions. We also ask that comments address the relationship, if any, of tower height with other factors, such as lighting, and whether there are situations where tower height could be limited to deter collisions by birds with towers yet still allow the provision of reliable communications services.

3. Type of Antenna Structure

22. The type of antenna support structure may be another important factor in the extent to which communications towers have an impact on migratory birds. For example, guy wires could create a level of risk to migratory birds that is not present with unguyed towers. We seek comment on

what impact, if any, different tower structures may have on migratory birds. Comments should include any studies or research on this issue, and should address the relative impact on migratory birds of guyed towers, self-supporting lattice towers, monopole towers, or other structures such as ''hidden'' towers that are made to resemble trees, for example. Are there factors that may make a particular type of tower structure more or less of a risk to migratory birds? For example, would guyed towers pose more of a risk than other tower structures to migratory birds at night in inclement weather? We also seek comment on whether particular tower designs or potential deterrent devices such as visual markers may deter migratory birds from towers.

4. Location of Antenna Structures and Other Factors

23. We seek comment on research or other data relating to any other matters within the scope of this inquiry. For example, is there information concerning the impact on migratory birds of communications towers located in or near specific habitats, such as wetlands, which may be a possible location of migratory bird populations? Do towers on ridges, mountains, or other high ground have a differential impact on migratory bird populations and, if so, are there scientifically rigorous studies that address such effects and their causes? We seek comment on the impact on migratory birds, if any, of locating towers in areas with a high incidence of fog, low clouds, or similar obscuration, in proximity to coastlines and major bird movement corridors, or either clustered near or dispersed from other towers. Comments on the role of any of these factors should consider the extent of any such impact during migration seasons. We also seek comment on any other factors that may influence the impact of communications towers on migratory birds. In addition, are data available from studies of non-communications facilities which may be relevant on the issue of the impact of communications facilities on migratory birds? If such information is relied upon, commenting parties should establish the relevance of that information and the relationship of facilities used in those industries to facilities used in the communications industry.

24. Certain migratory bird species may hold particular cultural or religious significance to Indian Tribes. The Commission has made a commitment to consult with federally recognized Indian tribes to the extent practical prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources. Consistent with that commitment, we specifically seek comments from the Tribes and other parties on whether any of the questions raised in this inquiry will significantly impact Tribal governments, their land, and resources.

B. Need for and Scope of Additional Study

25. In the event that parties believe that existing research is insufficient to permit the Commission to address fully the issue of migratory bird collisions with towers, we seek comment on what additional study or studies may be needed. We ask for comment on what variables the research should address, including possible lighting regimes, tower height, type of structure, location, and impact of different weather conditions. Comments should discuss the specific scope and parameters of recommended studies, including: the number of towers; different lighting regimes to be studied; whether a range of towers with different heights should be included; the geographic positioning of towers, including such factors as the incidence of inclement weather, topography, and proximity to areas that may be attractive to migrating birds, such as wetlands; and the different tower structures such as guyed or unguyed, including monopole, lattice, or other structures. We also seek comment on what types of procedures should be used to monitor birds that may be killed at communications towers during these studies. In addition, we request comment on whether studies can be structured specifically to research potential methods of reducing the potential for migratory bird collisions with towers.

26. Commenters should consider how much time would be needed to complete a new study or studies. Specifically, how many fall and spring migration seasons should be covered by any research, and how many summer seasons, if any, would be needed to monitor impacts on breeding, nesting, and local resident avian species? We seek comment on the factors that would impact the length of any study, including the number of towers that would be the subject of the research, and the particular testing procedures that would be used. In addition, there may be unpredictable factors, such as weather, that affect the time that it would take to complete a study. Estimates of the length of a study also should identify whether the estimates include the preparation of smaller pilot studies that may be needed to obtain meaningful data that would be used to design a broader and more in-depth study. We also seek comment on whether pilot studies followed by one or more larger studies are necessary, or whether one or more smaller studies could yield sufficient information on which the Commission could base future actions respecting migratory bird issues. If one or more smaller studies alone would be adequate, comments should address the relevant protocols. We further seek comment on the potential value of monitoring bird deaths at particular towers outside the context of a formal study, either in addition to or in lieu of such studies.

27. We also seek comment on the appropriate party or parties to design and conduct a study. The Commission is not an expert in the area of migratory birds, and we seek comment on what other entity might appropriately oversee any research that could be used to establish relevant standards for the Commission's use. In this regard, we note that the FWS is the lead federal agency for managing and conserving migratory birds, and its Division of Migratory Bird Management undertakes a number of surveys in conjunction with the FWS Regional Offices. We also seek comment on any ongoing or planned studies with which the Commission might coordinate in order to achieve synergies and avoid duplication of effort.

28. Another important consideration is the cost of a study and the source of funding. Cost can vary widely depending, in part, on the length of the study, the number of towers to be included, the extent of the geographic area, and particular tower features such as height and lighting. Sources for funding such studies have been difficult to identify. Comments should address both the estimated cost of any studies and potential sources of funding.

C. Suggested Methods To Minimize Impacts

29. We seek comment on whether existing studies or research address the use of particular methods to minimize any impact of communications towers on migratory birds. For example, would particular lighting systems, devices located on or near facilities to deter migratory birds, or other measures help to minimize bird collisions with communications towers? Comments should identify any particular methods, discuss the extent to which they have been used on communications towers or other similar relevant structures, and quantify the results of their use. In addition, would alternative siting of towers to avoid particular areas be a

reasonable method to minimize impacts, and are there alternate technologies available that would permit fewer and/or shorter towers to be built, yet still permit communications needs to be met? On the other hand, would the use of alternate siting be constrained by existing technology, the need for communications carriers to provide coverage for their services, build-out requirements under the Commission's rules, or any other requirements? In addition, do certain parts of towers, *e.g.*, top, middle, or lower sections, pose more or less of a potential for collisions with migratory birds and, if so, are there specific construction techniques, deterrent actions, or other methods that would be useful to minimize impacts?

30. The FWS Tower Siting Guidelines encourage certain measures that FWS says will ''provide significant protection for migratory birds pending completion'' of the CTWG's recommendations. The voluntary guidelines, which FWS recommends for use by all companies, license applicants, or licensees proposing new tower sitings, include to the extent feasible: collocation of antennas on existing towers or other structures rather than new tower construction; where collocation is not feasible, construction of new towers that are no taller than 199 feet above ground level without guy wires or lighting; siting new towers within existing tower farms; and use of the minimum acceptable amount of pilot warning and obstruction avoidance lighting recommended by the FAA for towers that require lights for aviation safety. As described, FWS intended the guidelines for interim use, and they were established in anticipation of further action by the CTWG. Further, FWS states that the guidelines would be ''updated as new information becomes available.'' Thus, these guidelines were not adopted as final measures, but were developed with the understanding that determining the appropriate methods to minimize the impact of communications towers on migratory birds would be an ongoing process.

31. We request comment on the scientific basis for these guidelines, the general use of the guidelines and the use of each of the specific guidelines, and any other potential measures to minimize impacts on migratory birds within the scope of our current rules. For example, comments could consider whether an MOU or other agreement between the Commission and other agencies, such as the FWS, could be used to specify the process to review potential impacts of antenna support structures on migratory birds, or to help facilitate any necessary research on the matters addressed in this inquiry. Comments also should address whether the current state of scientific knowledge on causes of bird collisions with communications towers supports the use of any or all of the FWS Tower Siting Guidelines. Further, does current scientific evidence support a finding that particular towers do not significantly pose a threat to migratory birds? For example, does such evidence exist relating to towers of a particular height, *e.g.*, unlit towers that are less than 200 feet in height, or towers that use particular lighting, *e.g.*, towers with primarily white strobe lighting? Commenters in particular should address the relationship of any measures they support or oppose with the current state of scientific knowledge. Comments also should consider how best to implement any of these matters within the current structure of our rules.

32. Particular guidelines intended to minimize impacts on migratory birds may, depending on their application, have an impact on Commission licensees, applicants, or other parties with respect to tower design and engineering, the ability to provide necessary communications services, liability, and costs. We seek comment on what effects, if any, the recommended FWS guidelines or other efforts to minimize impacts have had in these areas. Specifically, comments should address whether current or potential increased application of any of the guidelines would contribute to delay in tower construction, the provision of Commission-licensed services, or the transition to digital television. Comments should address advantages and disadvantages associated with different means of implementing the FWS guidelines, possible revisions to those guidelines, or other measures.

33. The Commission licenses and regulates the use of radio transmitters by state and local governments in public safety activities. We seek comment on the impact that restrictions or guidelines regarding tower siting and construction to protect migratory birds may have on the use of radio transmission for public safety. What would be the effect on the coverage provided by towers used to provide public safety service if those towers were, for example, subject to restrictions on height or other features in order to protect migratory bird populations? We also seek comment on what impact tower construction restrictions may have on homeland security objectives. In addition, are there other potential conflicts between potential measures to minimize impacts of communications towers on migratory birds and the availability of communications towers to address security concerns?

34. The Commission is committed to serving all parties interested in the impact that communications towers may have on migratory birds as well as resources allow. To this end comment is sought on ways that the Commission can do so better. What can the Commission do to meet its responsibilities under relevant statutes and rules better? Should the Commission develop additional staff expertise on avian mortality issues? Would the expertise of an ecologist or environmental biologist be helpful? What staff backgrounds are most important? What additional training should be made available for existing staff? Are there Commission procedures or rules that impede industry's or environmental groups' efforts to address issues related to avian mortality? For example, are there aspects of our EA requirements that could be improved with respect to migratory bird issues? Is there data that the Commission collects that could be of assistance to researchers in this field?

IV. Procedural Issues

A. Ex Parte Presentations

35. This is an exempt proceeding in which ex parte presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

B. Filing of Comments and Reply Comments

36. We invite comment on the issues and questions set forth. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 12, 2003, and reply comments on or before December 11, 2003.

37. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Given recent changes in the Commission's mail delivery system, parties are strongly urged to use the ECFS to file their pleadings. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, electronic filers should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail

comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

38. Parties who choose to file by paper must file an original and four copies of each filing. All filings by mail (including U.S. Postal Service Express Mail, Priority Mail and First Class Mail) must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington DC 20054. All filings sent to the Commission by overnight delivery, *e.g.*, Federal Express (other than by U.S. Postal Service Express Mail and Priority Mail), must be sent to the Commission's Secretary, Marlene H. Dortch, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. All hand-delivered or messenger-delivered filings must be delivered to the Commission's filing location at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002–4913. The filing hours at this facility are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

39. Parties who choose to file by paper should also submit their comments on diskette to: G. William Stafford, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. The required diskette copies of submissions should be on 3.5-inch diskettes formatted in an IBM compatible format using Microsoft Word or compatible software. Each diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY-B402, Washington, DC 20554.

40. Regardless of whether parties choose to file electronically or by paper, parties should also serve the following with either one copy of each filing via e-mail or two paper copies: (1) Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554 (telephone (202) 863–2893; facsimile (202) 863–2898) or e-mail at *qualexint@aol.com;* and (2) G. William Stafford, Federal Communications Commission, Room 6329, 445 12th Street, SW., Washington, DC 20554, or e-mail at *Bill.Stafford@fcc.gov.*

41. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Copies of filings in this proceeding may be obtained from Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *qualexint@aol.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (tty).

V. Ordering Clauses

42. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 303(r) of the Communications Act, 47 U.S.C. 151, 154(i), and 303(r), this Notice of Inquiry is *adopted.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–23311 Filed 9–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 02–34 and 00–248, FCC 03–154]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission invites comment on extending electronic filing requirements to all satellite and earth station-related filings. The Commission also proposes extending a streamlined license modification procedure to Direct Broadcast Satellite (DBS) and Digital Audio Radio Satellite (DARS) licensees. The intended purpose of this proceeding is to expedite the satellite and earth station license procedure, and to streamline the DBS and DARS modification procedure.

DATES: Comments are due on or before October 14, 2003. Reply comments are due on or before November 12, 2003.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite Division, International Bureau, (202) 418–1539. For additional information concerning the information collection(s) contained in this document, contact Judy Boley Herman at 202–418–0214, or via the Internet at *jbHerman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking, adopted June 26, 2003 and released July 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 2421 (May 1, 1998)). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paperwork Reduction Act

This Second Further NPRM contains proposed new and modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due October 14, 2003. Comments should address: (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 estimates; (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.

Summary of Further Notice of Proposed Rulemaking

In previous Reports and Orders, the Commission has adopted mandatory electronic filing requirements for all space station applicants other than DBS and DARS applicants. The Commission also requires mandatory electronic filing requirements for routine earth station license applicants, and for earth station assignments and transfer of control applications. Parties filing petitions to deny routine earth station applications, or other pleadings in response to routine earth station applications, are also required to file electronically. In this Second Further Notice of Proposed Rulemaking, the Commission proposes to extend mandatory electronic filing to all other space station and earth station-related filings.

In addition, in the *Second Report and Order* in IB Docket No. 02–34, the Commission adopted a streamlined procedure for satellite license modifications associated with fleet management, but precluded DBS and DARS licensees from using this streamlined procedure. In this Second Further NPRM, the Commission invites comment on extending the satellite fleet management modification procedure to DBS and DARS licenses.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA.

Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice of Proposed Rulemaking provided above. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

Need for, and Objectives of, the Proposed Rules: In this NPRM, we propose to revise our rules to require electronic filing for those earth station and space station license applications for which the Commission has not adopted an electronic filing requirement, and comments filed in response to those applications. We propose these mandatory electronic filing requirements to increase the number of satellite and earth station license applicants and associated parties may file documents with greater speed and efficiency. The system will also make license information more accessible to the Commission's staff, as well as the satellite industry and the general public. Furthermore, it is expected that the cost of filing applications or obtaining information will be reduced.

Legal Basis: The proposed action is supported by sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply: The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[2] The RFA generally defines the term ''small entity ''as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[8] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[9] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules proposed in this Notice of Proposed Rulemaking, if adopted, would affect satellite operators and earth station operators for whom we have not adopted an electronic filing requirement. These applicants include Direct Broadcast Satellite (DBS), Digital Audio Radio Satellite (DARS) satellite applications, all earth station applicants other than ''routine'' C-band and Ku-

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 603(b)(3).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[5] Small Business Act, 15 U.S.C. 632 (1996).

[6] 5 U.S.C. 601(4).

[7] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[10] *Id.*

band earth station applicants, and parties filing pleadings in response to these applications.

1. *DBS operators:* Because DBS provides subscription services, DBS falls within the SBA-recognized definitions of ''Cable Networks'' and ''Cable and Other Program Distribution.'' [11] These definitions provide that small entities are ones with $11.0 million or less in annual receipts.[12] Small businesses, *i.e.* ones with less than $11.0 million in annual receipts, do not have the financial ability to become DBS licensees because of the high implementation costs associated with satellite services. Because this is an established service, with limited spectrum and orbital resources for assignment, we estimate that no more than 15 entities will be Commission licensees providing these services. In addition, because of the high implementation costs and the limited spectrum resources we believe that none of the 15 licensees will be small entities. We expect that no small entities will be impacted by this rulemaking. Therefore, we certify that the proposed requirements of the Notice of Proposed Rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities.

2. *DARS operators:* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit broadcast satellite operators. Therefore, the applicable definition of small entity is the definition under Small Business Administration (SBA) rules applicable to the Communications Services, Not Elsewhere classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts.[13] There are only two SDARS providers authorized to provide service in the DARS spectrum band, XM Radio, Inc., and Sirius Satellite Radio, Inc. While neither has implemented nationwide service, both entities have financing of over $100 million. In addition, the DARS licensees have significant partnership interests with large corporations: General Motors in XM Radio, Inc., and DiamlerChrysler in Sirius Satellite Radio. Because of the above and the high implementation and operating costs for SDARS systems, we do not believe either DARS licensee qualifies as a small entity.

[11] 13 CFR 121.201, North American Industry Classification Systems (NAICS) codes 513210 and 513220.

[12] 13 CFR 121.201, NAICS codes 513210 and 513220.

[13] 13 CFR 121.201, NAICS Code 4899.

3. *Fixed Satellite Transmit/Receive Earth Stations.* As of the adoption date of this NPRM, there are about 10480 authorized operational fixed satellite transmit/receive earth stations. Of these, approximately 6875 are routine earth stations in the conventional C-band, and about 3469 are routine earth stations in the conventional Ku-band. Thus, only about 136 fixed satellite service earth stations, or between 1 and 2 percent, are ''non-routine'' earth stations. Accordingly, we estimate that between 1 and 2 percent of future earth station license applicants will be ''non-routine'' applicants potentially affected by the rules proposed in the NPRM. We do not request or collect annual revenue information, and thus are unable to estimate the number of these earth stations that would constitute a small business under the SBA definition.

4. *Mobile Satellite Earth Stations.* As of the adoption date of this NPRM, we have issued about 32 licenses for mobile satellite service earth stations currently in operation. We do not request or collect annual revenue information, and thus are unable to estimate the number of these earth stations that would constitute a small business under the SBA definition.

5. *Auxiliary, Special Broadcast and other program distribution services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (NAICS 513112) and television broadcasting stations (NAICS 513120). These definitions provide that a small entity is one with either $6.0 million or less in annual receipts for a radio broadcasting station or $12.0 million in annual receipts for a TV station. *See* 13 CFR 121.201. As of September 1999, there were 3,237 FM translators and boosters, 4913 TV translators.[14] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $6.0 million for a radio station or $12.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

[14] FCC News Release, *Broadcast Station Totals as of September 30, 1999*, No. 71831 (Jan. 21, 1999).

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements: None of the proposed rules in this notice are expected to increase the reporting, record keeping and other compliance requirements of any party.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered: The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

We have attempted not to foreclose any option.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules: None.

Ordering Clauses

Pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), that this Second Further Notice of Proposed Rulemaking in IB Docket No. 02–34 and Second Further Notice of Proposed Rulemaking in IB Docket No. 00–248 is hereby *adopted*.

The Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Second Further Notice of Proposed Rulemaking in IB Docket No. 02–34 and Second Further Notice of Proposed Rulemaking in IB Docket No. 00–248, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–23315 Filed 9–11–03; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 806

RIN 2900–AI99

VA Acquisition Regulations: Sealed Bidding and Competitive Proposals

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of Proposed rule.

SUMMARY: This document withdraws a proposed rule published in the **Federal Register** on March 11, 1998 (63 FR 11865), that would have amended the Department of Veterans Affairs Acquisition Regulation (VAAR) at 48 CFR 806.401. The changes proposed in this rule are being incorporated into a new proposed rule under RIN 2900-AK78 that will update the entire VAAR, thus making proposed rule 2900-AI99 unnecessary.

DATES: The proposed rule is withdrawn as of September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Division (049A5A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–8819.

Approved: August 28, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–23199 Filed 9–11–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AT28

Review of Information Concerning *Boiga* Snakes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Fish and Wildlife Service is reviewing available economic and biological information on the *Boiga* genus of snakes for possible addition of the 28 species of snakes in the genus to the list of injurious wildlife under the Lacey Act. The importation and introduction of *Boiga* snakes into the natural ecosystems of the United States may pose a threat to agriculture, horticulture, forestry, the health and welfare of human beings, or the welfare and survival of wildlife and wildlife resources in the United States. Listing *Boiga* snakes as injurious would prohibit their importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States, with limited exceptions. This notice seeks comments from the public to aid in determining if a proposed rule is warranted.

DATES: Comments must be submitted on or before November 12, 2003.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203; fax (703) 358–1800. You may send comments by electronic mail (email) to: *Boiga@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov.*

SUPPLEMENTARY INFORMATION: On May 28, 2003, the U.S. Fish and Wildlife Service received a petition from the North American Brown Tree Snake Control Team requesting that the entire *Boiga* genus of snakes be considered for inclusion in the injurious wildlife regulations pursuant to the Lacey Act. Brown tree snakes, *Boiga irregularis,* are already listed as an injurious wildlife species under the Lacey Act. The petitioners requested that we list the entire genus because many of the species are similar in appearance and could be misidentified upon inspection at importation, resulting in the accidental introduction of brown tree snakes. The petitioners also noted, ''many of the *Boiga* species have similar ecologies, so it is not just the brown tree snake that has the potential to become a problematic invasive species in the United States.''

There are 28 species of snakes in the *Boiga* genus. Snakes in the *Boiga* genus are native to Southeast Asia, China, India, Afghanistan, Malaysia, Indonesia, Oceania, Northeast Australia, and eastern equatorial Africa. *Boiga irregularis* was accidentally introduced in Guam and has become established. There have been other accidental introductions into Hawaii, Alaska, and Texas, but *Boiga* snakes are not established in those locations.

Based on U.S. Fish and Wildlife Law Enforcement importation declaration data, there were 1,850 snakes in the *Boiga* genus imported into the United States during the six and one-half year period from January 1997 to June 2003. The declared value of those 1,850 snakes was $16,495. Most of the snakes were imported from Indonesia and most are used in the pet trade.

The Lacey Act (18 U.S.C. 42) and its implementing regulations in 50 CFR part 16 restrict the importation into or the transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any species of wildlife, or eggs thereof, determined to be injurious or potentially injurious to certain interests, including those of agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. However, injurious wildlife may be imported by permit for zoological, educational, medical, or scientific purposes in accordance with permit regulations at 50 CFR 16.22, or by Federal agencies without a permit solely for their own use. If the process initiated by this notice results in the addition of the *Boiga* genus of snakes to the list of injurious wildlife contained in 50 CFR part 16, their importation into the United States would be prohibited except under the conditions, and for the purposes, described above.

This notice solicits economic, biological, or other information concerning *Boiga* snakes. The information will be used to determine if the species is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious wildlife in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand-delivered to the above address or faxed to (703) 358–1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN 1018–AT28]'' and your name and return address in your e-mail message. Please note that this email address will be

closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This notice is issued under the authority of the Lacey Act (18 U.S.C. 42).

Dated: September 2, 2003.

Craig Manson,

Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 03–23286 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 082703B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 13; Amendment 13A

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

ACTION: Notification announcing preparation of an environmental assessment (EA).

SUMMARY: NMFS and the South Atlantic Fishery Management Council (South Atlantic Council) intend to prepare a draft EA, in accordance with the National Environmental Policy Act (NEPA), for extension of the prohibition on fishing for and possessing snapper grouper species within the Oculina Experimental Closed Area.

FOR FURTHER INFORMATION CONTACT: Julie Weeder, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Julie.Weeder@noaa.gov*.

SUPPLEMENTARY INFORMATION: The proposed action to continue fishing restrictions in the Oculina Experimental Closed Area was originally combined with multiple other actions the South Atlantic Council was evaluating in Amendment 13 to the Snapper-Grouper FMP. A Notice of Intent (NOI) to prepare a supplemental environmental impact statement (supplemental EIS) to support that amendment was published in the **Federal Register** on January 31, 2002 (67 FR 4696).

In March 2003, the South Atlantic Council voted to separate the actions in Amendment 13 into two amendments. The proposed action to extend the prohibition on fishing for and possessing snapper grouper species within the Oculina Experimental Closed Area is being evaluated in Amendment 13A to the Snapper-Grouper FMP. Most of the other actions in Amendment 13 are now being evaluated in Amendment 13B, for which a supplemental EIS is being prepared. The purpose of separating the actions was to ensure that the Council had the information it needed to make a decision on whether to extend the prohibition on fishing for and possessing snapper grouper species within the Oculina Experimental Closed Area before the regulations implementing that prohibition expire as scheduled in June 2004.

This document is intended to inform the public of the change from preparation of a supplemental EIS for Amendment 13A to preparation of an EA. The purpose of an EA is to determine whether significant environmental impacts would result from a proposed action. If the action is determined not to be significant, the EA and resulting Finding of No Significant Impact will be the final environmental documents required by NEPA. If the EA indicates that significant environmental impacts may be reasonably expected to occur, then the agency will prepare a supplemental EIS and publish an NOI in the **Federal Register**. The preliminary environmental review of the proposed action in this amendment indicated that it would not likely have a significant impact on the quality of the human environment. Consequently, the South Atlantic Council and NMFS are jointly preparing an EA to decide whether to prepare a supplemental EIS.

The Oculina Bank is a 90–mile (145–km) strip of coral reefs and limestone outcroppings located in the exclusive economic zone (EEZ) near the continental shelf edge, approximately 60 nautical miles (nm) off central eastern Florida. Its name derives from the presence of banks, thickets, and rubble zones of the delicate, slow-growing *Oculina varicosa* (ivory tree coral). The massive thickets formed by this coral support dense and diverse invertebrate and finfish communities.

In recognition of the biological significance of this coral, in 1984 the Council designated a 92–square nm portion of the Oculina Bank as the ''Oculina Habitat Area of Particular Concern (Oculina HAPC)''. This designation categorized it as an area of special biological significance worthy of stricter regulatory and enforcement activity. The Council prohibited the use of bottom trawls, bottom longlines, dredges, fish traps, and fish pots within the Oculina HAPC to mitigate the threat of fishing gear to Oculina coral. These actions were implemented through the FMP for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic, which was prepared jointly by the Gulf of Mexico and South Atlantic Councils.

In Amendment 6 to the Snapper-Grouper FMP, which was implemented in 1994, the South Atlantic Council prohibited fishing for and retaining snapper grouper species within the Oculina HAPC, and prohibited anchoring by vessels fishing for snapper grouper species. The area to which these prohibitions applied became known as the Oculina Experimental Closed Area (OECA). The primary purpose of the OECA is to ''enhance stock stability and increase recruitment by providing an area where deep-water species can grow and reproduce without being subjected to fishing mortality''(SAFMC 1993).

In January of 1996, regulations implementing Amendment 3 to the FMP for Coral, Coral Reefs and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP) became effective. These regulations prohibited all fishing vessels from anchoring within the Oculina HAPC. Also in 1996, in Amendment 1 to the FMP for the Shrimp Fishery of the South Atlantic Region, the Council prohibited trawling for rock shrimp east of 80°W. long., between 27°30′ N. and 28°30′ N. lat., in depths less than 100 fathoms (183 m). These restrictions were adopted to minimize the impacts of the rock shrimp fishery on essential fish habitat including the fragile coral species existing in the Oculina bank. The area to which the prohibition applied became known as the rock shrimp closed area.

In 1998, the Council expanded the Oculina HAPC to include the rock shrimp closed area. This action was accomplished through Amendment 4 to the Coral FMP. Within the expanded

Oculina HAPC, fishing with a bottom longline, bottom trawl, dredge, fish pot, or fish trap is prohibited, as is anchoring by a fishing vessel. The prohibition on fishing for and possessing snapper grouper species remains in effect only within the smaller OECA, which is scheduled to expire in June 2004 and is the subject of Amendment 13A to the Snapper Grouper FMP.

The renewal of fishing restrictions in the OECA is intended to provide continued protection of snapper grouper populations and associated *Oculina* coral. This action is needed to provide a hedge against the high degree of scientific uncertainty associated with the status of these species and to reduce the possibility that these populations may fall below sustainable levels.

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

Dated: September 8, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–23310 Filed 9–11–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 177

Friday, September 12, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TB–03–12]

Burley Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the Burley Tobacco Advisory Committee.

DATES: The meeting will be held on October 9, 2003, at 9 a.m.

ADDRESSES: The meeting will be held at the Ramada Inn, 2143 North Broadway, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to elect officers, recommend opening dates and selling schedules, and discuss other related issues for the 2003–2004 burley tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by October 1, 2003, and inform us of your needs.

Dated: September 8, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–23216 Filed 9–11–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant Aerotech Laboratories, Inc. of Phoenix, Arizona an exclusive license to U.S. Patent No. 5,563,040, ''Method and Apparatus for Immunological Diagnosis of Fungal Decay in Wood,'' issued on October 8, 1996. Notice of Availability of this invention for licensing was published in the **Federal Register** on June 21, 1994.

DATES: Comments must be received within thirty (30) calendar days of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send comments to: Patent Advisor, USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone 608–231–9502.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Aerotech Laboratories, Inc. of Phoenix, Arizona has submitted a complete and sufficient application for a license.

The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be granted unless, within thirty (30) days from the date of this published notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 03–23218 Filed 9–11–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on September 25, 2003 in John Day, Oregon. The purpose of the meeting is to meet as a Committee to complete business items identified at the May 15 meeting.

DATES: The meeting will be held as follows: September 25, 2003, 8 a.m. to 3:30 p.m., John Day, Oregon.

ADDRESSES: The September 25, 2003 meeting will be held at the Malheur National Forest Supervisors Office, 431 Patterson Bridge Road, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Designated Federal Official, USDA, Malheur National Forest, P.O. Box 909, John Day, Oregon 97845. Phone: (541) 575–3008.

SUPPLEMENTARY INFORMATION: At the September 25 meeting the RAC will receive an update of how the fiscal year 2002 and fiscal year 2003 projects are progressing, discuss replacement RAC members and re-chartering of the RAC, allocate remaining fiscal year 2004 dollars to existing projects, and review project issues. A public comment period will be provided at 1:15 p.m. and individuals will have the opportunity to address the committee at that time.

Dated: September 4, 2003.

Jennifer L. Harris,

Designated Federal Official.

[FR Doc. 03–23209 Filed 9–11–03; 8:45 am]

BILLING CODE 3410–DK–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by November 12, 2003.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: 7 CFR 1779, Water and Waste Disposal Programs Guaranteed Loans.

OMB Number: 0572–0122.

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

Abstract: The Rural Utilities Service is authorized by section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of water and waste disposal facilities primarily servicing rural residents. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed loans. The regulations governing the Water and Waste Disposal Guaranteed Loan program are codified at 7 CFR 1779. The required information, in the form of written documentation and Agency approved forms, is collected from applicants/borrowers, their lenders, and consultants. The collected information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 7.8 hours per response.

Respondents: Business or other for profit; Not-for-profit institutions; State, local or tribal government.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 7.3.

Estimated Total Annual Burden on Respondents: 858 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 5, 2003.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 03–23217 Filed 9–11–03; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* October 12, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s)

underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Slimline Workstation Clocks
6645–00–NIB–0102—6″ Brown Case
6645–00–NIB–0103—6″ Black Case
6645–00–NIB–0104—6″ Brown Case—Federal Logo
6645–00–NIB–0105—12″ Wall Clock—Putty Case
6645–00–NIB–0106—6″ Black Case—Federal Logo
6645–00–NIB–0107—12″ Wall Clock—Putty Case—Federal Logo
NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Commissary Custodial and Warehousing, Fort Sill, Oklahoma.
NPA: Trace, Inc., Eagle, Idaho.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Service Type/Location: Custodial Services, Denver Federal Center, Building 56, Denver, Colorado.
NPA: Aspen Diversified Industries, Inc., Colorado Springs, Colorado.
Contract Activity: GSA/PBS Rocky Mountain Region, Denver, Colorado.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–23326 Filed 9–11–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 12, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 11, and July 18, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 41297, and 42684) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, Irvine-Tustin U.S. Army Reserve Center, Irvine, California.
NPA: Elwyn, Inc., Aston, Pennsylvania (At its facility in Fountain Valley, California).
Contract Activity: 63rd Regional Support Command, Los Alamitos, California.
Service Type/Location: Mailroom Operation (SH), Internal Revenue Service Mailroom (Multiple Locations)

ServiceSource, Alexandria, VA (Prime Contractor) at the following locations for the Nonprofit Agencies identified:

Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Atlanta SE, Atlanta, Georgia.
NPA: Bobby Dodd Institute, Inc., Atlanta, Georgia.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Baltimore, Maryland.
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Boston, Massachusetts.
NPA: Work, Incorporated, North Quincy, Massachusetts.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Buffalo, New York.
NPA: Phoenix Frontier, Inc., Buffalo, New York.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Cincinnati, Ohio.
NPA: Ohio Valley Goodwill Industries Rehabilitation Center, Inc., Cincinnati, Ohio.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Contractor Owned,Alexandria, Virginia,Internal Revenue Service Mailroom, Plantation, Florida.
NPA: ServiceSource, Inc., Alexandria, Virginia.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Contractor Owned, Alexandria, VA.
NPA: Columbia Lighthouse for the Blind, Washington, DC.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Denver, Colorado.
NPA: Bayaud Industries, Inc., Denver, Colorado.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Detroit, Michigan, Internal Revenue Service Mailroom, Computing Center, Detroit, Michigan.
NPA: Jewish Vocational Service and Community Workshop, Southfield, Michigan.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Greensboro, North Carolina.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Hartford, Connecticut.
NPA: Easter Seals Greater Hartford Rehabilitation Center, Inc., Windsor, Connecticut.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Alliance Tower, Houston, Texas.
NPA: Lighthouse for the Blind of Houston, Houston, Texas.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Indianapolis, Indiana.
NPA: GW Commercial Services, Inc., Indianapolis, Indiana.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Modis Building,Jacksonville, Florida,Internal Revenue Service Mailroom, North Florida, Jacksonville, Florida.
NPA: CCAR Services, Inc., Green Cove Springs, Florida.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Laguna Niguel, CA.
NPA: Landmark Services, Inc., Santa Ana, California.
Service Type/Location: Mailroom Operation,

Internal Revenue Service Mailroom, Los Angeles, California.
NPA: Goodwill Industries of Southern California, Los Angeles, California.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Nashville, Tennessee.
NPA: Goodwill Government Services, Inc., Nashville, Tennessee.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, New Orleans, Louisiana.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Oakland, California, Internal Revenue Service Mailroom, San Francisco, California.
NPA: Pacific Coast Community Services, Truckee, California.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Oklahoma City, Oklahoma.
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Philadelphia, Pennsylvania.
NPA: Horizon House, Inc., Philadelphia, Pennsylvania.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Phoenix, Arizona.
NPA: Goodwill Community Services, Inc., Phoenix, Arizona.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Richmond, Virginia.
NPA: Goodwill Services, Inc., Richmond, Virginia.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Riverside, Chicago, Illinois.
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, Springfield, New Jersey.
NPA: New Jersey Association for the Deaf-Blind, Inc., Somerset, New Jersey.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, St. Louis, Missouri.
NPA: MGI Services Corporation, St. Louis, Missouri.
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailroom, St. Paul, Minnesota.
NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota.
Contract Activity: U.S. Treasury, IRS Headquarters, Oxon Hill, Maryland.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–23327 Filed 9–11–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–856]

Synthetic Indigo From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 10, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on synthetic indigo from the People's Republic of China with respect to Liyang Skyblue Chemical Co., Ltd. Based on our analysis of the comments received since the preliminary results, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final margin is listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: September 12, 2003.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Margarita Panayi, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the exporter Liyang Skyblue Chemical Co., Ltd. (Liyang).

On March 10, 2003, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on synthetic indigo from the People's Republic of China (PRC) (68 FR 11371) (*Preliminary Results*). On April 9, 2003, Liyang requested a public hearing, but withdrew that request on May 7, 2003. Liyang submitted additional surrogate value data on April 14, 2003. We received case briefs from the petitioner, Buffalo Color Corporation, and Liyang on April 25, 2003. We received rebuttal briefs from these parties on April 30, 2003. The Department placed additional information on the record on May 19, 2003, and both the petitioner and Liyang submitted comments on this information on May 29, 2003. On July 7, 2003, the Department placed on the record import statistics from various countries relevant to certain surrogate values. On July 10, 2003, the Department published in the **Federal Register** the postponement of the final results of the administrative review of the antidumping duty order on synthetic indigo from the PRC (68 FR 41113). Liyang submitted comments on the Department's July 7, 2003, import statistic data. Liyang submitted additional comments in an August 14, 2003, letter. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Order

The products subject to this order are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as ''Vat Blue 1.'' Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (*e.g.*, powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this order are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Period of Review

The period of review (POR) covers the period June 1, 2001, through May 31, 2002.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Jeffrey May, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated September 5, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in

the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes From the Preliminary Results

Based on our analysis of comments received and a review of the available information on the record, we have made certain changes to the margin calculations, including:

- We corrected the valuation of the ''auxiliary agent'' and the ''wetting agent,'' which Liyang obtained from market economy sources and paid for in market economy currencies, by converting the per-kilogram prices for these inputs to per-metric ton prices for purposes of calculating Liyang's normal value.
- We revised the valuation of solid potassium hydroxide to rely on the average of the *Chemical Weekly* POR average price and the Indian import weighted-average value during the POR for this chemical.
- We corrected the valuation of liquid potassium hydroxide by adjusting the surrogate value for solid potassium hydroxide to reflect the concentration of the liquid input consumed by Liyang.
- We revised the valuation of liquid sodium hydroxide, also known as lye, to rely on the average of the *Chemical Weekly* POR average price and Indian import POR average value for this chemical, adjusted for the concentration consumed by Liyang. To calculate the Indian import portion of the value, we excluded imports from countries on which India has issued an antidumping duty order.
- We revised the valuation of solid sodium hydroxide, which was based on the average of the *Chemical Weekly* POR average price and the Indian import POR average value, to exclude imports of liquid sodium hydroxide and imports from countries on which India has issued an antidumping duty order from the import value portion of the calculation
- We revised the surrogate value for inland freight to apply the average of the Indian freight rate information derived from the February through May 2002 editions of *Chemical Weekly*.
- We revised the valuation of international freight to rely on the arrival notices submitted by Liyang.
- We revised the valuation of the foreign brokerage and handling expense to include an amount for terminal handling charges, which were considered part of the surrogate ocean freight value applied in the preliminary results.
- We revised the valuation of marine insurance to apply the surrogate value rate on a percentage basis, rather than a per-unit basis.

For a discussion of these changes, see the ''Margin Calculations'' section of the Decision Memo, the Decision Memo comments, and the September 5, 2003, *Final Results Valuation Memorandum.*

Final Results of the Review

We determine that the following margin percentage exists:

Manufacturer/producer/exporter	Margin percent
Liyang Skyblue Chemical Co., Ltd. ..	4.60

Assessment Rates

The Department shall determine, and the U.S. Bureau of Customs and Border Protection (BCBP) shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. The Department will issue appropriate assessment instructions directly to BCBP within 15 days of publication of these final results of review. For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct the BCBP to liquidate them at the cash deposit rate in effect at the time of entry.

Cash Deposit Requirements

The cash deposit rate for all shipments by Liyang of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, will be the rate of 4.60 percent, as provided for by section 751(a)(1) of the Act. The cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding for which there was no request for administrative review will continue to be the rate assigned in that segment of the proceeding. The cash deposit rate for the PRC NME entity will continue to be 129.60 percent, and the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will continue to be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: September 5, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—List of Issues

Comment 1: Valuation of Phenylglycinonitrile
Comment 2: Normal Value Based on Different Production Processes
Comment 3: Surrogate Value for Castor Oil
Comment 4: Valuation of Solid Potassium Hydroxide
Comment 5: Adjustment for Concentration Levels of Liquid Sodium Hydroxide and Liquid Potassium Hydroxide
Comment 6: Adjustment for Concentration Levels of Other Chemicals
Comment 7: Valuation of Liquid Ammonia
Comment 8: Valuation of Aniline
Comment 9: Valuation of Ocean Freight
Comment 10: Valuation of Auxiliary and Wetting Agents
Comment 11: Valuation of Plastic Bags

[FR Doc. 03–23317 Filed 9–11–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090203B]

Pacific Fishery Management Council; Notice of Intent

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an environmental impact statement (EIS); request for written comments; notice of public scoping meetings.

SUMMARY: NMFS and the Pacific Fishery Management Council (Council) intend to prepare an EIS in accordance with the National Environmental Policy Act of 1969 analyzing the adoption of rebuilding plans for four overfished groundfish species: cowcod (*Sebastes levis*), bocaccio (*S. paucispinis*), widow rockfish (*S. entomelas*), and yelloweye rockfish (*S. ruberrimus*). The proposed action is to adopt these rebuilding plans as Amendment 16–3 to the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) and adds key rebuilding targets to Federal groundfish regulations. This approach is consistent with the framework for rebuilding overfished species established in Amendment 16–1, which is currently under Secretarial review.

DATES: A public scoping meeting for the Amendment 16–3 EIS is scheduled for Sunday, November 2, 2003, from 3 p.m. to 5 p.m. in conjunction with the Council's November 3–7, 2003, meeting (see **SUPPLEMENTARY INFORMATION**). Written comments will be accepted at the Council office through November 10, 2003.

ADDRESSES: Written comments on issues and alternatives to be addressed in the Amendment 16–3 EIS should be sent to Dr. Donald McIsaac, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 200, Portland OR, 97220.

Comments also may be sent via email to pfmc.comments@noaa.gov (enter ''Amendment 16–3 EIS scoping'' in the subject line) or facsimile (fax) to 503–820–2299.

FOR FURTHER INFORMATION CONTACT: Matthew Harrington, NMFS, Northwest Region; telephone: 206–526–4742, fax: 206–526–6426 and e-mail: matthew.harrington@noaa.gov; or Kit Dahl, Pacific Fishery Management Council; telephone: 503–820–8220 or 866–806–7204 (toll free), fax: 503–820–2299 and email: kit.dahl@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council published a notice of intent to prepare an EIS evaluating rebuilding plans for overfished groundfish at 67 FR 18576 on April 16, 2002. Rebuilding measures apply to groundfish species that have been declared overfished by the U.S. Secretary of Commerce pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and these measures must be consistent with the provisions of Section 304(e) of the Magnuson-Stevens Act. At that time, NMFS and the Council planned to prepare a single EIS evaluating both the framework for adopting rebuilding plans and the adopted rebuilding plans themselves. A subsequent notice of intent, published in the **Federal Register** on March 18, 2003, (68 FR 12888) announced that separate analyses would be prepared: an environmental assessment (EA) for the framework portion of the action and one or more EISs for the rebuilding plans themselves. This approach facilitates rebuilding plan adoption for two reasons. First, the framework, which establishes procedures and standards, was not anticipated to result in significant impacts to the human environment. Therefore, the proposed action could be evaluated in an EA. Completing Council decision-making on this framework would provide greater certitude about the process and standards to be subsequently used in adopting rebuilding plans. Second, not all the scientific analyses needed to prepare rebuilding plans were completed simultaneously. Rather than waiting and delaying adoption of rebuilding plans, several amendments were planned based on the availability of stock assessments and scientific analyses. The framework is established in Amendment 16–1, which is currently under Secretarial review published in the **Federal Register** on August 18, 2003, at (68 FR 49415). The Council prepared an EIS for Amendment 16–2, that adopts rebuilding plans for four species: canary rockfish (*Sebastes pinniger*), darkblotched rockfish (S. crameri), Pacific ocean perch (*S. alutus*), and lingcod (*Ophidon elongatus*). The Amendment 16–2 draft EIS (DEIS) is scheduled to be available for a 45–day public comment period beginning on September 19, 2003.

Amendment 16–3 will adopt rebuilding plans for four overfished groundfish species: cowcod (*Sebastes levis*), bocaccio (*S. paucispinis*), widow rockfish (*S. entomelas*), and yelloweye rockfish (*S. ruberrimus*). The rebuilding plan for Pacific whiting (*Merluccius productus*), the final groundfish species to be declared overfished to date, will be adopted in a subsequent FMP amendment.

Alternatives

According to the rebuilding plan framework, certain elements of rebuilding plans must be incorporated into the Groundfish FMP and Federal groundfish regulations. These include strategic rebuilding parameters, which are subject to policy decisions made by the Council. These parameters reflect the tradeoff between rebuilding the stock in as short a time period as possible and the needs of fishing communities and the interaction of the stock with the marine ecosystem. Rebuilding means returning a fish stock to a size and structure capable of supporting maximum sustainable yield (or the highest level of harvest that can occur on a continuing basis). There are three such strategic rebuilding parameters. The first is the harvest control rule, which expresses a given fishing mortality rate over the course of rebuilding the stock. The second is, for a given fishing mortality rate, the probability that the stock will be rebuilt in the maximum time period allowed under National Standard 1 guidelines (50 CFR 600.310(e)(4)(ii)), or the ''rebuilding probability.'' The third is a ''target year,'' which is defined as the year in which there is a 50 percent likelihood that the stock will have been rebuilt, for a given fishing mortality rate. For any given fishing mortality rate, there is a unique value for the rebuilding probability and the related target year. However, in developing their strategy, policymakers can choose any one of the three strategic parameters, recognizing that choosing one parameter will determine the value of the other two parameters.

The alternatives in the Amendment 16–2 EIS present the choice of rebuilding strategies in terms of rebuilding probabilities for each of the overfished species. It is likely that the alternatives in Amendment 16–3 will be similarly structured. Once the strategic parameters are chosen, they will be used to determine annual harvest levels, or optimum yield (OY) values for overfished species. A rebuilding strategy also includes the management measures necessary to constrain fishing mortality to the OY. However, new management measures will not be incorporated into the FMP through Amendment 16–3. Instead, existing management measures, which are part of the Groundfish FMP management framework, will be used to manage total fishing mortality. These measures are implemented periodically, through a harvest specification process. (To date, this harvest specification process has occurred annually. Beginning in 2005, it will switch to a biennial cycle.) This approach is considered more adaptive, because management measures can be regularly adjusted in response to new information about the status of stocks.

Preliminary Identification of Environmental Issues

A principal objective of the scoping and public input process is to identify potentially significant impacts to the human environment that should be analyzed in depth in the EIS. Council and NMFS staff conducted initial screening to identify potentially significant impacts resulting from the proposed action. These impacts relate to the likelihood that overfished stocks will rebuild and, generally, effects stemming from the need to constrain fishing in order to rebuild overfished groundfish stocks. Impacts to the following components of the biological and physical environment may be evaluated: (1) essential fish habitat and ecosystem; (2) protected species listed under the Endangered Species Act and Marine Mammal Protection Act and their critical habitat; and (3) the fishery management unit, including target and non-target fish stocks, and especially overfished groundfish stocks. Socioeconomic impacts are also considered in terms of the effect changes in projected harvests will have on the following groups of individuals: (1) those who participate in harvesting the fishery resources and other living marine resources; (2) those who process and market fish and fish products; (3) those who are involved in allied support industries; (4) those who consume fish products; (5) those who rely on living marine resources in the management area, either for subsistence needs or for recreational benefits; (6) those who benefit from non-consumptive uses of living marine resources; (7) those involved in managing and monitoring fisheries; and (8) fishing communities.

Scoping

A public scoping meeting is scheduled for Sunday, November 2, 2003, from 3 p.m. to 5 p.m. This scoping session will coincide with the Council meeting and will occur at the same location, the Hilton San Diego/Del Mar, 15575 Jimmy Durante Blvd., Del Mar, CA 92014–1901 (858–792–5200). The primary purpose of the scoping meeting is to focus the analysis on the real issues and concerns of the public (see 40 CFR 1500.5(d) and 40 CFR 1501.7). Public comment also may be made during the November Council meeting (November 3–7, 2003), under the agendum when the Council will consider the proposed action. The agenda for this meeting will be available from the Council website or by request from Council offices in advance of the meeting (see **ADDRESSES**). The agenda will also identify the room in which the Sunday scoping meeting will occur. Written comments on the scope of issues and alternatives may be submitted as described under **ADDRESSES**.

NMFS invites comments and suggestions on the scope of the analysis to be included in the environmental impact statement for Amendment 16–3. The scope includes the range of alternatives to be considered and potentially significant impacts to the human environment that should be evaluated in the EIS. In addition, NMFS is notifying the public that, in conjunction with the Council, it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision.

A draft environmental impact statement (DEIS) will be prepared for comment later on in the process. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time.

To be the most helpful, comments on the DEIS should be as specific as possible. Comments received during the scoping process, 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.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the scheduled meeting date.

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

Dated: September 5, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–23203 Filed 9–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052803A]

Taking Marine Mammals Incidental to Specified Activities; Oceanographic Surveys at the Storegga Slide, Norwegian Sea

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys at the Storegga Slide off the west coast of Norway in the Norwegian Sea has been issued to Lamont-Doherty Earth Observatory (LDEO).

DATES: Effective from August 28, 2003, through August 27, 2004.

ADDRESSES: The application, a list of references used in this document, and/or the IHA are available by writing to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the

availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 21, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program within the Storegga slide area off the west coast of Norway, in the Norwegian Sea, between 8oW and 7oE and between 62 and 68oN, during late August and September 2003. The Storegga slide was produced by colossal slope failures on the Norwegian continental margin in the late Quarternary period. The purpose of this survey is to determine whether submarine landslides can release methane from hydrate into the oceans and/or atmosphere. More specifically, the survey of the Storegga slide seeks to discover: (1) How much hydrate and free gas is present in the Storegga region and how it is distributed, (2) if methane escaped from the slide, and if so, how much, when and by what mechanisms, and (3) if hydrate dissociation promotes and/or localizes submarine landslides. A coordinated seismic and coring study of the Storegga slide is proposed to obtain information on these subjects (the coring portion of the project will be completed in 2004). This study will help explain whether methane in gas hydrate reservoirs is mobile and can affect the earth's climate.

Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will conduct the seismic work. The *Maurice Ewing* will deploy an array of airguns as an energy source, plus a 6–km (3.2–nm) towed streamer containing hydrophones to receive the returning acoustic signals.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with the participation of scientists from the University of Wyoming. Water depths within the Storegga slide survey area will range from approximately 100 to 5,000 m (330 to 16,405 ft). The Maurice Ewing will initially deploy a 2–General Injector (GI) gun array for several survey lines, and then a 6–airgun array will be employed for several survey lines. Whichever array produces better data will be used for the rest of the cruise. The project will consist of 3,109 km (1,678 n.mi) of survey lines, of which approximately 2,596 km (1,402 n.mi) will be conducted in water depths greater than 1,000 m (3,280 ft), 504 km (272 n.mi) will be surveyed in depths 100–1000 m (330–3,280 ft), and 9 km (4.9 n.mi) will be surveyed in water less than 100 m (330 ft) deep. There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte et al., 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey. Seismic surveys will likely commence on August 28, 2003, and continue until September 25, 2003, for a total of 29 days of seismic surveying.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the airgun array (either the 2–GI gun or 6–gun array) and a streamer containing hydrophones along predetermined lines. The vessel will travel at 4–5 knots (7.4–9.3 km/hr), and seismic pulses will be emitted at intervals of approximately 20 seconds. The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). The 6–gun array will include six 2000 psi 1500C Bolt airguns ranging in chamber volume from 80 to 500 in3, with a total volume of 1,350 in3. These airguns will be spaced in an approximate rectangle with dimensions 12 m (39.4 ft)(across track) by 10 m (32.8 ft)(along track). The two 105 in3 GI guns will be towed 7.8 m (25.6 ft) apart side by side and 37 m (121.4 ft) behind the vessel, with a total volume of 210 in^3.

The dominant frequency components for both airgun arrays is 0 - 188 Hz. The 2–airgun array will have a peak sound source level of 237 dB re 1 μPa or 243 dB peak-to-peak (P-P). The 6–airgun array will have a peak sound source level of 243 dB re 1 μPa or 250 dB P-P. These are the nominal source levels for the sound directed downward, and represent the theoretical source level close to a single point source emitting the same sound as that emitted by the array of 2 or 6 sources. Because the actual source is a distributed sound source (2 or 6 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the downward directional nature of the sound from these airgun arrays, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multi-beam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multi-beam sonar. These mid-frequency sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first mode is when water depth is <400 m (1312.3 ft). The source output is 210 dB re 1 Pa-m rms and a single 1–millisec pulse or ''ping'' per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in beamwidth. The

beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes: The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the ''ping'', including all 5 successive segments, varies with water depth but is 1 millisec in water depths <500 m (1640.4 ft) and 10 millisec in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Sounds from the sub-bottom profiler are very short pulses, occurring for 1, 2 or 4 msec once every second. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. Most of the energy in the sound pulses emitted by this multi-beam sonar is at mid-frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward.

Sound levels have not been measured for the sub-bottom profiler used by the *Maurice Ewing*, but Burgess and Lawson (2000) measured the sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 μPa-m). The 160 and 180 dB re 1 μPa (rms) radii, in the horizontal direction, were estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively, from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

The sub-bottom profiler on the Maurice Ewing has a maximum source level of 204 dB re 1 μPa-m. Thus the received level would be expected to decrease to 160 and 180 dB at about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively (assuming spherical spreading). Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30o beamwidth) and the measurements of Burgess and Lawson (2000). Additional information on the airgun arrays, Atlas Hydrosweep, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Comments and Responses

An earlier notice of an LDEO application and proposed IHA was published in the **Federal Register** on April 14, 2003 (68 FR 17909). That notice described, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects. In addition, another notice of receipt of an LDEO application and proposed IHA was published in the **Federal Register** on July 28, 2003 (68 FR 44291). That notice described in detail the proposed activity and the marine mammal species that may be affected by it. That information is not repeated here. During the 30–day public comment period, comments were received from the Marine Mammal Commission (Commission).

Monitoring Concerns

Comment 1: The Commission believes that NMFS preliminary determinations are reasonable, provided NMFS is satisfied that the proposed mitigation and monitoring activities are adequate to detect marine mammals in the vicinity of the proposed operations and ensure that marine mammals are not being taken in unanticipated ways or numbers. In this regard, NMFS **Federal Register** notice and the application state that [v]essel-based observers will monitor marine mammals near the seismic source vessel during all daylight airgun operations and during any nighttime startups of the airguns;'' and that bridge personnel will watch for marine mammals during nighttime activities but that ''[o]bservers will not be on duty during ongoing seismic operations at night. The **Federal Register** notice states that image-intensifier night-vision devices (NFDs) will be available for use at night, although past experience has shown that NFDs are of limited value for this purpose.'' Thus it is unclear that, for nighttime activities, the monitoring effort will be sufficient to determine that no marine mammals are within the safety zones at start-up or will be an effective means of detecting when marine mammals enter the safety zones during operations such that activities are suspended before received levels of 180 and 190 dB (rms) are reached.

Response: As part of the IHA, NMFS is requiring that if the airguns are started up at night, two marine mammal observers will monitor for marine mammals within the safety radii for 30 minutes prior to start up using night vision devices as described later (see Monitoring and Reporting). Airgun operations will be suspended when marine mammals are observed within or about to enter designated safety zones, and operations will not resume until the animal is outside the safety radius. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence. The ''ramp-up'' procedure will then be followed. Because the sizes of the two airgun arrays to be used are small, the safety zones are relatively small, and there are no ''power-down'' procedures, ramp-up may not commence unless the entire safety radii is visible for 30 minutes prior to ramp-up in either daylight or nighttime. The combination of the two conditions ensures, to the greatest extent practicable, that no mammals will be within the appropriate safety zones whenever the airguns are turned on, either in daylight or nighttime.

However, it is noted that at times, pinnipeds and even some small cetaceans will approach a vessel during transmissions (the vessel itself moving forward at about 3–5 knots) from the side of the vessel or the stern, meaning that the animal is voluntarily approaching a noise source that is increasing in strength as the animal gets closer. Experience indicates that pinnipeds will come from great distances to scrutinize seismic-reflection operations. Seals have been observed swimming within airgun bubbles only 10 m (33 ft) away from active arrays. Also, Canadian scientists, who were using a high-frequency seismic system that produced sound frequencies closer to pinniped hearing than those used by the *Ewing*, describe how seals frequently approached close to the seismic source, presumably out of curiosity. Therefore, because at least pinnipeds indicated no adverse behavioral reaction to seismic noise, NMFS has concluded that the above-mentioned mitigation requirement is reasonable because the bridge-watch will be concentrating on marine mammals approaching the vessel from the bow. Also, the night-vision ability of

the trained bridge-watch staff will be better than observers elsewhere on the vessel where normal ship-board lighting is more likely. Finally, an observer is still required to be on standby, meaning he or she will be in the vicinity of the bridge and is not precluded from conducting observations during night-time.

Comment 2: The Commission notes that there is no discussion on why nighttime operations are considered necessary.

Response: The daily cost to the Federal government to operate the Ewing is approximately $33,000-$35,000/day (Ljunngren, pers. comm. May 28, 2003), or approximately $1,050,000 for this 30–day research cruise. If the Ewing is prohibited from operating during nighttime, the 30–day trip would require an additional 3–5 days, or up to $105,000–175,000 more, depending upon average daylight at the time of the work.

Therefore, because NMFS has determined that the safety zone must be visible during ramp-up, and because once the Ewing is underway and ramp-up completed, mammals will have sufficient notice of a vessel approaching (at least one hour) to avoid the approaching array if the sounds are annoying, NMFS determined that it is neither practical nor necessary to limit seismic operations to daylight hours since marine mammals are unlikely to be injured.

Comment 3: The Commission notes that it is unclear whether vessel-based passive acoustic monitoring will be conducted as an adjunct to visual monitoring during daytime and particularly during nighttime operations to detect, locate, and identify marine mammals, and, if not, why not.

Response: The passive acoustical monitoring equipment that was used onboard the *Ewing* during the 2003 Gulf of Mexico (GOM) Sperm Whale Seismic Study (SWSS), is not the property of LDEO or the *Ewing*, and therefore is not available for the Norwegian Sea cruise. LDEO is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises. NMFS expects a report on this analysis shortly.

Comment 4: The Commission asks whether conducting monitoring for at least 30 minutes prior to the planned start of airgun operations during the day and at night is sufficient, particularly for detecting the presence of species that make long dives.

Response: NMFS believes it is unnecessary to lengthen this period considering that the ramp-up period will increase SPLs at a rate no greater than 6 dB per 5–minutes for a total ramp-up duration of approximately 14 min for the 6 gun array. Also, while some whale species may dive for up to 45 minutes, it is unlikely that the ship's bridge watch would miss a large whale surfacing from its previous dive if it is within a mile or two of the vessel.

Comment 5: The Commission notes that there are several species of beaked whales in the Norwegian Sea, and states that ''although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this....suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.'' The Service's **Federal Register** notice, however, makes no reference to or requirement for any additional caution with respect to beaked whales.

Response: While NMFS shares the Commission's concern regarding the possible relationship between low-frequency seismic survey transmissions and the beaked whale strandings in the Gulf of California, NMFS believes that additional factors probably also influence whether beaked whales will be affected in ways other than possibly vacating the immediate vicinity of the noise similar to other marine mammal species. For example, beaked whales in the Gulf of Mexico have been exposed to seismic noise for several decades but mass stranding events similar to the 2000 event in the Bahamas do not appear in the stranding record. However, NMFS welcomes recommendations regarding additional practical mitigation measures to protect beaked whales from anthropogenic sounds. A notice of receipt of an LDEO application and proposed IHA was published in the **Federal Register** on July 28, 2003 (68 FR 44291).

Mitigation

For the seismic operations in the Storegga slide area, LDEO will use 2 GI guns with a total volume of 210 in3 and/or a 6–gun array with a total volume of 1350 in3. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward. The directional nature of the airgun arrays to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (2 or 6 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Safety Radii

Modeled results for the 2- and 6–gun arrays indicate received levels to the 180–dB re 1 μPa (rms) isopleth (the level for the potential for Level A harassment applicable to cetaceans) were estimated as 50 and 220 m (164 and 722 ft), respectively. The radii around the 2- and 6–gun arrays where the received level would be 190 dB re 1 μPa (rms), (the level for the potential for Level A harassment applicable to pinnipeds), were estimated as 15 and 50 m (49 and 164 ft), respectively. A calibration study was conducted prior this survey to determine the actual radii corresponding to each sound level. These actual radii will be implemented for this study. Until then, or if those measurements appear defective, LDEO will use a precautionary 1.5 times the 180–dB (cetaceans) and 190–dB (pinnipeds) radii predicted by the model as the safety radii. Under those circumstances, the safety radii for cetaceans are 75 and 330 m (246 and 1,083 ft), respectively, for the 2–GI gun and 6–gun arrays, and the proposed safety radii for pinnipeds are 23 and 75 m (75 and 246 ft), respectively.

Shutdown Procedures

Vessel-based observers will monitor marine mammals near the seismic vessel during daylight and for at least 30 minutes prior to start up during darkness throughout the program. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, designated safety zones. The shutdown procedure should be accomplished within several seconds or a single seismic ping of the determination that a marine mammal is within or about to enter the safety zone.

Power-down Procedures

Vessel-based observers will monitor marine mammals near the seismic vessel during daylight and for 30 minutes prior to start up during darkness throughout the program. The same procedures for shut-down will be followed in the case that marine mammals are seen within, or about to enter, designated safety zones.

Ramp-up Procedure

A standard ''ramp-up'' (soft start) procedure will be followed when the airgun arrays begin operating after a period without any airgun operations as specified in this paragraph. From shut-down, ramp-up will begin with the

smallest gun in the 6–gun array (80 in3), and guns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 14 min. Under normal operational conditions (vessel speed 4–5 knots), a ramp-up will be required after a ''no shooting'' period lasting 2 minutes or longer. At 4 knots, the source vessel would travel 247 m (810 ft) during a 2–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, ramp-up will be required after a ''no shooting'' period lasting 3 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 277 m (909 ft) in 3 minutes. These guidelines would require modification if the normal shot interval were more than 2 or 3 min, but that is not expected to occur during the Storegga slide cruise. During the ramp-up procedures, the safety zone for the full gun array will be maintained. Ramp-up will not occur for the 2–GI gun array, since the total air discharge volume for this array is small (210 in3).

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and relative motion, is likely to enter the safety radius, alternative ship tracks will be plotted against anticipated mammal locations. The vessel's direct course and/or speed will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns. The Ewing is required to adopt this mitigation measure during the Norwegian Sea seismic survey program provided that doing so will not compromise operational safety requirements.

Marine Mammal Monitoring

LDEO will conduct marine mammal monitoring during its seismic program in the Norwegian Sea in order to verify that the taking of marine mammals, by harassment, incidental to conducting the seismic survey will have a negligible impact on marine mammal stocks and to ensure that these harassment takings are at the lowest level practicable. Up to three vessel-based observers will be stationed on the *R/V Maurice Ewing* during seismic operations in the Storegga slide area. Vessel-based observers will monitor for marine mammals near the seismic source vessel for at least 30 minutes prior to and during all daylight ramp-up and airgun operations, and for at least 30 minutes before and during any nighttime startups of the airguns. At least one experienced marine mammal observer will be on duty aboard the seismic vessel, as well as a fisheries expert (as likely required by the Norwegian Petroleum Directorate (2003)) and possibly one qualified contract biologist. Observers (appointed by LDEO) will complete a training/refresher course on marine mammal monitoring procedures, given by a contract employee experienced in vessel-based seismic monitoring projects. The *Ewing* is a suitable platform for marine mammal observations. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge (the highest practical vantage point on the vessel), allowing for good visibility within a 210° arc for each observer. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence. The ''ramp-up'' procedure will then be followed.

Observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers whenever possible will decrease the potential that marine mammals near the source vessel will be missed. Bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given proper instruction for observing and reporting marine mammals and sea turtles.

Observers will not normally be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will immediately call for the airguns to be shut-down or powered-down if marine mammals are observed in or about to enter the safety radii. A marine mammal observer will be on ''standby'' at night, in case bridge personnel see a marine mammal. If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up using night-vision devices. An image-intensifier night-vision device (NVD) will be available for use at night, although NMFS notes that past experience has shown that NVDs are of limited value for this purpose. If the complete safety radii are not visible for at least 30 minutes prior to ramp-up in either daylight or nighttime, ramp-up may not commence unless the seismic source has maintained an SPL of at least 180 dB during the interruption of seismic survey operations.

The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Bushnell Lytespeed 800 laser rangefinder with 4 optics or equivalent) will be available to assist with distance estimation.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zones. Results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun power-down); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

When a marine mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility,

cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

A draft report will be submitted to NMFS within 90 days after the end of the seismic program in the Storegga slide area. The end of the Storegga slide program is predicted to occur on or about September 25, 2003. The report will cover the seismic surveys in the Storegga slide area and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

Estimates of Take by Harassment for the Norwegian Sea Cruise

As described previously (see 68 FR 17909, April 14, 2003) and in the LDEO application, animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment.

Based on summer marine mammal density survey data collected by Sigurjonsson and Gunnlaugsson (1989), LDEO used its best estimate of density to compute a best estimate of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1 μPa (rms) (NMFS' current criterion for onset of Level B harassment), except for bottlenose whales. Northern bottlenose whales are migratory and most leave the proposed seismic survey area before the end of June (Benjaminsen 1972; Sigurjonsson and Gunnlaugsson 1990). Therefore, only a few, if any, bottlenose whales may be seen during the seismic survey in the study area during late August to September. For bottlenose whales, LDEO used 0.10x the observed average or maximum density to calculate the numbers that might be exposed to seismic sounds, but even this reduced number is likely a high estimate. For all other species, the average densities were then multiplied by the proposed survey effort (3109 km or 1678 n.mi) and twice the 160–dB safety radius around the 6–gun array to estimate the ''best estimate'' of the numbers of animals that might be exposed to sound levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program.

The estimates of takes by harassment are based on the number of marine mammals that might be found within the 160 dB isopleth radius and potentially disturbed by operations with the 6–airgun array planned for the project. If the 2–GI gun array is used for all or part of the survey, the numbers of marine mammals that might be affected by the proposed seismic survey would be lower than the estimates described below. The 160–dB radius for the 2–GI gun array is 520 m (1706 ft) or 19 percent of that of the 6–gun array. If only the 2–GI gun array is used, the numbers of animals that would encounter airgun sounds ≥160 dB re 1 (rms) would be about one-fifth of the number if only the 6–gun array were used.

Based on this method, Table 3 in LDEO (2003) gives the best estimates of densities for each species or species group of marine mammal that might be exposed to received levels >160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study area of the Norwegian Sea. Of these, 86 animals would be endangered species, primarily fin (42), humpback (22), and sperm whales (18). Delphinidae would account for 75 percent of the overall estimate for potential taking by harassment, with white-beaked dolphins (298) believed to account for about 90 percent of all delphinids in the area of the proposed seismic survey, and with killer whales (137) and long-finned pilot whales (302) accounting for most of the remaining 10 percent.

Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed. LDEO's best estimate is that 42 fin whales, or 0.5 percent of the estimated fin whale population in and adjacent to the study area, will be exposed to sound levels ≤160 dB re 1 μPa (rms) and potentially affected. Similarly, 22 humpback whales, or 0.8 percent, and 18 sperm whales, or 0.2 percent of their populations that occur in and adjacent to the proposed survey area, would receive seismic sounds >160 dB. Numbers and impact would be even smaller if the 2–GI gun array is used for a substantial fraction of the survey project.

Larger absolute numbers of odontocetes may be affected by the proposed activities, but the population sizes of the main species are large and the numbers potentially affected are small relative to the population sizes. The best estimate of the total number of odontocetes that might be exposed to ≥160 dB re 1 μPa (rms) in the proposed survey area in the Norwegian Sea is 878. Of these, 770 are Delphinidae, and of these about 200 might be exposed to ≥170 dB. These figures are <0.1 percent of the populations of these combined species that occur in the Northeast Atlantic. These potential takings of small numbers of marine mammals by short-term Level B harassment will have

a negligible impact on the affected species or stocks of cetaceans.

Effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered during the proposed seismic survey in the Norwegian Sea. A maximum of 70 pinnipeds in the Storegga slide area may be affected by the proposed seismic surveys. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. These effects would have no more than a negligible impact on the affected species or stocks of pinnipeds.

Determinations

Based on the information contained in the LDEO application, the NSF EA, the July 28, 2003, proposed authorization notice (68 FR 44291) and this document, NMFS has determined that conducting a seismic survey by the *Ewing* at the Storegga Slide in the Norwegian Sea in the fall of 2003 by LDEO would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal species or stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses. This activity will result, at worst, in a temporary modification in behavior by affected species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result n no more than a negligible impact on the affected species. Also, while the number of actual incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA. For these reasons therefore, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Endangered Species Act

NMFS has concluded consultation under section 7 of the ESA on NMFS' issuance of an IHA to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic seismic survey in the Norwegian Sea by LDEO. The consultation concluded with a biological opinion that this action is not likely to jeopardize the continued existence of marine species listed as threatened or endangered under the ESA. No critical habitat has been designated for these species in the equatorial Pacific Ocean; therefore, none will be affected. A conservation recommendation was made to ensure that the safety zone is clear of sea turtles prior to ramp up. This recommendation has been implemented through the IHA to LDEO. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

On May 1, 2003, the NSF made a determination, based on information contained within its EA that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of Executive Order 12114. NSF determined therefore, that an environmental impact statement would not be prepared. On July 28, 2003 (68 FR 44291), NMFS noted that the NSF had prepared an EA for the Norwegian Sea survey and that this EA was available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. As a result, NMFS has determined that it is not necessary to issue either a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to LDEO for this activity. Therefore, based on this review and analysis, NMFS is adopting the NSF EA under 40 CFR 1506.3. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Authorization

NMFS has issued an IHA to take small numbers of marine mammals, by harassment, incidental to conducting a seismic survey by the Ewing at the Storegga Slide in the Norwegian Sea to LDEO for a 1–year period, provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: August 28, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–23309 Filed 9–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090503A]

Endangered Species; File No. 1429

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

ACTION: Receipt of application for modification

SUMMARY: Notice is hereby given that the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach, Miami, FL 33149, has requested a modification to scientific research Permit No. 1429.

DATES: Written or telefaxed comments must be received on or before October 14, 2003.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided

the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 1429, issued on June 26, 2003 (68 FR 38011) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1429 authorizes the permit holder to take loggerhead (*Caretta caretta*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), olive ridley (*Lepidochelys olivacea*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles to conduct sea turtle bycatch reduction research in the pelagic longline fishery of the western north Atlantic Ocean. Captured turtles are measured, flipper and passive integrated transponder (PIT) tagged, photographed and tissue sampled. Forty-five loggerheads are also being outfitted with a conventional satellite or a pop-up archival transmitting tag using the lanyard attachment method. The permit holder requests authorization to attach conventional satellite or pop-up archival transmitting tags to 15 leatherback sea turtles. The permit holder will use a hoist to bring the turtles on deck. The tags would be attached to the peduncle of each animal by lanyard and would provide information on the movements and post hooking survival of this species. This permit modification will be valid through the date of expiration of the permit on December 31, 2003.

Dated: September 5, 2003.

Carrie W. Hubard,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–23202 Filed 9–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Cooperation Treaty

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 12, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at *susan.brown@uspto.gov*; or by facsimile at 703–308–7407.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Rafael Bacares, Office of PCT Operations, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 703–308–6312; or by e-mail at *rafael.bacares@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the provisions of the Patent Cooperation Treaty (PCT), a United Nations Treaty that was signed on June 19, 1970, by the 20 member states of the Paris Union for the Protection of Industrial Property, including the United States. The PCT became operational in June 1978 and is administered by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. The provisions of the PCT have been implemented by the United States in Part IV of Title 35 of the U.S. Code and Subpart C of Title 37 of the Code of Federal Regulations.

The purpose of the PCT is to simplify the filing of patent applications for the same invention in different countries. The PCT provides a standardized filing format and procedure that allows an applicant to file one international application in one location, in one language, and pay one initial set of fees. The international application receives an international filing date (priority date) that serves as the actual filing date for the designated countries.

The information in this collection is used by the public to submit a patent application under the PCT and by the United States Patent and Trademark Office (USPTO) to fulfill its obligation to process, search, and examine the application as directed by the treaty. The USPTO acts as the United States Receiving Office (RO/US) for international applications filed by residents and nationals of the United States. These applicants send most of their correspondence directly to the USPTO, but they may also file certain documents directly with the IB. The USPTO also serves as an International Searching Authority (ISA) and an International Preliminary Examining Authority (IPEA).

This collection currently includes 10 paper forms to assist the public with providing the required information for filing PCT applications and related documents. One additional form, Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (PTO–1390), is being added to the collection. Some of the items in this collection do not have any associated forms. The submission of biosequence listings and related tables for associated PCT applications is covered under the separate information collection 0651–0024 Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures. The PCT also permits electronic filing of international applications, as long as the confidentiality requirements are met. The USPTO does not currently accept electronic submissions for international applications, but an electronic application system that will be fully compliant with the PCT specifications for electronic filing is under development.

This collection was previously approved by OMB in December 2000 with terms of clearance instructing the USPTO to report the filing fees for this collection as part of its annual (non-hour) cost burden. In April 2001, OMB approved a change worksheet to add annual (non-hour) cost burden to this collection in the form of filing fees. OMB also approved another change worksheet in April 2001 to decrease the annual responses and burden hours for two requirements, Descriptions/claims/drawings/abstracts and Notices Effecting Later Elections (PCT/IB/328), in order to reflect the total burden for this collection more accurately.

In August 2001, OMB approved a change worksheet that moved the burden for two forms, Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unavoidably Under 37 CFR 1.137(a) (PTO/SB/61/PCT) and Petition for Revival of an International

Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) (PTO/SB/64/PCT), into this collection from collection 0651–0031 Patent Processing (Updating). The Application Data Sheet, which was already an approved requirement in collection 0651–0032 Initial Patent Application, was also added to 0651–0021 due to a rule change permitting some PCT applications to include an Application Data Sheet. In April 2003, OMB corrected the total annual (non-hour) cost figure listed for this collection in the USPTO's inventory so that the annualized costs would be listed properly in thousands of dollars.

II. Method of Collection

By mail or hand delivery to the USPTO. Some communications related to PCT applications may also be submitted to the USPTO by facsimile.

III. Data

OMB Number: 0651–0021.

Form Number(s): PCT RO/101/134/144, PTO–1382, PTO–1390, PCT/IPEA/401, PCT/IB/328, PTO/SB/61/PCT, PTO/SB/64/PCT, PCT/Model of power of attorney, PCT/Model of general power of attorney.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and State, local, or tribal governments.

Estimated Number of Respondents: 379,065 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public from 15 minutes (0.25 hours) to 8 hours to gather the necessary information; prepare the appropriate form, petition, or other request; and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 367,842 hours per year.

Estimated Total Annual Respondent Cost Burden: $92,696,184 per year. The USPTO expects that the information in this collection will be prepared by attorneys. Using the professional rate of $252 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be $92,696,184 per year.

Item	Form No.	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Request and Fee Calculation Sheet (Annex and Notes)	PCT/RO/101	1 hour	42,200	42,200
Description/claims/drawings/abstracts	N/A	3 hours	42,200	126,600
Application Data Sheet	N/A	23 minutes	3,000	1,140
Transmittal Letter to the United States Receiving Office (RO/US).	PTO–1382	15 minutes	29,500	7,375
Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. § 371.	PTO–1390	15 minutes	22,385	5,596
PCT/Model of Power of Attorney	(1)	15 minutes	30,700	7,675
PCT/Model of General Power of Attorney	(1)	15 minutes	3,000	750
Extensions of time	N/A	15 minutes	25,000	6,250
Priority documents	N/A	15 minutes	63,000	15,750
Indications Relating to a Deposited minutes Microorganism	PCT/RO/134	15 minutes	400	100
Response to invitation to correct defects	N/A	2 hours	30,000	60,000
Request for rectification of obvious errors	N/A	30 minutes	2,000	1,000
Notice of Confirmation of Precautionary Designations	PCT/RO/144	15 minutes	260	65
Demand and Fee Calculation Sheet (Annex and Notes)	PCT/IPEA/401	1 hour	27,800	27,800
Amendments	N/A	1 hour	15,000	15,000
Notice Effecting Later Elections	PCT/IB/328	15 minutes	50	13
Fee Authorization	N/A	15 minutes	15,000	3,750
Petitions	N/A	4 hours	3,000	12,000
Requests to transmit copies of international application	N/A	15 minutes	2,300	575
Withdrawal of international application/designations of the state/demands/elections/priority claims.	N/A	15 minutes	5,000	1,250
Request/authorization to access international application	N/A	15 minutes	600	150
Translations	N/A	2 hours	16,000	32,000
Petition for Revival of an International Application for PatentDesignating the U.S. Abandoned UnavoidablyUnder 37 CFR 1.137(a).	PTO/SB/61/PCT	8 hours	19	152
Petition for Revival of an International Application for PatentDesignating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b).	PTO/SB/64/PCT	1 hour	651	651
Total			379,065	367,842

[1] Same as title.

Estimated Total Annual Non-hour Respondent Cost Burden: $149,320,674 per year. There are no capital start-up costs, maintenance costs, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of translation costs, filing fees, and postage costs.

Under the terms of the PCT, the USPTO may require documents submitted for a PCT application to be translated into English when necessary. This requirement carries additional costs for the party to contract for a translation of the documents in question. Depending on the particular circumstances, the documents to be translated can vary greatly in size. Firms that perform translation services do not have set fees for these services. The cost of translating a document is dependent upon the length of the document, the complexity of the document, whether the document is technical, and the languages that the document has to be translated to and from. Due to these

variables, many firms require customers to submit the documents in question to the firm so that they can be reviewed and a price quote prepared. There are translation firms that deal specifically with translations of intellectual property. Due to all of these factors, however, the USPTO cannot precisely estimate the costs that parties may incur for these translations. Based on experience, the USPTO believes that on average the documents to be translated will be 10 pages in length and that it will cost $150 per page for the translation, for an average translation cost of $1,500 per document. The USPTO estimates that it receives approximately 16,000 English translations per year. Multiplying the 16,000 translation submissions by $1,500 results in a total cost of $24,000,000 per year. Therefore, the USPTO estimates a total non-hour cost burden of $24,000,000 per year for English translations of non-English language documents for PCT applications.

The total estimated annual filing fees for this collection are calculated in the accompanying chart. The fees listed in the chart represent an estimate of the average fees for filing the appropriate items associated with the requirements for an international application. The USPTO estimates that the total filing costs associated with this collection will be $125,180,420 per year.

Item	Form No.	Estimated annual responses	Fee amount	Estimated annual filing costs
Request and Fee Calculation Sheet (Annex and Notes)	PCT/RO/101	42,200	$2,396.00	$101,111,200.00
Description/claims/drawings/abstracts	N/A	42,200	0	0
Application Data Sheet	N/A	3,000	0	0
Transmittal Letter to the United States Receiving Office (RO/US)	PTO–1382	29,500	0	0
Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. § 371.	PTO–1390	22,385	0	0
PCT/Model of Power of Attorney	([1])	30,700	0	0
PCT/Model of General Power of Attorney	([1])	3,000	0	0
Extensions of time	N/A	25,000	0	0
Priority documents	N/A	63,000	20.00	1,260,000.00
Indications Relating to a Deposited Microorganism	PCT/RO/134	400	0	0.00
Response to invitation to correct defects	N/A	30,000	0	0.00
Request for rectification of obvious errors	N/A	2,000	0	0.00
Notice of Confirmation of Precautionary Designations	PCT/RO/144	260	104.00	27,040.00
Demand and Fee Calculation Sheet (Annex and Notes)	PCT/IPEA/401	27,800	778.00	21,628,400.00
Amendments	N/A	15,000	0	0
Notice Effecting Later Elections	PCT/IB/328	50	0	0
Fee Authorization	N/A	15,000	0	0
Petitions	N/A	3,000	130.00	390,000.00
Requests to transmit copies of international application	N/A	2,300	0	0
Withdrawal of international application/designations of the state/demands/elections/priority claims.	N/A	5,000	0	0
Request/authorization to access international application	N/A	600	0	0
Translations	N/A	16,000	0	0
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unavoidably Under 37 CFR 1.137(a)— small entity.	PTO/SB/61/ PCT	2	55.00	110.00
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unavoidably Under 37 CFR 1.137(a)— large entity.	PTO/SB/61/ PCT	17	110.00	1,870.00
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)— small entity.	PTO/SB/64/ PCT	130	650.00	84,500.00
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)— large entity.	PTO/SB/64/ PCT	521	1,300.00	677,300.00
Total		379,065	.....	125,180,420

[1] Same as title.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 37 cents and that up to 379,065 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is $140,254 per year.

The total non-hour respondent cost burden for this collection in the form of translation costs, filing fees, and postage costs is $149,320,674 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 8, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–23245 Filed 9–11–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Availability of the Record of Decision for the Los Angeles Air Force Base Land Conveyance and Development Project

ACTION: Notice of Availability (NOA) of the Record of Decision (ROD) for the Los Angeles Air Force Base Land Conveyance, Construction and Development Project, Transfer Portions of Private Development in Exchange for Construction of New Seismically Stable Facilities, Cities of El Segundo and Hawthorne, Los Angeles County, CA.

SUMMARY: The ROD is based on a Final Environmental Impact Statement (FEIS) with a notice of availability (NOA) published on July 3, 2003 **Federal Register** (FR): (Volume 68, Number 128) Page 39940) having a waiting period ending August 18, 2003. Due to an error, EPA issued an amended NOA, revising the FR Notice Public on July 3, 2003 stating the CEQ Comment Period previously Ending August 18, 2003 has been Corrected to CEQ Wait Period Ending August 4, 2003 **Federal Register**: July 11, 2003 (Volume 68, Number 133), Page 41338–41339)

FOR FURTHER INFORMATION CONTACT: Jack Bush, Headquarter United States Air Force 703–604–5264, or Jason Taylor, Los Angeles Air Force Base, (310) 363–0142.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–23211 Filed 9–11–03; 8:45 am]

BILLING CODE 5001–05–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Unmanned Aerial Vehicles Panel. The purpose of the meeting is to brief the Air Staff and the Joint Staff on the results of the study. This meeting will be closed to the public.

DATES: 1 October 2003.

ADDRESSES: SAFTAS Conference Facility, 4th Floor, 1560 Wilson Boulevard, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Maj Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–23210 Filed 9–11–03; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) Regarding the Proposed Leasing of Lands at Fort Bliss, Texas, for the Proposed Siting, Construction, and Operation by the City of El Paso of a Brackish Water Desalination Plant and Support Facilities

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: This announces the intention of the U.S. Army Air Defense Artillery Center and Fort Bliss (SUAADACENFB) to prepare an EIS regarding the proposed leasing of lands at Fort Bliss, Texas, for the proposed siting, construction, and operation of a brackish water desalination plant (the ''Project'') by the City of El Paso, Texas. The purpose of the EIS is to evaluate the environmental impacts associated with the Project.

ADDRESSES: Written comments and requests for information may be forwarded to John F. Barrera, Fort Bliss Directorate of Environment, ATTN: ATZC–DOE–C, B624 Pleasonton Road, Fort Bliss, TX 79916–6812.

FOR FURTHER INFORMATION CONTACT: John Barrera at (915) 568–3908.

SUPPLEMENTARY INFORMATION: The Project has the potential to result in effects to the human environment in and around Fort Bliss and the El Paso City and County area. The study area for the environmental analysis is the eastern half of El Paso County, which includes Fort Bliss and most of El Paso City, as well as southern portions of Doña Ana and Otero Counties, New Mexico. The objective of the DEIS is to provide a planning and decision-making too, serve as a public information service, and a reference fir mitigation tracking.

Alternatives that will be evaluated include locations for the Project and support facilities, desalination methodologies, and disposal options for the brine water resulting from the desalination process.

Issue of potential significance: The Hueco Bolson aquifer is a major source of water for Fort Bliss and the El Paso Region. This extensive underground water resource, located in large part under Fort Bliss training lands, contains significant quantities of brackish water. Brackish water is water designated by the Environmental Protection Agency as containing dissolved solids (salts) above the drinking water standards. The Project is proposed for the purpose of extending the life of fresh groundwater supplies by desalinating this brackish water for use by the City of El Paso and Fort Bliss. The Project would help meet existing and projected demands for potable water and extend the life of the Hueco Bolson aquifer.

The EIS will include analyses of environmental impacts from the following: (1) Alternative sites for the desalination plant and support facilities; (2) construction by the City of El Paso of the desalination plant and support facilities on Fort Bliss at one of three proposed locations; (3) alternative methodologies for desalination; (4) alternate methodologies for brine disposal, including reinjection and evaporation; and (5) effects of pumping brackish water out of the Hueco Bolson.

A public meeting in the vicinity of the installation and the general proposed location of the desalination plant will be held to facilitate input to the EIS process by citizens and organizations. The date and time of this meeting will be announced in the general media and will be at a time and location convenient to the public. To ensure comments are fully considered in the Draft EIS, comments and suggestions should be received no later than 15 days following the meeting. Comments and questions may also be e-mailed to *desaleis@bliss.army.mil.* Additional information may also be obtained at the following web site: *www.bliss.army.mil.*

Dated: September 5, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 03–23243 Filed 9–11–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report for a Proposed Marine Terminal Development at Pier S In the Port of Long Beach, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is considering the development of Pier S Marine Terminal Project (Proposed Action). The development of Pier S would result in a 160-acre marine container terminal, and would include four elements: dredging, wharf construction, and container cranes; container yard; terminal buildings and truck gates; and an intermodal rail yard.

The primary Federal concern is the dredging and discharging of materials within waters of the U.S. and potential impacts on the human environment. Under section 404 of the Clean Water Act, the Corps is authorized to approve discharges of dredged or fill material into waters of the U.S. Under Section 10 of the Rivers and Harbors Act, the Corps may authorize activities that could affect navigable waters. The Corps is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) prior to deciding whether or not to authorize the Proposed Action. The Corps may ultimately make a determination to permit or deny the Proposed Action, or permit or deny alternatives to the Proposed Action.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the preparation of an Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a Draft EIS/EIR in order to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address federal, state, and local requirements and environmental issues concerning the proposed activities and permit approvals.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS/EIR can be answered by Mr. Joshua Burnam, Corps Project Manager, at 213–452–3294. Comments regarding the scope of the Draft EIS/EIR shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, ATTN: File Number 1999–16479–JLB, PO Box 532711, Los Angeles, California 90053–2325. Copies should also be sent to Stacey Crouch, Port of Long Beach, PO Box 570, Long Beach, CA 90801–0570.

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information.* Pier S is an approximately 170-acre marine terminal site in the Terminal Island Harbor Planning District of the Port. The site was formerly used as an active oil and gas production field from the 1930s until 1999. From 1951 to 1969, a portion of the site was leased by the United Pacific Resources Corporation (UPRC) to the now defunct TCL Corporation for the disposal of oil and gas drilling waste in shallow impoundments or ''sumps.'' Testing conducted in the 1980s indicated that TCL Corporation disposed of materials other than those permitted under lease agreement.

As a continuing effort to remediate contaminated soils and allow for expanding port uses, the Port and the California Department of Toxic Substances Control entered into a voluntary cleanup agreement in September 1997 to investigate and remediate contamination. Several phases of subsurface investigations conducted between 1991 and 1997 characterized subsurface contamination. The total volume of sump material on site was estimated to be approximately 180,000 cubic yards. Chemical analyses of soil and shallow groundwater identified organic and inorganic contaminants.

In 1998 and 1999, an EIR for a marine container terminal on Pier S was prepared. The Port's Board of Harbor Commissioners certified the EIR in March 1999, approving the Pier S marine container terminal. Project components included: relocation of oil facilities and utilities; site remediation; site preparation; dike realignment; wharf construction; and other terminal facilities. The relocation of oil facilities and utilities, site remediation, which included investigation and remediation of approximately 25 acres of sump material and contaminated groundwater, and site preparation, which included raising the existing ground surface to approximately 15 feet Mean Lower Low Water by placing approximately 4.5 million cubic yards of material on site, have all been completed. The dike realignment, wharf construction, and terminal facilities project components were evaluated in this EIR.

2. *Proposed Action.* The proposed dredge and fill activities would take place at Pier S and would involve dike realignment and wharf construction activities. Approximately 3,200 feet of concrete pile-supported wharf would be constructed as part of this project. Construction of the wharf would include excavation of the existing shoreline to straighten the shoreline and widen the Cerritos Channel to 808 feet between the Pier A and future Pier S pierhead lines to accommodate the passage of a 22 container wide vessel (approximately 188 feet in width) through the channel. Widening of the Cerritos Channel would create approximately 10.7 acres of new water surface area. Wharf excavation would include removing approximately 1,200,000 cubic yards of material to be disposed of as described below, driving approximately 1,950 concrete piles (up to 110 feet in length), and reconstructing the shoreline with up to 500,000 tons of imported quarry run and armor rock. In addition to wharf excavation, approximately 500,000 cubic yards of material that may or may not be suitable for unconfined aquatic disposal would be dredged from the Cerritos Channel for ship berthing. Material would be deposited at agency-approved, in-water and/or upland disposal sites.

Wharf construction may include rail access, automobile import/export, or a multi-use storage area. The majority of the backlands of the Pier S terminal (up to 100 acres) would be developed for container storage, and could be utilized without a DA permit. Both wheeled and grounded operations would be served by various terminal equipment including trucks, yard tractors, reach stackers, top-picks, straddle carriers, and rubber-tired gantry cranes. The terminal would include buildings, facilities, and other structures needed to support container terminal operations and administration. Building construction is anticipated to include, but not be limited to, fourteen structures. Two truck gates (main gate and secondary gate) with sign bridges, raised pedestals, scales, and infrastructure required to mount and operate optical character recognition equipment would be constructed at the southwest (main gate) and southeast (secondary gate) corners of the terminal. A pedestrian footbridge may also be constructed over the main gate complex. Truck access to the terminal would be through the main gate complex from New Dock Street and through the secondary gate from Pier T Avenue. The terminal may include an intermodal railyard facility, consisting of eight tracks totaling approximately 13,750 lineal feet. The facility would have the

capacity to accommodate two twenty-car unit trains (each car is 309 feet long and has five, articulated wells in which containers can be stacked two high).

3. *Issues.* There are several potential environmental issues that will be addressed in the EIS/EIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

1. Geological issues including dredging and stabilization of fill areas.
2. Potential impacts on marine biological resources, including endangered species.
3. Marine water circulation and water and sediment quality.
4. Impacts on air quality.
5. Traffic, including navigation issues, and transportation related impacts.
6. Potential noise impacts.
7. Impacts on public utilities and services.
8. Impact on aesthetic resources.
9. Potential impacts on public health and safety.
10. Environmental justice issues.
11. Cumulative impacts.

4. *Alternatives.* Alternatives initially being considered for the proposed project development include the following:

a. Marine Container Terminal with Rail Access (preferred).
b. Marine Container Terminal without Rail Access.
c. Landfill Alternative—construction of a new marine terminal by creating a new landfill in the harbor.
d. Non-containerized use of terminal (lumber, autos).
e. Reduced Wharf and Reduced Dredging Alternative.
f. Non-shipping use-park, cruise terminal, commercial development, empty container storage.
g. No Federal action alternative—construction and use of only upland portions of the site.

5. *Scoping Process.* The Corps and the Port will jointly conduct a scoping meeting for the proposed project. English and Spanish translation services will be provided at the meeting. The public scoping meeting will be held to receive public comment and assess public concerns regarding the appropriate scope of the Draft EIS/EIR. Participation in the public meeting by federal, state and local agencies and other interested organizations and persons are encouraged.

Parties interested in being added to the Corps' electronic mail notification list for the Pier S marine terminal project or other projects in the Port of Long Beach can register at: *http://www.spl.usace.army.mil/regulatory/register.html.* This list will be used in the future to notify the public about scheduled hearings and availability of future public notices.

The Corps of Engineers will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act. Additionally, the EIS/EIR will assess the consistency of the proposed Action with the Coastal Zone Management Act and potential water quality impacts pursuant to Section 401 of the Clean Water Act.

The public scoping meeting for the Draft EIS/EIR will be held on September 25th, 2003, at 6 p.m, at the Port of Long Beach administration building. The Corps and the Port will separately transmit local notices of the meeting prior to the event. Written comments will be received until October 10th, 2003.

6. *Availability of the Draft EIS/EIR.* The Draft EIS/EIR is expected to be published and circulated sometime between Winter 2003 and Spring 2004, and a new public notice and public hearing will be held after its publication.

Richard G. Thompson,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–23205 Filed 9–11–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Karen_Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 8, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Reinstatement.
Title: Private School Universe Survey.
Frequency: Biennially.
Affected Public: Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 28,800.
Burden Hours: 9,600.

Abstract: The Private School Universe Survey is collected every two years to create a universe of private K–12 schools. Information includes types of schools, length of school year and school day, and numbers of students.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2299. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the

complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–23230 Filed 9–11–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 8, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Student Exchange Questionnaire.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 200. *Burden Hours:* 100.

Abstract: The Fund for the Improvement of Postsecondary Education (FIPSE) proposes to establish a post-experience student exchange questionnaire to ensure that the appropriate information and data is collected regarding student experience abroad.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2285. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–23231 Filed 9–11–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

North Hartland. LLC., et al.; Electric Rate and Corporate Filings

September 3, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. North Hartland, LLC

[Docket No. EL03–215–000]

Take notice that on August 22, 2003 North Hartland, LLC (North Hartland) filed an amended complaint alleging that Central Vermont Public Service Corporation has violated its obligations under The Public Utility Regulatory Policy Act of 1978 (PURPA) and seeking Commission enforcement of PURPA.

Comment Date: September 18, 2003.

2. Allegheny Power

[Docket No. ER03–309–005]

Take notice that on August 28, 2003, Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, doing business as Allegheny Power (Allegheny Power), tendered for filing with the Federal Energy Regulatory Commission a compliance filing in response to the Commission's July 29, 2003 Order in PJM Interconnection, L.L.C. *et al.*, 104 FERC ¶ 61,154. Allegheny Power respectfully requests that the Commission accept the revised Interconnection and Operating Agreement to become effective December 20, 2002.

Allegheny Power states that a copy of this filing has been served on all parties identified on the official service list, Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment Date: September 18, 2003.

3. Moraine Wind LLC

[Docket No. ER03–951–002]

Take notice that on August 28, 2003, Moraine Wind LLC (Moraine Wind) filed substitute sheets to its Market-Based Rate Schedule (the Schedule) filed with the Federal Energy Regulatory Commission (Commission) on June 12, 2003. The amendments are made in accordance with the directive in the Commission's Order dated July 17, 2003, which required a change to the wording of the Schedule to conform to

Commission precedent and practice regarding affiliate transactions (*see* 101 FERC ¶ 61,331).

Comment Date: September 18, 2003.

4. St. Paul Cogeneration, LLC

[Docket No. ER03–1212–001]

Take notice that on August 28, 2003, St. Paul Cogeneration, LLC (St. Paul) tendered for filing an errata to correct the pagination of their Code of Conduct in their Application for market-based rate authority filed on August 14, 2003 in Docket No. ER03–1212–000.

Comment Date: September 18, 2003.

5. Liberty Electric Power, LLC

[Docket No. ER03–1226–000]

Take notice that on August 19, 2003, Liberty Power, LLC (Liberty) filed a Notice of Cancellation of Service Agreement No. 1 under FERC Electric Tariff No. 1, which is a Tolling Agreement between Liberty and PG&E Energy Trading ''Power, L.P.

Comment Date: September 15, 2003.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1260–000]

Take notice that on August 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13 (2002), submitted for filing a second revised Interconnection and Operating Agreement among GM Transmission, LLC, the Midwest ISO and Northern States Power Company d/b/a Xcel Energy.

Midwest ISO states that a copy of this filing was served on the GM Transmission, LLC and Northern States Power Company d/b/a Xcel Energy.*Comment Date:* September 17, 2003.

7. Tampa Electric Company

[Docket No. ER03–1261–000]

Take notice that on August 28, 2003, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets showing amendment of an exhibit to the contract for interchange service between Tampa Electric and Florida Power Corporation (FPC). Tampa Electric states that the amendment reflects a sale by Tampa Electric to FPC of a segment of transmission line that interconnects their respective systems. Tampa Electric proposes that the revised rate schedule sheets be made effective on August 14, 2003.

Tampa Electric states that copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment Date: September 18, 2003.

8. Metropolitan Edison Company

[Docket No. ER03–1262–000]

Take notice that on August 28, 2003, Metropolitan Edison Company (Met-Ed), on behalf of itself and PPL Electric Utilities Corporation (PPL Electric), submitted for filing a revised Interconnection Agreement between Met-Ed and PPL Electric (Agreement). Met-Ed states that the Agreement has been revised by the addition of a ''First Supplemental Agreement'' and the ''Second Supplemental Agreement'' and has been redesignated as First Revised Service Agreement No. 941 under the PJM Interconnection, LLC (PJM) open access transmission tariff.

Met-Ed states that copies of this filing have been served on PPL Electric, PJM and regulators in the state of Pennsylvania.

Comment Date: September 18, 2003.

9. PPL Electric Utilities Corporation

[Docket No. ER03–1263–000]

On August 28, 2003, PPL Electric Utilities Corporation (PPL Electric) and Northampton Generating Company, L.P. (Northampton) filed with the Federal Energy Regulatory Commission (Commission) an amendment to PPL Electric's Rate Schedule FERC No. 112, which is a Transmission Service Agreement between PPL Electric and Northampton.

PPL Electric states that a copy of this filing has been provided to Northampton.

Comment Date: September 18, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23253 Filed 9–11–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental ReviewProcess (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–E65065–KY Rating EC2, Daniel Boone National Forest Land and Resource Management Plan Revision, Implementation, Winchester, several counties, KY.

Summary: EPA has environmental concerns related primarily to water quality improvement goals and objectives for the National Forest. EPA recommends inclusion of several forest-wide goals, objectives and standards to improve water quality and identifies individual, watershed-specific, and management prescriptions for implementation.

ERP No. D–AFS–E65087–AL Rating LO, Forest Health and Restoration Project, Proposal to Determine the Desired Future Conditions of allExisting Loblolly Pine Stands, National Forests in Alabama, Bankhead National Forest, Winston,Lawrence and Franklin Counties, AL.

Summary: EPA supports efforts to restore native upland hardwood forests and pine-oak woodlands. EPA has no objections to this project, provided mitigation measures and monitoring programs, as described in the Draft EIS, are implemented.

ERP No. D–AFS–J65388–UT Rating EC2, North Rich Cattle Allotment, Grazing Authorization,Implementation, Logan District, Wasatch-Cache NationalNational Forest, Cache and Rich Counties, UTCounties, UT.

Summary: EPA expressed environmental concerns regarding impacts from livestock grazing and motorized recreation to wetlands, streams and riparian zones, pathogens in streams, springs and ponds that are habitat for boreal toad (ESA candidate species) and rare Bonneville cutthroat trout. EPA recommended the Proposed Action be modified to eliminate grazing impacts near important aquatic resources.

ERP No. D–AFS–L65419–ID Rating EC2, Upper and Lower East Fork Cattle and HorseAllotment Management Plans, Revision of Allotment Plans to Allow Permitted LivestockGrazing, National Forest System Lands, Sawthooth and Challis National Forests, Custer County, ID.

Summary: EPA expressed environmental concerns with adverse impacts to riparian zones and aquatic habitat from grazing. The final EIS should contain measures to restore and protect critical habitat in the project area. The final EIS should offer a full range of alternatives to meet a well defined purpose and need.

ERP No. D–AFS–L65424–ID Rating EC2, North End Sheep Allotment Management Plan (AMP)Revision, Authorization of ContinuedLivestock Use, Caribou-Targhee NationalForest, Soda Springs Ranger District, Caribou and Bonneville Counties, ID.

Summary: EPA recommends that a broader range of action alternatives be considered in the final EIS to meet the Purpose and Need of the project. EPA recommends that the final EIS further analyze the cumulative effects, especially related to grazing, mining, and other recreational activities that may continue to degrade aquatic habitat.

ERP No. D–FHW–G40175–TX Rating LO, TX–45 Highway Southeast Study, I–35 south at Farm-to-Market Road-1327 to TX–130/US 183,Local Regional Enhancements to the NationalTransportation Systems, Funding and Right-of-WayPermit Issuance, Travis County, TX.

Summary: EPA has no objections to the preferred alternative.

ERP No. D–FRC–E03010–FL Rating EC2, Ocean Express Pipeline Project, Construction,Operation and Maintenance of an Interstate NaturalGas Pipeline extending from the Exclusive EconomicZone (EEZ) boundary between the United States and the Bahamas, (Docket No. CP02–090–001–1) Plan of Operations Approval, NPDES and U.S. Army COE Section 10 and Possible 404 Permits, Broward County, FL.

Summary: EPA expressed environmental concern about potential impacts to Florida nearshore corals/hardbottoms and onshore mangrove wetlands and the uncertainty of successful Horizontal DirectionalDrilling crossings. Impact verification and a better mitigation plan to include a relocation plan for corals/hardbottoms was requested.

ERP No. D–IBW–G36155–TX Rating EC2, Lower Rio Grande Flood Control Project,Alternative Vegetation Maintenance PracticesImpacts, Implementation, Portions of the RioGrande, Cameron, Hidalgo and Willacy Counties, TX.

Summary: EPA expressed environmental concerns regarding potential jurisdictional wetland impacts and requested additional information on this issue.

ERP No. D–NPS–E65066–NC Rating LO, Proposed Land Exchange between the National ParkService and the Eastern Band of Cherokee Indians,Exchange of Land Known as Ravensford Site for Land Known as Waterrock Knob Site, Great SmokyMountains National Park, Cherokee, Graham,Jackson, Macon, Swain Counties, NC.

Summary: EPA supports the 143-acre Revensford site exchange for the Waterrock Knob site; this reduced-acre site exchange would most protect most of the alluvial forest adjacent to the Oconaluftee River that constitutes the 100-year floodplain. EPA also suggested design modifications be considered that would minimize impacts to all 100-year floodplain areas.

ERP No. D–TVA–E39062–00 Rating EC2, Programmatic EIS—Tennessee Valley AuthorityReservoir Operations Study, Implementation,TN, AL, KY, GA, MS, NC and VA.

Summary: EPA expressed environmental concerns over the potential water quality impacts associated with the ''policy alternatives'' and recommended potential modifications to the alternatives and inclusion of mitigation measures.

ERP No. D–USN–K11035–CA Rating EC2, Military Family Housing (MFH) in the San DiegoRegion, Construction of 1,600 MFH Units, ThreeMFH Sites are Located in the Marine Corps AirStation (MCAS), Miramar in the City of San Diego,San Diego County, CA.

Summary: EPA raised environmental concerns with potential impacts to aquatic resources regulated under CleanWater Act section 404. EPA asked that the Final EIS and Record of Decision incorporate pollution prevention measures to reduce adverse mitigation to reduce construction-related air pollution.

Final EISs

ERP No. F–AFS–J65368–UT Duck Creek—Swains Access (Duck/Swains), Management Project, Wildlife Habitat, Soil and Watershed Conditions and Motorized Vehicle Use Management Improvements, Dixie National Forest, Cedar City Ranger District, Iron, Garfield and Kane Counties, UT.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–J65370–MT Management Area 11 Snowmobile Use Areas on the Seeley Lake Ranger District, Implementation, Lola National Forest, Missoula and Powell Counties, MT.

Summary: EPA did not identify any potential environmental impacts requiring substantive changes to the proposal but recommended instituting monitoring and enforcement to prevent snowmobile use in unauthorized areas.

ERP No. F–AFS–J65372–CO Trout-West Hazardous Fuels Reduction Project, Proposed Action to Reduce Fuels, Pike-San Isabel National Forest, Trout and West Creek Watersheds, Teller, El Paso and Douglas Counties, CO.

Summary: The final EIS reflects project changes made to address EPA's concerns including measures to minimize impacts, retention of thermal cover and road density reduction. However, EPA continues to have environmental concerns about landscape-level impacts to aquatic resources and terrestrial habitat fragmentation.

ERP No. F–AFS–J65377–CO Missionary Ridge Burned Area Timber Salvage Project, Timber Harvesting, San Juan National Forest north of Durango, LaPlata County, CO.

Summary: EPA has environmental concerns about (1) soil erosion, soil disturbance, and soil compaction; (2) runoff and potential degradation of water quality and habitats in streams and affected reservoirs; (3) sedimentation of streams and water-storage reservoirs; (4) fish and wildlife impacts to sensitive species; and (5) the potential to establish and spread noxious weeds.

ERP No. F–AFS–L65340–AK Finger Mountain Timber Sales, Timber Harvesting, Implementation, U.S. Coast Guard, NPDES and U.S. Army COE Section 10 and 404 Permits, Tongass National Forest, Sitka Ranger District, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65393–WA Gardin—Taco Ecosystem Restoration Projects, Implementation, Vegetative Restoration, Road Closures, and Decommissioning, and other Road Improvements, Colville National Forest, Newport Ranger District, Pend Oreille and Stevens Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–D40312–00 Pennsylvania Turnpike/I–95 Interchange Project, Pennsylvania Turnpike (I–276) and I–95 in Buck County, PA Connection with Proposed Interstate Improvements Extending east into Burlington County, NJ.

Summary: EPA has no objections with the preferred alternative. EPA requests that the project team continue to work closely with the appropriate resource agencies to ensure incorporation of any changing environmental conditions as the project proceeds.

ERP No. F–USN–D52000–00 Introduction of F/A 18 E/F (Super Hornet) Aircraft, Replacing the F–14 (TOMCAT) and F/A–18 C/D (Hornet) Aircraft, Homebasing and Operation, Possible Homebase sites include Naval Air Station (NAS) Oceana, VA; Marine Corps Air Station (MCAS) Beaufort, SC and MCAS Cherry Point, NC

Summary: EPA has determined that the Department of the Navy has adequately addressed its comments within the FEIS.

Dated: September 9, 2003.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 03–23306 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed September 1, 2003 Through September 5, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030406, Final EIS, NPS, VA, Green Spring Colonial National Historical Park Management Plan, Implementation, James City County, VA, Wait Period Ends: October 14, 2003, Contact: Kathryn Schlegel (215) 597–6486. This document is available on the Internet at: *http://www.nps.gov/colo*.

EIS No. 030407, Draft EIS, EPA, CT, NY, Central and Western Long Island Sound Dredged Material Disposal Sites, Designation, CT and NY, Comment Period Ends: October 27, 2003, Contact: Ann Rodney (617) 918–1538. This document is available on the Internet at: *http://www.epa.gov/region1*.

EIS No. 030408, Final EIS, BLM, NV, Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (NCA) and Associated Wilderness, and Other Contiguous Lands, Resource Management Plan, Implementation, Great Basin, NV, Wait Period Ends: October 14, 2003, Contact: David C. Cooper (775) 623–1500.

EIS No. 030409, Draft EIS, AFS, ID, Mission Brush Project, Proposes Vegetation, Wildlife Habitat, Recreation and Aquatic Improvement Treatments, Idaho Panhandle National Forests, Bonners Ferry Ranger District, Bounty County, ID, Comment Period Ends: October 27, 2003, Contact: Doug Nishek (208) 267–5561. This document is available on the Internet at: *http://www.fs.fed.us/outernet/ipnf/eco/manage/nepa/index.htm1*.

EIS No. 030410, Final EIS, AFS, ID, Frank Church River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID, Wait Period Ends: October 27, 2003, Contact: Ken Worting (208) 756–5131.

EIS No. 030411, Final EIS, FHW, WY, Wyoming Forest Highway 4 U.S. 212 (KP 39.5 to KP 69.4) the Beartooth Highway, A Portion Proposed for Reconstruction begins 7.1 miles east of the Junction of WY–296 (Chief Joseph Highway) and Proceeds East for 18.6 miles to the Wyoming/Montana State Line, Park County, WY, Wait Period Ends: October 14, 2003, Contact: Jennifer Corwin (303) 716–2997.

EIS No. 030412, Draft EIS, AFS, OR, Juncrock Timber Sale Project, Treat Forest Vegetation, MT. Hood National Forest, Barlow Ranger District, Wasco County, OR, Comment Period Ends: October 27, 2003, Contact: Becky Nelson (541) 467–2291.

EIS No. 030413, Draft EIS, AFS, CA, Emigrant Wilderness Dams Project, Reconstruct, Repair, Maintain and Operate 12 Dams; Snow, Bigelow, Huckleberry, Emigrant Meadow, Middle Emigrant, Emigrant, Leighton, Long, Lower Buck, Y–Meadow and Bear, Stanislaus National Forest, Summer Ranger District, Tuolumne County, CA, Comment Period Ends: October 27, 2003, Contact: John J. Maschi (209) 532–3671. This document is available on the Internet at: *http://www.fs.fed.us/r5/stanislaus*.

EIS No. 030414, Draft EIS, HUD, WA, Tacoma Housing Authority (THA) HOPE VI Salishan Redevelopment Project, Revitalize the Community Neighborhood and Housing in the Area, Funding, NHPA Section 106, NPDES Permit, City of Tacoma, WA, Comment Period Ends: October 27, 2003, Contact: Karie Hayashi (253) 591–5387.

EIS No. 030415, Final EIS, AFS, AK, Madan Timber Sale, Implementation, Tongass National Forest, Wrangell Ranger District, COE Section 404 Permit and NPDES Permit, AK, Wait Period Ends: October 14, 2003, Contact: Richard Cozby (907) 874–7572.

Amended Notices

EIS No. 030337, Third Draft EIS, AFS, OR, Mt. Ashland Ski Area Expansion, Site Specific Project, Maintenance and Enhancements of Environmental Resources, Implementation, Special Use Permit, Ashland Ranger District, Rogue River National Forest and Scott River Ranger District, Klamath National Forest, Jackson County, OR, Comment Period Ends: October 23, 2003, Contact: John Schuyler (541) 482–3333.

Revision of FR Notice Published on 7/25/2003: CEQ Comment Period Ending 9/23/2003 has been Extended to 10/23/2003.

Dated: September 9, 2003.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 03–23307 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–8]

Public Input Requested on the Proposed Yucaipa Valley Water District's Regional Non-Potable Water Distribution System Project, Yucaipa, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to initiate the scoping phase for public input in

advance of preparing an Environmental Impact Statement (EIS) to fund the construction of a non-potable water distribution system. The source of the non-potable water would come from four sources: (1) A mixture of advanced tertiary treated wastewater (recycled water) generated at the Henry N. Wochholz Wastewater Treatment Plant (WWTP); (2) untreated surface water; (3) untreated imported water from the State Water Project; and (4) non-potable groundwater pumped from the Yucaipa Management Zone Groundwater basin to a lesser degree. Currently, the Yucaipa Valley Water District (District) discharges approximately 3.0 million gallons per day (mgd) of tertiary treated wastewater into San Timoteo Creek from the WWTP via an outfall located approximately 1.5 miles upstream of Redlands Boulevard. Some or all of the tertiary treated effluent would be withdrawn from San Timoteo Creek for use within the non-potable water distribution system.

Purpose: In accordance with Section 15082 of California Environmental Quality Act (CEQA) Guidelines, the District is the lead agency in the preparation of an Environmental Impact Report (EIR) for the proposed Regional Non-Potable Water Distribution System Project. In accordance with Section 1501.7 and 1508.22 of the National Environmental Policy Act (NEPA), the U.S. EPA is the lead agency in the preparation of an Environmental Impact Statement (EIS). The District and EPA are coordinating to prepare a joint EIR/EIS.

For Further Information, to Submit Comments, and To Be Placed on a Project Mailing List, Contact: Ms. Elizabeth Borowiec, U.S. Environmental Protection Agency, Mail Code WTR–4, 75 Hawthorne Street, San Francisco, California, 94105–3901, Telephone: (415) 972–3419 or FAX: (415) 947–3537 or E-mail at *borowiec.elizabeth@epa.gov.*

Summary: This Notice is to announce EPA and the District's intention to collect public comment in advance of preparing an EIS.

Need for Action: The Yucaipa Valley Water District is dependent on local groundwater sources, surface water and imported water to meet the potable water demands of its customers. Currently, these groundwater basins are experiencing an overdraft of 3,000 acre-feet per year. The proposed project would reduce the demand for potable water by up to 1,300 acre-feet per year under existing conditions.

Alternatives: The following proposed alternatives have been tentatively defined:

1. ''Proposed Project''—A total of approximately 126,100 linear feet of pipeline, eight reservoirs and four pump stations would be constructed, maintained and operated to distribute non-potable water to markets identified in the Water Master Plan as Phase I and II customers. Approximately, 9,600 linear feet of pipeline would be constructed to discharge water to San Timoteo Creek at the Live Oak Road bridge crossing. Also, one existing reservoir (H–1) located near the proposed Casa Blanca golf course would be converted from potable to non-potable water storage, maintained and operated by the District as part of the non-potable water distribution system.

2. ''A Reduced Distribution System Alternative''—A total of 39,900 linear feet of pipeline and two reservoirs would be constructed to distribute non-potable water to markets identified in the Water Master Plan as Phase I customers. Approximately, 9,600 linear feet of pipeline would be constructed to discharge water to San Timoteo Creek at the Live Oak Road bridge crossing. Also, one existing reservoir (H–1) located near the proposed Casa Blanca golf course would be converted from potable to non-potable water storage, maintained and operated by the District as part of the non-potable water distribution system.

3. ''A No-Project Alternative''—Construction of a non-potable water distribution system would not occur.

Scoping: EPA is requesting written comments from federal, state, and local governments, industry, non-governmental organizations, and the general public on the need for action, the range of alternatives considered, and the potential impacts of the alternatives. Scoping comments will be accepted for 30 days, beginning with the date of this Notice. A public scoping meeting is scheduled for this proposed project on September 29, 2003 at 6:00 pm at the Yucaipa Valley Water District at 12770 Second Street in Yucaipa, California. Because of the time limits provided by State law, responses should be sent at the earliest possible date, but not later than October 14, 2003.

Estimated Date of Draft EIS Release: Spring 2004.

Dated: September 8, 2003.

Janet Bearden,

Environmental Protection Specialist, Environmental Protection Agency.

[FR Doc. 03–23308 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0171; FRL–7323–3]

Region III Urban Initiative Grants; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region III is announcing the availability of approximately $60,000 in fiscal year (FY) 2003 grant/cooperative agreement funds under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, for grants to non-profit groups, including commodity groups/associations and farmers' groups, State agencies, Tribal governments, cooperative extensions, universities, and institutes of higher learning for public education, training, monitoring, demonstration, and studies.

DATES: Proposals must be postmarked by October 3, 2003.

ADDRESSES: Proposals may be submitted electronically, by mail, or through hand delivery/courier to Fatima El Abdaoui at the address/e-mail listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Fatima El Abdaoui, Environmental Protection Agency, Region III, Mail code 3WC32, Waste & Chemicals Management Division, 1650 Arch Street, Philadelphia, PA 19103–2029; telephone number: (215) 814–2129; fax number: (215) 814–3113; e-mail address: *El-Abdaoui.Fatima@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to eligible applicants who primarily operate out of and will conduct the project in one of the following Region III States: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia or the District of Columbia. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0171. 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. Once in the system, select ''search,'' then key in the appropriate docket ID number.

3. *By mail or in person*. Contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Purpose of this Request

EPA's, Waste & Chemicals Management Division, Pesticides/Asbestos Programs & Enforcement Branch, Region III, is requesting proposals for its Urban Initiative Grant. The goals of the Urban Initiative Grant Program are to: (1) Detect any diversion of highly toxic pesticides from the agriculture sector into urban areas for illegal use indoors; (2) identify any ongoing misuse of agricultural pesticides in urban and residential communities; and (3) prevent future diversion and structural application of pesticide misuse through compliance assistance and education. This program is included in the Catalog of Federal Domestic Assistance under number 66.716.

III. Grant Specifics

1. *Amount of funding available*. A total of approximately $60,000 in Federal funds is available to award for projects in Region III. The number of awards will depend on individual proposal cost; the final aggregate amount of Federal funding for all proposals; and the total amount of Federal funding available. Should additional funding become available for award, the Agency may award additional grants based on this solicitation and in accordance with the final selection process, without further notice of competition.

2. *Funding type*. The funding for selected award projects is in the form of a grant awarded under FIFRA.

3. *Right to reject all initial proposals*. The Agency reserves the right to reject all proposals and make no awards.

4. *Matching/cost share requirements*. There are no cost share requirements for these projects. However, matching funds are encouraged.

5. *Project period time frame*. The project period time frame should not exceed 2 years.

6. *Eligible applicants*. Grant funds are available to non-profit groups, including commodity groups/associations and farmers' groups, State agencies, Tribal governments, cooperative extensions, universities, and institutes of higher learning. Ineligible groups are encouraged to work with an eligible organization to submit proposals. Implementation of all projects must occur within one of the following EPA Region III States: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia or the District of Columbia. EPA will consider only one proposal by an applicant.

7. *Proposal submittal*. All proposals should be mailed or hand delivered to: Fatima El Abdaoui, Environmental Protection Agency, Region III, Waste & Chemicals Management Division, Mail code (3WC32), 1650 Arch Street, Philadelphia, PA 19103–2029.

8. *Due dates*. EPA will consider all proposals which are postmarked by the U.S. Postal Service, hand delivered, or electronically delivered to the Agency, or include official delivery service documentation indicating EPA acceptance from a delivery service, on or before the deadline published in the request for initial proposals. This due date is October 3, 2003. Proposals received after the due date will not be considered for funding.

9. *Statutory and regulatory authorities*. Urban Initiative Grants will be awarded under the authority of section 20 of FIFRA, as amended, for public education, training, monitoring, demonstration and studies. The regulations governing the award and administration of these grants can be found at 40 CFR part 30 for institutions of higher education, colleges and universities, and non-profit organizations; and 40 CFR part 31 for States and local governments.

10. *Allowable costs*. EPA grant funds may only be used for the purposes set forth in the grant agreement, and must be consistent with the statutory authority for the award. Grant funds may not be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other government entity. All costs identified in the budget must conform to applicable Federal Cost Principles contained in OMB Circular A–87; A–122; and A–21, as appropriate.

11. *Federal requirements*. An applicant whose proposal is selected for Federal funding must complete additional forms prior to award (see 40 CFR 30.12 and 31.10). In addition, successful applicants will be required to certify that they have not been debarred or suspended from participation in Federal assistance awards in accordance with 40 CFR part 32.

12. *Intergovernmental review*. Applicants must comply with the Intergovernmental Review Process and/or consultation provisions of Executive Order 12372 or section 204 of the Demonstration Cities and Metropolitan Development Act, if applicable, which are contained in 40 CFR part 29. Further information regarding this requirement will be provided if your proposal is selected for funding.

13. *Pre-application assistance*. None planned.

IV. Proposal Format and Contents

Proposals must be typewritten, double spaced in 12 point or larger print using 8.5 x 11 inch paper with minimum 1 inch horizontal and vertical margins. Pages must be numbered in order starting with the cover page and continuing through the appendices. One original and one electronic copy (e-mail or disk) is required. All proposals must include:

1. Completed Standard Form SF 424*, Application for Federal Assistance. Please include organization fax number and e-mail address.

2. Completed Section B--Budget Categories, on page 1 of Standard Form

SF 424A*, (See Unit III.10.--Allowable Cost).

*Blank forms may be located at *http://www.epa.gov/region03/grants/appforms.htm* or by contacting Fatima El Abdaoui at telephone number (215) 814–2129.

3. Detailed itemization of the amounts budgeted by individual Object Class Categories (See Unit III.10.--Allowable Cost).

4. Statement regarding whether this proposal is a continuation of a previously funded project. If so, please provide the assistance number and status of the current grant/cooperative agreement.

5. *Executive Summary*. The Executive Summary shall be a stand alone document, not to exceed one page, containing the specifics of what is proposed and what you expect to accomplish regarding measuring or movement toward achieving project goals. This summary should identify the measurable environmental results you expect including potential human health and ecological benefits.

6. *Table of contents*. A one page table listing the different parts of your proposal and the page number on which each part begins.

7. *Proposal narrative*. Includes Parts I–VI (Parts I through VI listed below are not to exceed 10 pages).

- *Part I--Project title*. Self explanatory.
- *Part II--Objectives*. A numbered list (1, 2, etc.) of concisely written project objectives, in most cases, each objective can be stated in a single sentence.
- *Part III--Justification*. For each objective listed in Part II, discuss the potential outcome in terms of environmental, human health, pesticide risk and/or use reduction or pollution prevention. If appropriate, the target pest(s) and use area(s) should be explicitly stated. This section should be numbered with a justification corresponding to each objective.
- *Part IV--Literature review*. Briefly, describe relevant information currently available. This should also include information on projects currently in progress that are relevant to or provide the basis for either the experimental design or the validation of a new approach to pest management.
- *Part V--Approach and methods*. Describe in detail how the program will be carried out. Describe how the system or approach will support the program goals.
- *Part VI--Impact assessment*. Please state how you will evaluate the success of the program in terms of measurable environmental results. How and with what measures will humans or ecosystems be better protected as a result of the program.

8. *Proposal appendices*. These appendices must be included in the grant proposal. Additional appendices are not permitted.

- *Literature cited*. List cited key literature references alphabetically by author.
- *Timetable*. A timetable that includes what will be accomplished under each of the objectives during the project and when completion of each objective is anticipated.
- *Major participants*. This appendix should list all farmers, farm organizations, researchers, educators, and conservationists and others having a major role in the proposal. Provide name, organizational affiliation or occupation (such as farmer) and a description of the role each will play in the project. A brief resume (not to exceed two pages) should be submitted for each major researcher or other educator.

9. *Electronic copy*. The electronic copy should be e-mailed to *El-Abdaoui.Fatima@epa.gov* or submitted on a 3.5 disk, IBM compatible, readable in Word Perfect WP6/7/8 for Windows. The electronic copy should be consolidated into a single file. Original copy and disk should be sent to: Fatima El Abdaoui, Environmental Protection Agency, Region III, Waste & Chemicals Management Division, 1650 Arch Street, Mail Code (3WC32), Philadelphia, PA 19103–2029. Disks will be checked for computer viruses. Proposals that are submitted with viruses will be disqualified. To be considered, both the paper and electronic copy must be received by the due date.

V. Preliminary Eligibility Screening Requirements

To be eligible for consideration, applicants must meet all of the following criteria. Failure to meet the following criteria will result in the automatic disqualification of the proposal for funding consideration:

1. Be a applicant who is eligible to receive funding under this announcement.

2. The proposal must meet all format and content requirements contained in this notice.

3. The proposal must comply with the directions for submittal contained in this notice.

VI. Proposed Evaluation Criteria

All proposals will be evaluated based on the following criteria and weights (Total: 100 points) :

1. Qualification and experience of the applicant relative to the proposed project activity. (Weighting: 30 points)

2. Project proposal is consistent with the goals of the Urban Initiative Grants. (Weighting: 30 points)

3. Provisions for a quantitative or qualitative evaluation of the project success at achieving stated goals. (Weighting: 20 points)

4. Likelihood that the project can be replicated in other areas by other organizations to their benefit. (Weighting: 20 points)

VII. Processes

A. Evaluation Process

Applicants will be screened to ensure that they meet all eligibility criteria and will be disqualified if they do not meet the criteria. All proposals will be reviewed, evaluated, and ranked by a selected panel of EPA reviewers based on the evaluation criteria listed in Unit VI.

B. Selection Process

The funding decision will be made from the group of top rated proposals based on the following additional factors:

- Region III's environmental priorities which include preventing pollution from one media to another and to strive towards the reduction or elimination of environmental contamination.
- The extent of anticipated environmental impact of the project in Region III.

1. *Selection official*. The final selection of initial proposals will be made by the Region III, Director, Waste & Chemicals Management Division.

2. *Notification*. The Region III EPA Office will mail acknowledgments to applicants upon receipt of the proposal. Once proposals have been reviewed, evaluated, and ranked, applicants will be notified regarding the outcome of the competition. A listing of the successful proposals will be posted on the Region III website address (*http://epa.gov/region03*) at the conclusion of the competition. This website may also contain additional information about this announcement including information concerning deadline extensions or other modifications.

C. Dispute Resolution Process

The procedures for dispute resolution at 40 CFR 30.63 and 40 CFR 31.70 apply.

VIII. Confidential Business Information

Applicants should clearly mark information contained in their proposal which they consider confidential

business information. EPA reserves the right to make final confidentially decisions in accordance with Agency regulations at 40 CFR part 2, subpart B. If no such claim accompanies the proposal when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

X. Congressional Review Act

Under the Agency's current interpretation of the definition of a ''rule,'' grant solicitations such as this which are competitively awarded on the basis of selection criteria, are considered rules for the purpose of the Congressional Review Act (CRA). The CRA, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rules 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

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

Dated: August 25, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–23275 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7557–6]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee; Notification of Public Advisory Committee Meeting (Teleconference)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency), Science Advisory Board (SAB) Staff Office announces a publicly-accessible teleconference: for the Clean Air Scientific Advisory Committee (CASAC) to review, deliberate on, and approve the report of the CASAC National Ambient Air Monitoring Strategy (NAAMS) Subcommittee; and for the CASAC Particulate Matter (PM) Review Panel to discuss follow-on matters related to its review of the EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft).

DATES: The teleconference will take place on Friday, October 3, 2003, from 2 to 5 pm (Eastern Time). The CASAC will discuss the report of the CASAC NAAMS Subcommittee from 2 to 3 pm; and the CASAC PM Review Panel will discuss follow-on matters related to the draft PM Air Quality Criteria Document from 3 to 5 pm.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the teleconference call-in numbers and access codes should contact Ms. Delores Darden, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2282, or e-mail: *darden.delores@epa.gov,* or Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526, or e-mail: *friedman.sandra@epa.gov.*

Any member of the public who wants further information concerning this teleconference, or who wishes to submit written or brief oral comments (five minutes or less), must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail: (202) 564–4561; fax: (202) 501–0582; or e-mail: *butterfield.fred@epa.gov.* Requests to provide oral comments must be in *writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon Eastern Time five business days prior to the teleconference in order to reserve time on the meeting agenda. Written comments (preferably via e-mail) should be sent to Mr. Butterfield by the same deadline so that these comments can be provided to the CASAC or the CASAC PM Review Panel, as applicable, prior to the teleconference. See additional instructions in the section below entitled, ''Providing Oral or Written Comments at SAB Meetings.'' General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Summary:* The Clean Air Scientific Advisory Committee, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC, which is administratively located under the EPA Science Advisory Board Staff Office, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC and CASAC Particulate Matter Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The CASAC NAAMS Subcommittee is charged with providing advice, information and recommendations to the Agency on the technical bases and design aspects of the National Ambient Air Monitoring Strategy. The NAAMS Subcommittee held a public meeting in Research Triangle Park, North Carolina, on July 8–9, 2003 (68 FR 34945, June 11, 2003) to review the NAAMS document. The Subcommittee will report to the Administrator of EPA through the CASAC.

The CASAC PM Review Panel is charged in part with providing advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS for particulate matter, under sections 108 and 109 of the Clean Air Act. The PM Review Panel reports directly to the Administrator of EPA. This teleconference is a follow-on to the Panel's review of the EPA Air Quality Criteria Document for Particulate Matter (Fourth External Review Draft), which review took place in a public meeting held in Research Triangle Park on August 25–26, 2003 (68 FR 47060, August 7, 2003), and specifically to discuss the restructuring of Chapter 9 (Integrative Synthesis) of that document.

Availability of Additional Meeting Materials: The draft agenda for the CASAC and CASAC PM Review Panel teleconference will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the ''Agendas'' subheading) in advance of the meeting. The draft report of the CASAC NAAMS Subcommittee, and any other materials that may be available, will also be posted on the SAB Web site during this time-frame.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the

EPA Science Advisory Board Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board Staff Office expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, for teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total for all speakers. The deadline for getting on the public speaker list for this teleconference is given above. Speakers who attend the teleconference in person should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB Staff Office will accept written comments until the date of the teleconference (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the teleconference in person are also asked to bring 35 copies of their comments for public distribution.

Meeting Access. Individuals requiring special accommodation to access this teleconference, or who wish to attend this teleconference in person, should contact Mr. Butterfield at the telephone or e-mail address provided above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 8, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–23274 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7557–8]

Science Advisory Board Staff Office; Ecological Processes and Effects Committee; Notification of Public Advisory Committee Meeting; Consultation on EPA's Strategy on Suspended and Bedded Sediments; Discussion of EPEC Activities in Fiscal Year 2004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board Staff Office (SAB), Ecological Processes and Effects Committee (EPEC) will hold a face-to-face meeting to conduct a consultation on EPA's strategy for developing water-quality criteria for suspended and bedded sediments. In addition, EPEC members will discuss EPEC activities for fiscal year 2004.

DATES: The meeting will begin on Thursday, October 2, 3003, at 8:30 am (Eastern Time) and adjourn no later than 5:30 pm that day.

ADDRESSES: The meeting will be held in Washington, DC. Location of the meeting will be announced on the SAB Web site, *http://www.epa/sab.* For further information concerning the meeting, please contact Dr. L. Joseph Bachman (see contact information below).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting must contact Dr. L. Joseph Bachman, Designated Federal Officer, USEPA Science Advisory Board Staff Office, (1400A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–3968; fax at (202) 501–0582; or via e-mail at *bachman.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION: *Action:* Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Ecological Processes and Effects Committee (EPEC) of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday October 2, to hold a consultation on EPA's strategy for developing water-quality criteria for suspended and bedded sediments. In addition, EPEC members will discuss possible EPEC activities for fiscal year 2004. The meeting is open to the public; however, seating is limited and available on a first come basis.

Availability of the Meeting Materials: Any meeting materials will be made available from the EPA's Office of Water (OW) and the Office of Research Development (ORD). The proposed agenda for the meeting will be posted approximately 10 calendar days prior to the meeting at the SAB's Web site at *http://www.epa.gov/sab/panels/epecsabspanel.htm.* Links to available meeting materials will also be posted at this location. For questions and information concerning the agenda, please contact Dr. L. Joseph Bachman (see contact information above).

Background for Consultation on Suspended and Bedded Sediments

The Ecological Processes and Effects Committee (EPEC) of the EPA Science Advisory Board was asked by the Health and Ecological Criteria Division of the Office of Science and Technology, Office of Water, to provide a consultation on potential approaches on a strategy for developing water-quality criteria for Suspended and Bedded Sediments (SABS). A request for nominations for consultant panel members to provide additional expertise to EPEC appeared in the **Federal Register** on July 30, 2003 (68 FR 44758–44760). That request contained a more detailed description of the regulatory context of the SABS issue and the scientific approaches being considered in the strategy development.

In 1976, EPA issued a water quality criteria recommendation under the Clean Water Act for solids and turbidity. For a variety of reasons, the States seldom use this criterion. It is questionable whether this criterion would achieve intended protection for all different designated uses for water bodies. SABS occurs naturally in streams in a wide range of concentrations—levels that might be perfectly normal in one water body could be indicative of impairment in another.

Although most States currently have water quality criteria that can be applied to manage SABS, these are typically based on turbidity, suspended solids or settleable solids, and their effectiveness for dealing with all water quality impairments caused by SABS, especially as benchmarks for aquatic life protection based on natural levels, is questionable. In recent consultations with State representatives, the need for new water quality criteria for SABS or methodologies for deriving them on a site-specific basis was identified as one of the highest priorities for the water quality criteria program. As a result, the EPA Office of Water has concluded that to better manage SABS in all types of water bodies and for all designated uses, State and Tribal water quality managers

need new and updated water quality criteria and information for SABS.

Charge: While many questions and much research remain, EPA seeks the opportunity for a consultation with the Science Advisory Board to gain advice and recommendations on the best potential approaches to developing water quality criteria for suspended and bedded sediments as will be described in the draft discussion paper entitled Developing Water Quality Criteria for Suspended and Bedded Sediments (SABS)—Potential Approaches. The Office of Water is also seeking recommendations on additional criteria development approaches for different types of water body uses, other than aquatic life, and is also seeking advice on any potential criteria derivation methodology not included in the discussion paper.

More Specific Consultation Questions:

(1) Is it a legitimate premise that SABS in natural amounts (background levels) are beneficial to ecosystems and therefore water quality criteria should attempt to simulate background levels or natural regimes?

(2) Can SABS criteria be stratified by water body type or by some other scheme? If by water body-type, by what level of classification—lotic and lacustrine? Rivers and streams, wetlands, lakes/reservoirs and estuaries/coastal areas? Other? If some other classification scheme is necessary, what type and how much resolution must it have?

(3) Should a water quality criterion for SABS include components that address turbidity, suspended solids, and deposited solids.

(4) Can biological assessments and biocriteria play a role in SABS criteria? If so, what role?

(5) Should EPA reconsider the inclusion of organic particulate material in its definition of suspended and bedded sediments?

(6) Which of the EPA proposed criteria methods do you believe have the greatest potential? Why? Which ones should EPA pursue further?

(7) Do any of the recent efforts of the States or other Countries hold promise for a national criteria method?

If SABS criteria are established to protect aquatic life in water bodies, is it reasonable to assume that these criteria will be stringent enough to also protect other uses of the water body (recreation, industrial water intake, drinking water source, etc.)

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board Staff Office (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to Dr. L. Joseph Bachman at the contact information provided in this notice in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98/XP/2000 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring any additional special accommodation at this meeting should contact the DFO indicated above for this FR notice, at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 8, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–23272 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7557–7]

Science Advisory Board Staff Office; Notification of Public Advisory Committee Meeting; Executive Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency Science Advisory Board (SAB) Executive Committee (EC), a Federal Advisory Committee, will hold a public meeting on the date and time given below to review a report from an SAB Subcommittee and to complete its planning activities for the SAB FY2004 Operating Plan.

DATES: The meeting will take place on Wednesday and Thursday, October 1–2, 2003, beginning 9 a.m. on October 1 and adjourning no later than 12 noon on October 2 (eastern time). Requests for oral comments, as well as submission of written comments must be received by September 23, 2003. Please see further details below.

ADDRESSES: The meeting will be held in Washington, DC. The specific location will be posted on the SAB Web site at *www.epa.gov/sab/whatsnew.htm* approximately ten days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to present oral comments must contact Mr. Thomas O. Miller, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4558; Fax (202) 501–0582; or via e-mail at *miller.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the EC of the U.S. EPA Science Advisory Board (SAB) will hold a public meeting to discuss the following topics:

(a) *Review a Report Prepared by an SAB Subcommittee*—The Executive Committee will review a report entitled *Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens: An EPA Peer Review Report.* This report was prepared by the SAB EC's ad hoc panel, the Supplemental Guidance for Assessing Susceptibility from Early-Life Review Panel (SGACSRP).

(b) *SAB Operating Plan for FY2004*—The Board will complete its planning for its FY2004 activities that will include an Annual Meeting, proposed projects submitted by Agency offices and regions, and two original studies proposed by the SAB. These projects are all being considered for inclusion in the SAB's FY2004 Operating Plan (see below for availability of these project summaries). Special emphasis will be given on planning the scientific themes that will be the focus of the Board's Annual Meeting that is scheduled to

take place from December 10–12, 2003, and in preparing for the Board's annual review of the EPA Science and Technology budget.

A meeting agenda will be posted on the SAB Web site (*www.epa.gov/sab/whatsnew.htm*) prior to the meeting. Any additional topics developed for this meeting will be reflected in the agenda.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. General information about the EPA Science Advisory Board, may be found on the SAB Web site (*http://www.epa.gov/sab*).

Requests for Comment: Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Miller no later than noon Eastern Standard Time on September 24, 2003. Written comments should also be sent to Mr. Miller no later than noon Eastern Standard Time on September 24, 2003. Submission of written comments by e-mail to Mr. Miller will maximize the time available for review by the EC.

Availability of Review Materials: All preliminary meeting materials will be posted on the SAB Web site at *http://www.epa.gov/sab/whatsnew.htm* prior to the meeting.

General Guidance on Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for being included on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the face-to-face meetings. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Mr. Miller at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend face-to-face meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 8, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–23264 Filed 9–11–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 4, 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 (PRA) of 1995, Pub. L. 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 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 Paperwork Reduction Act (PRA) comments should be submitted on or before November 12, 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 contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0697.

Title: Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 3,600.

Estimated Time Per Response: 1.25–2 hours.

Frequency of Response: On occasion reporting requirement, and recordkeeping requirement.

Total Annual Burden: 15,750 hours.

Total Annual Cost: $750,000.

Needs and Uses: This Commission is consolidating two information collections into one combined collection. They are 3060–0697 and 3060–0765. Both of these collections contain requirements in Parts 22 and 90 to facilitate future development of paging systems. The Commission will retain 3060–0697 as the active OMB control number and cancel 3060–0765 after OMB approves the revised request. This collection is necessary to (1) lessen the administrative burden of licensees; (2) determine the partitioned service areas and geographic area licensee's remaining service area of parties to an agreement; (3) determine whether geographic area licensee's and parties to agreements have met the applicable coverage requirements for their service areas; (4) to determine whether the applicant is eligible to receive bidding credit as a small business; (5) determine the real parties interest of any joint bidding agreements; (6) determine the

appropriate unjust enrichment compensation to be remitted to the government; and (7) establish a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which will promote efficient licensing and competition in the commercial mobile radio marketplace.

OMB Control No.: 3060–0865.

Title: Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 62,787.

Estimated Time Per Response: .166–4 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 77,164 hours.

Total Annual Cost: N/A.

Needs and Uses: The Universal Licensing System (ULS) establishes streamlined set of rules that minimizes filing requirements, eliminates redundant or unnecessary submission requirements and assures ongoing collection of reliable licensing and ownership data. The recordkeeping and third party disclosure requirements contained in this collection are a result of the elimination of a number of filing requirements. The ULS forms contain a number of certifications. However, applicants must maintain records to document compliance with the requirements for which they provide certifications. In some instances, third party coordinations are required. The Commission is seeking extension of this information collection (no change) in order to obtain the full three year clearance.

OMB Control No.: 3060–0132.

Title: Supplemental Information—72–76 MHz Operational Fixed Stations.

Form No.: FCC Form 1068–A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 300.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 150 hours.

Total Annual Cost: $4,500.

Needs and Uses: FCC rules require that the applicant agrees to eliminate any harmful interference caused by the operation to TV reception on either channel 4 or 5 that might develop. This form is required by the Communications Act of 1934, as amended; International Treaties and FCC rules (47 CFR Section 90.257). The form is being revised to include the FCC Registration Number information as well as updated information on the Privacy Act statement. FCC staff will use the data to determine if the information submitted will meet FCC rule requirements for the assignment of frequencies in the 72–76 MHz band.

OMB Control No.: 3060–0853.

Title: Receipt of Service Confirmation Form; Adjustment of Funding Commitment; and Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act—Universal Service for Schools and Libraries.

Form No.: FCC Forms 479, 486, 486–T, and 500.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 40,000.

Estimated Time Per Response: 1.5–2 hours.

Frequency of Response: Annual reporting requirement and third party disclosure requirement.

Total Annual Burden: 75,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Following a district court decision that portions of the Children's Internet Protection Act (CIPA) were unconstitutional, the Commission modified FCC Forms 479 and 486 to remove certain language from the certifications for libraries (language requiring compliance with the parts of CIPA the district court found unconstitutional). The Supreme Court reversed the district court decision and the Commission must revise the forms to enable libraries to certify their compliance with CIPA. Specifically, the Commission has made a few small changes to the forms in item 6.b and 11 of the Form 486 and item 6 of the Form 479, and will add new FCC Form 486–T for libraries unwilling to make a CIPA certification for funding year 2003. FCC Form 500 remains unchanged. Additionally, the Commission is requesting contact information to conform to the contact information requested in other Schools and Libraries Universal Service forms.

OMB Control No.: 3060–0292.

Title: Part 69—Access Charges.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,485 respondents; 5,832 responses.

Estimated Time Per Response: .75–5 hours.

Frequency of Response: Annual, monthly, semi-annual, biennial and on occasion reporting requirements and third party disclosure requirement.

Total Annual Burden: 27,702 hours.

Total Annual Cost: N/A.

Needs and Uses: Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies. Local telephone companies and states are required to submit information to the Commission and/or the National Exchange Carrier Association (NECA). The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. The Commission will submit this information collection to OMB as an extension (no change) in order to obtain the full three year clearance.

OMB Control No.: 3060–0816.

Title: Local Competition and Broadband Reporting, CC Docket No. 99–301.

Form No.: FCC Form 477.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 255 respondents; 510 responses.

Estimated Time Per Response: 59 hours.

Frequency of Response: Semi-annual reporting requirement.

Total Annual Burden: 29,924 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 477 seeks together information on the development of local competition and deployment of broadband service also known as advanced telecommunications services. The data is necessary to evaluate the status of developing competition in local exchange telecommunications markets and to evaluate the status of broadband deployment. The information will be used by Commission staff to advise the Commission about the efficiency of Commission policies and rules adopted to implement the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–23312 Filed 9–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 4, 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, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current 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 November 12, 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 contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0340.

Title: Section 73.51, Determining Operating Power.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,867.

Estimated Time per Response: 0.25 to 3.0 hours.

Frequency of Response: Recordkeeping.

Total annual burden: 1,448 hours.

Total annual costs: None.

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power might be used on a temporary basis. 47 CFR Section 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. 47 CFR Section 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. FCC staff use this information in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. Station personnel use the value F (efficiency factor) in the event that measurement by the indirect method of power is necessary.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–23313 Filed 9–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 5, 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, Pub. L. No. 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: Persons wishing to comment on this information collection should submit comments by November 12, 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 contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0790.

Title: Section 68.110(c), Availability of Inside Wiring Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 1,200.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 1,200 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Section 68.110(c) requires telephone companies to provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. The information

must be provided to the telephone company upon request of the building owner or agent thereof. The information is needed so that building owners may be able to contract with an installer of their choice for maintenance and installation service, or elect to contract with the telephone company to modify existing wiring or assist with the installation of additional inside wiring.

OMB Control No.: 3060–0791.

Title: Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1.

Estimated Time Per Response: 36 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 36 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: In CC Docket No. 93–240, the Commission considered the issue of the accounting rules and ratemaking policies that should apply to litigation costs incurred by carriers subject to Part 32 of its rules and regulations. The Commission concluded that there should be special rules to govern the accounting treatment of federal antitrust judgments and settlements, in excess of the avoided costs of litigation, but not for litigation expenses. The Commission further concluded that these special rules should not apply to costs arising in other kinds of litigation. A carrier must make a showing to receive recognition of its avoided costs of litigation. This provision safeguards consumers against rates that are unreasonably high and guarantees carriers that they will not be required to charge rates that are so low as to be confiscatory. Carriers under the Commission's jurisdiction must be allowed to recover the reasonable costs of providing service to ratepayers, including reasonable and prudent expenses and a fair return on investment. This fundamental requirement is unchanged by the Telecommunications Act of 1996.

OMB Control No.: 3060–0933.

Title: Community Broadband Deployment Database Reporting Form.

Form No.: FCC Form 460.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, federal government, state, local, or tribal government.

Number of Respondents: 150.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 37 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Pursuant to Section 410(b) of the Communications Act of 1934, as amended, the FCC convened a Federal-State Joint Conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment efforts has been established. The information will be used by the Commission to prepare reports that help inform consumers and policy makers at the state and federal levels of the status of deployment of broadband services. We will use this information to better inform our understanding of broadband deployment in conjunction with our congressionally required Section 706 reports. Absent this information, the Commission would lack an essential tool for assisting it in determining the effectiveness of its policies and fulfilling its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–23314 Filed 9–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2627]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

DATE: September 8, 2003.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by October 14, 2003. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 20 days after the time for filing oppositions have expired.

Subject: In the Matter of Implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02–278).

Number of Petitions Filed: 55.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–23246 Filed 9–11–03; 8:45 am]

BILLING CODE 6712–01–M

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 October 6, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Kampsville Bancshares, Inc., Kampsville, Illinois; to become a bank

holding company by acquiring 100 percent of the voting shares of Bank of Kampsville, Kampsville, Illinois.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Vision Bancshares, Inc., Laredo, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Somerset Bancshares Corporation, Somerset, Texas, and thereby indirectly acquire Somerset National Bank, Somerset, Texas.

Board of Governors of the Federal Reserve System, September 8, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–23238 Filed 9–11–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 10 a.m.

Date: September 23, 2003.

Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC.

Status: Open.

Matters To Be Considered

1. Nomination of Council Chairman and election of Vice Chairman.

2. Report of the Executive Director on Thrift Savings Plan status.

3. Settlement of AMS lawsuit.

4. New TSP record keeping system.

5. Legislation.

6. New Business.

For further information contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: September 8, 2003.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 03–23200 Filed 9–11–03; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Health Care Policy and Research Special Emphasis Panel; Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ or other Department support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Adolescent Family Life Research Grant (R01) Awards are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Adolescent Family Life Research Grant (R01) Award.

Date: September 8, 2003 (open on September 8 from 8 a.m. to 8:10 a.m. and closed for the remainder of the meeting).

Place: Quality Suites & Conference Center, 3 Research Court, Rockville, MD 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the September 8 meeting, due to the time constraints of reviews and funding cycles.

Dated: September 5, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–23229 Filed 9–11–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10096, CMS–2786]

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:* New Collection; *Title of Information Collection:* Medicare Health Survey (MHS); *Form No.:* CMS–10096 (OMB# 0938–NEW); *Use:* The Centers for Medicare and Medicaid Services has developed a survey, the Medicare Health Survey, that is similar to the Health Outcomes Survey (HOS). The main purpose of the MHS is to collect information that may be used to adjust Medicare payment. This approach has been tested for PACE (as mandated by BBA) and other organizations that serve frail populations and frailty adjusted payments will be made to PACE and certain demonstrations starting in 2004. CMS is currently investigating the feasibility of applying frailty adjustment to the M+C program in the future. To

conduct the necessary research, CMS needs functional impairment information for a national sample of FFS beneficiaries. The information will be used for two purposes; to develop appropriate adjustments to the ratebook for levels of functional impairment, and to recalibrate the frailty payment model using FFS data. Adjusting the ratebook is necessary to ensure accurate payment while recalibration of the frailty model based on the MHS will properly align the calibration of the model and the data collection method, thereby avoiding payment error associated with the mode of administration issues; *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 50,000; *Total Annual Responses:* 35,000; *Total Annual Hours:* 5,833.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Fire Safety Survey Report Forms and Supporting Regulations in 42 CFR 488.26 and 442.30; *Form No.:* CMS–2786 M, R, and T–Y (OMB# 0938–0242); *Use:* CMS surveys facilities to determine compliance with the Life Safety Code of 2000. The providers must make documentation proving compliance available to the surveyors; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 27,900; *Total Annual Responses:* 27,900; *Total Annual Hours:* 2325.

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 C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 5, 2003.

Julie Brown,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–23213 Filed 9–11–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–1515/1572]

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:* Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument and Supporting Regulations in 42 CFR 488.26 and 442.30; *Form No.:* CMS–1515/1572 (OMB# 0938–0355); *Use:* In order to participate in the Medicare program as a Home Health Agency (HHA) provider, the HHA must meet Federal Standards. These forms are used to record information about patients' health and provider compliance with requirements; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Individuals or households; *Number of Respondents:* 24,150; *Total Annual Responses:* 24,150; *Total Annual Hours:* 3,864.

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: September 5, 2003.

Julie Brown,

CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–23214 Filed 9–11–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0361]

Anti-Counterfeit Drug Initiative; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 26, 2003 (68 FR 51270). The document announced the establishment of a docket to receive information and comments on the agency's initiative against counterfeit drugs. The document published with incorrect information in the **DATES** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–21751, appearing on page 51270 in the **Federal Register** of August 26, 2003, the following correction is made:

1. On page 51270, in the first column, the **DATES** section is corrected to read

''**DATES:** The agency encourages interested parties to submit information by November 3, 2003.''

Dated: September 5, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–23250 Filed 9–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Center for Complementary and Alternative Medicine Office of Communications and Public Liaison Communications Program Planning and Evaluation Research

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Center for Complementary and Alternative Medicine (NCCAM), at the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: NCCAM Office of Communications and Public Liaison Communications Program Planning and Evaluation Research. *Type of Information Collection Request:* New.

Need and Use of Information Collection: The NCCAM Office of Communications and Public Liaison (OCPL) requests clearance to collect data from individuals and organizations in order to conduct (1) formative research and (2) evaluation of activities, using both qualitative and quantative methods. OCPL communications goals include raising awareness of issues unique to complementary and alternative medicine (CAM) so that people and health care providers can make better, more informed decisions, and establishing NCCAM as the source for credible, authoritative CAM information.

Communicating about CAM presents unique challenges. The popularity of CAM is ever-increasing, yet only a small number of CAM modalities have been adequately tested for safety and effectiveness. At the same time, often misleading and unreliable claims of health benefits are delivered to the public by various sources. No other NIH institute or center is faced with the challenge of untested and unproven healing practices being as widely used by the public.

Established in 1999, NCCAM is still a new center within NIH. Furthermore, the field of CAM research is relatively new. Little research exists on NCCAM's audiences, their information needs, key messages, and strategies to reach them. This clearance will allow NCCAM OCPL to tailor and evaluate key health messages for its audiences.

Proposed formative research activities include market and consumer research, pretesting, and pilot testing. Through market and consumer research, OCPL will learn more about the composition and characteristics of the target audiences, which includes members of the general public, researchers, providers of both conventional and CAM health care, and the media. Results of market and consumer research will enable OCPL to identify opportunities for, and barriers to, shaping communication strategies. Pretesting will allow OCPL to refine and strengthen materials to ensure that they resonate with intended audiences. Pilot testing will allow OCPL to test and refine outreach and other program activities before full-scale implementation.

OCPL also wishes to evaluate messages, materials, and communication and outreach strategies during and after discussion to target audiences, in order to assess their effectiveness. Through process evaluation, OCPL will demonstrate the extent to which each product or activity reaches its intended market, effectively exposes audiences to the program's messages, and is used by gatekeeper audiences. Outcome evaluation will measure an activity's success, such as in creating an audience's knowledge of CAM issues, or promoting positive health behaviors. Impact evaluation will examine an activity's contribution to long-term goals, such as improving an audience's health status.

Through qualitative and quantitative research, OCPL can focus its efforts to hone its messages and activities, and thus expend limited program resource dollars efficiently, as the Office gains a broader and deeper understanding of intended audiences and of the effectiveness of its communications strategies. Data collection will help NCCAM meet its unique health communications challenges by providing information on the knowledge, attitudes, and behaviors of audiences faced with decisions about popular, yet unproven, healing practices.

Frequency of Response: Periodically or as needed. *Affected Public:* Individuals and households; nonprofit institutions; Federal Government; State, Local, or Tribal Government. *Type of Respondents:* Members of the public, health care professionals, organizational representations. The annual reporting burden is as follows. *Estimated Number of Respondents:* 13,490; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.18; and *Estimated Total Burden Hours Requested:* 2,455 for the 3-year clearance period (approximately 818 hours annually). There are no Capital Costs, Operating Costs, or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Christy Thomsen, Director, Office of Communications and Public Liaison, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, or fax your request to 301–480–3519, or e-mail *thomsenc@mail.nih.gov*. Ms. Thomsen can be contacted by telephone at 301–451–8876 (not a toll-free number).

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 4, 2003.

Christy Thomsen,

Director, Office of Communications and Public Liaison, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. 03–23237 Filed 9–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: September 22–23, 2003.

Open: September 22, 2003, 8 a.m. to 3:15 p.m.

Agenda: Living Beyond Cancer: Adolescent and Young Adult Cancer Survivorship.

Place: Doubletree Guest Suites, 303 W. 15th Street, Austin, TX 78701.

Open: September 22, 2003, 7 p.m. to 9 p.m.

Agenda: Town Hall Meeting.

Place: Doubletree Guest Suites, 303 W. 15th Street, Austin, TX 78701.

Closed: September 23, 2003, 9 a.m., to 12 p.m.

Agenda: To review and evaluate discussion of prepublication manuscripts on adolescent's and young adult's survivorship.

Place: Doubletree Guest Suites, 303 W. Suites 15th Street, Austin, TX 78701.

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; National Institutes of Health, HHS)

Dated: September 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23236 Filed 9–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel CFAR Competitive Supplements in AIDS—FY 2004 Awards.

Date: October 7–8, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Geetha P. Bansal, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive MSC–7616, Bethesda, MD 20892–7616, (301) 496–2550, *gbansal@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23234 Filed 9–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Brain Dopamine.

Date: September 11–12, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Comfort Inn Riverview, 144 Bee Street, Charleston, SC 29401.

Contact Person: Louise L. Hsu, Ph.D., The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–7705.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging Mitochondria.

Date: September 16, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: William Cruce, Ph.D., Scientific Review Administrator, National Institute on Aging, National Institutes of Health, Scientific Review Office, 7201 Wisconsin Avenue, Gateway Bldg. 2C212, Bethesda, MD 20814–9692. 301–402–7704, *crucew@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23235 Filed 9–11–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Submission for OMB Emergency Review; Comment Request

AGENCY: Office of the Under Secretary for Management, Homeland Security.

ACTION: Submission for OMB Emergency Review; comment request.

DATES: September 8, 2003.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106). OMB approval has been requested by September 15, 2003. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Homeland Security, Theresa M. O'Malley (202.358.3571).

Comments: Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503 (202.395.7316; 202.395.6974 = Fax).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis: Agency: Department of Homeland Security, Under Secretary of Management, Office of the Chief Information Officer.

Title: Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act).

OMB Number: 1640-new collection.

Frequency: On occasion.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Number of Respondents: 1,000.

Estimated Time Per Respondent: 20–400; average 120 per respondent.

Total Burden Hours: 120,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Description: As part of the Homeland Security Act of 2002, Public Law 107–296, Congress enacted several liability protections for the providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of risk management and litigation management. The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers of anti-terrorism technologies from developing and commercializing technologies that could significantly reduce the risks or mitigate the effect of large-scale terrorist events.

Steven I. Cooper,

Chief Information Officer.

[FR Doc. 03–23290 Filed 9–9–03; 3:22 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of Science and Technology; Announcement of Seminars

AGENCY: Office of Science and Technology, Department of Homeland Security.

ACTION: Announcement of seminars.

SUMMARY: The Office of Science and Technology, Department of Homeland Security, will be hosting a series of seminars in key cities nationwide to educate the public about the application process for the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act), Sections 861–865, Public Law 107–296.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for seminar addresses.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for seminar addresses.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or the seminars, write or call Ms. Wendy Howe, Program Manager, SAFETY Act Implementation, Department of Homeland Security, 7th and D Streets, SW., Washington, DC 20598, *wendy.howe@dhs.gov,* or at 202–772–9887.

SUPPLEMENTARY INFORMATION:

Registration

All seminars are open to the public, but registration is required. For more information or to register, please call 301–975–8933 or visit *http://www.dhs.gov* and click on the ''Threats & Protection'' link at the top of the page.

Seminar Dates and Locations

The seminars will be held at the following dates and locations:

September 22, 2003, 9 a.m. to 4 p.m.—Dallas Marriott Quorum Hotel, 14901 Dallas Parkway, Dallas, TX 75254

September 23, 2003, 8 a.m. to 2 p.m.—Renaissance Los Angeles, 9620 Airport Boulevard, Los Angeles, CA 90045

September 24, 2003, 9 a.m. to 4 p.m.—Marriott Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, GA, 30303

September 26, 2003, 9 a.m. to 4 p.m.—Chicago Marriott O'Hare Hotel, 8535 West Higgins Road, Chicago, IL 60631

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the seminars, contact the registration number provided above.

Media Inquiries

Members of the media who would like to cover this event must present a valid press credential. For further information, contact Ms. Michelle Petrovich, Director of Communications, Office of Science and Technology, Department of Homeland Security, 7th and D Streets, SW., Washington, DC 20598, *michelle.petrovich@dhs.gov,* at 202–772–9886.

(Authority: Sec. 862(c), Pub. L. 107–296; Department of Homeland Security Management Directive 0490.1)

Dated: September 9, 2003.

Dr. Holly Dockery,

Director, Safety Act Implementation, Science and Technology Division, Department of Homeland Security.

[FR Doc. 03–23291 Filed 9–9–03; 3:22 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Dennis F. Danner, Spencerville, MD, PRT–076509

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–075553.

Applicant: Michael J. Wodjenski, New Milford, CT.

The applicant requests a permit to import the sport-hunted trophy of one female brown hyena (*Parahyaena brunnea*) taken from the wild in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–074389 through 074398.

Applicant: Mitchel Kalmanson, Maitland, FL.

The applicant requests permits to export, re-export, and re-import captive-born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: PRT–074389—Weber, 074390—Pancho, 074391—Petra, 074392—Gandhi, 074393—Tasha, 074394—Kiara, 074395—Chardon, 074396—Rufus, 074397—Princesa, and 074398—Isis. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: August 29, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–23220 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
052418	Field Museum of Natural History	67 FR 7188; February 15, 2002	August 27, 2003.
074368	Matthew A. Dick	68 FR 43156; July 21, 2003	September 2, 2003.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit number issuance date
038448	Univ. of Florida—Larkin	68 FR 20166; April 24, 2003	August 21, 2003.
072044	Scott G. Olds	68 FR 33734; June 5, 2003	August 28, 2003.
072135	Paul M. Vial	68 FR 33735; June 5, 2003	August 28, 2003.
072138	Mark D. Nuessle	68 FR 33735; June 5, 2003	August 28, 2003.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS—Continued

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit number issuance date
073132	Juan B. Suarez	68 FR 39961; July 3, 2003	August 28, 2003.

Dated: September 3, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–23222 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by October 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–076575.

Applicant: Gregg V. Severinson, Sidney, NE.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–076616

Applicant: Steven D. Reiley, Grand Rapids, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–076685

Applicant: Lewis E. Misterly, Anaheim Hills, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–695190

Applicant: Western Foundation of Vertebrate Zoology, Camarillo, CA.

The applicant requests renewal of the permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–075484

Applicant: Saint Louis Zoological Park, St. Louis, MO.

The applicant requests a permit to import biological samples from Galapagos hawk (*Buteo galapagoensis*) located on the Galapagos Islands, Ecuador, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Dated: September 5, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–23223 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit for Activities on the (Crosswhite) EC Bar Ranch, Apache County, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and 30-day public comment period.

SUMMARY: James W. Crosswhite (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (Act). The permit application includes a proposed Safe Harbor Agreement between the Applicant and the Service. The Applicant has been assigned permit number TE–075891–0. The proposed Agreement and permit would become effective upon signature of the Agreement and both would remain in effect for 50 years. The requested permit would authorize take of two federally listed species—the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) and the threatened Little Colorado River spinedace (*Lepidomeda vittata*). The proposed take could occur as a result of conservation measures implemented on 2.5 miles of Nutrioso Creek in Apache County, Arizona.

Based upon guidance in the Service's June 17, 1999, Final Safe Harbor Policy, if a Safe Harbor Agreement and associated permit are not expected to individually or cumulatively have a significant impact on the quality of the human environment or other natural resources, the Agreement/permit may be categorically excluded from undergoing National Environmental Policy Act (NEPA) review. We have made a preliminary determination that the proposed Agreement and permit application qualify as a ''Low Effect''

agreement, thus, these actions are eligible for categorical exclusion under NEPA. The ''Low Effect'' determination is available for review.

DATES: Written comments on the application should be received by October 14, 2003.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the Agreement may obtain a copy by writing to the Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951, (602) 242–0210. Documents relating to the application will be available for public inspection by written request, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, Phoenix, Arizona.

Written data or comments concerning the application and Agreement should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951. Please refer to permit number TE–075891–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Field Supervisor at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951 (602) 242–0210.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subject to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

James W. Crosswhite, owner of the 394-acre EC Bar Ranch, plans to implement conservation measures on 2.5 miles of Nutrioso Creek, located one mile north of Nutrioso, in Apache County, Arizona. The conservation measures will improve riverine, riparian, and upland habitat through establishment of native riparian vegetation. These measures have been shown to be effective in improving water quality, reducing sedimentation, and increasing stream bank stability. The measures that will be implemented include: planting 10,000 to 21,000 riparian trees, harvesting of cuttings of riparian vegetation in two to four years, planting of grasses and shrubs along the flood plain terrace, and repairing old and installing new livestock and elk fence exclosures.

The Agreement is expected to provide a net conservation benefit for two federally listed species; the southwestern willow flycatcher and the Little Colorado spinedace. The baseline condition for the southwestern willow flycatcher is zero. This is because there is currently no habitat for this species in the project area. The Safe Harbor Policy states that the baseline can be described using measurements of available suitable habitat components. Because data from fish surveys can vary due to the monitoring methods used as well as fluctuations in natural conditions, actual population levels will not be used to quantify baseline conditions for the Little Colorado spinedace. Instead, the baseline conditions will use the number of woody riparian trees that are three feet or greater in height that are present either as individuals or as clumps along the 2.5 miles of Nutrioso Creek on the EC Bar Ranch at the signing of this Agreement. Currently there are approximately 100 individual or clumps of woody riparian trees consisting of coyote willow, shiny willow, strapleaf willow, narrowleaf cottonwood, and thin-leafed alder in the project area that are three feet or greater in height.

The Agreement will provide protection to the Applicant against further regulation under the Endangered Species Act in the event that any of the covered species should be taken on his land as a result of implementation of the proposed conservation measures.

The Service will evaluate the permit application, associated documents, and comments submitted to determine whether the permit application meets the issuance criteria of 50 CFR 17. If, upon completion of the 30-day comment period, the Service determines that the criteria are met, the Service will sign the Agreement and issue an enhancement of survival permit under section 10 (a)(1)(A) of the Act to James W. Crosswhite for take of southwestern willow flycatcher and Little Colorado spinedace incidental to otherwise lawful activities in accordance with the terms of the Agreement.

Section 9 of the Act prohibits the ''taking'' of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and 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 and 50 CFR 17.32 for threatened species.

This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Bryan Arroyo,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 03–23244 Filed 9–11–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Notice of a Public Scoping Meeting Related to the Pima County Multi-Species Conservation Plan To Be Held on October 4, 2003

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to prepare an EIS and notice of a public scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare an EIS to evaluate the impacts of and alternatives for the possible issuance of an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), to Pima County. Pima County is preparing to apply for an incidental take permit through development and implementation of the Pima County Multi-Species Conservation Plan (MSCP), which will serve as a habitat conservation plan, as required by the Act, for issuance of an incidental take permit. The Pima County MSCP will include measures necessary to minimize and mitigate the effects of the proposed taking of listed and sensitive species and their habitats.

Date of Scoping Meeting: A public scoping meeting will be held on October 4, 2003, at 10 a.m. at the Pima County Public Works.

DATES: Written comments on possible conservation alternatives and issues to be addressed in the EIS must be received by October 27, 2003.

ADDRESSES: Written comments should be sent to Mr. Steven L. Spangle, Field Supervisor, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021. Oral and written comments will also be accepted at the public scoping meeting to be held at the offices of Pima County Public Works, Room C in the Basement, 201 North Stone Avenue, Tucson, Arizona 85701.

Comments, as well as the names and addresses of commentors, may be disclosed under the Freedom of Information Act unless a commentor gives a privacy or other exemption justification.

FOR FURTHER INFORMATION CONTACT: *On the EIS, Contact:* Ms. Sherry Barrett, Assistant Field Supervisor, Tucson Suboffice, U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ, 85701, at 520/670–4617.

For Further Information on the Pima County MSCP Contact: Mr. Paul Fromer, RECON, 1927 Fifth Avenue, Suite 200, San Diego, California 92101–2358 at 619/308–9333. Information on the purpose, membership, meeting schedules, and documents associated with the Pima County MSCP may be obtained on the Internet at *http://www.co.pima.az.us/cmo/sdcp/index.html*.

SUPPLEMENTARY INFORMATION: This notice advises the public that the Service intends to gather information necessary to determine impacts and alternatives for an EIS related to the issuance of an incidental take permit to Pima County, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), and the implementation of the Pima County Multi-Species Conservation Plan (MSCP), which will provide measures to minimize and mitigate the effects of the incidental take of federally listed species.

Background

Pima County, Arizona, is home to over 800,000 residents, and the population is expected to reach 1.2 million by the year 2020. The Pima County Board of Supervisors is responsible for the protection of those lands in Pima County that are of environmental, cultural, or historic importance. Given Pima County's rapid growth rate, the Board of Supervisors has recognized the need to balance economic, environmental, and human interests by implementing a regional, ecosystem-based multi-species conservation program.

In October of 1998, Pima County developed a draft Sonoran Desert Conservation Concept Plan (SDCP). Pima County adopted the SDCP in concept in March 1999 to frame future regional land-use conservation planning and formed an 84-member Steering Committee and numerous technical teams.

Pima County also agreed to pursue an ecosystem-based approach to developing the SDCP for interim and long-term compliance with applicable endangered species and environmental laws and to implement conservation and protection measures for species and habitat covered in the SDCP. In December 2001, the Pima County Board of Supervisors adopted the Pima County Comprehensive Plan Update, which incorporates aspects of the SDCP.

On June 17, 2003, the recommendations of the Steering Committee were presented to the Pima County Board of Supervisors for formulation of the preferred alternative for the MSCP.

Purpose of and Need for Action

The purpose of and need for the proposed Pima County MSCP are: (1) to ensure the long-term survival of the full spectrum of plants and animals that are indigenous to Pima County, through maintaining or improving the habitat conditions and ecosystems necessary for their survival; and (2) to provide the framework for a combination of actions to protect and enhance the natural environment through comprehensive, long-range planning. This will ensure that the County's natural and urban environments can not only coexist, but can also develop an interdependent relationship with one another. This relationship will guide already approved public bond investments and conservation and preservation actions, define Federal program and funding priorities, and establish a regional preference for the expenditure of State funds to preserve and protect State Trust lands threatened by urbanization.

Section 9 of the Act prohibits the ''taking'' of threatened and endangered species. The Service may, however, under limited circumstances, issue permits that allow the incidental take of federally listed and candidate species, incidental to, and not the purpose of, the carrying out of otherwise lawful activities. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. The term ''take'' under the Act means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Regulations define ''harm'' as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The proposed permit would allow approved incidental take that is consistent with the conservation guidelines of the Pima County MSCP.

Section 10(a)(1)(B) of the Act contains provisions for issuing incidental take permits to non-federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the Plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. Any other measures that the Service may require as being necessary or appropriate for the purposes of the Plan.

The Pima County MSCP considers the Act's section 10(a)(1)(B) requirements and is consistent with Pima County's larger conservation and land-use vision.

We anticipate that Pima County will request permit coverage for a period of 20 to 50 years. Implementation of the Pima County MSCP will result in the establishment of a conservation lands system that is expected to provide for the conservation of covered species and their habitats in perpetuity. Research and monitoring in combination with adaptive management will be used to facilitate accomplishment of these goals.

Proposed Action

The proposed action is the issuance of an incidental take permit for listed and sensitive species in Pima County, pursuant to section 10(a)(1)(B) of the Act. Pima County will develop and implement the Pima County MSCP, which will serve as a habitat conservation plan, as required by section 10(a)(2)(A) of the Act. The Pima County MSCP will provide measures to minimize and mitigate the effects of the taking on listed and sensitive species and their habitats. The biological goal of the Pima County MSCP is to ensure the long-term survival of the full spectrum of plants and animals that are indigenous to Pima County through maintaining or improving the habitat conditions and ecosystem functions

necessary for their survival and to ensure that any incidental take of listed species will not appreciably reduce the likelihood of the survival and recovery of those species.

The purpos of the scoping meeting to be held on October 4, 2003, at 10:00 a.m. at the offices of Pima County Public Works, Room C in the Basement, 201 North Stone Avenue, Tucson, Arizona is to brief the public on the background of the Pima County MSCP, alternative proposals under consideration for the draft EIS, and the Fish and Wildlife Service's role and steps that we will take to develop the draft EIS for this habitat conservation planning effort. At the scoping meeting, there will be an opportunity for the public to ask questions, to provide oral comments and also to provide written comments. Written comments may also be sent to the Fish and Wildlife Service by mail (see **ADDRESSES** section above).

Activities proposed for coverage under the incidental take permit include lawful activities that would occur consistent with the Pima County MSCP conservation guidelines and include, but are not limited to, maintenance of county operations, implementation of capital improvement projects, and issuance of land-use related permits, including those for residential and commercial development.

Pima County is expected to apply for an incidental take permit for 55 vulnerable species that would be protected within their Conservation Lands System map. The 55 species include the following federally listed species: the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), southwestern willow flycatcher (*Empidonax traillii extimus*), Chiricahua leopard frog (*Rana Chiricahuensis*), desert pupfish (*Cyprinodon macularius*), Gila topminnow (*Poeciliopsis occidentalis occidentalis*), Huachuca water umbel (*Lilaeopsis schaffneriana var. recurva*), Nichol Turk's head cactus (*Echinocactus horizonthalonius var. nicholli*), and Pima pineapple cactus (*Coryphantha scheeri var. robustispina*). In addition, Pima County will seek to address and cover the Gila chub (*Gila intermedia*), a species proposed for listing, and the Acuna cactus (*Echinomastus erectocentrus var. acunensis*) and yellow-billed cuckoo (*Coccyzus americanus spp. Occidentalis*), both of which are candidates for listing. Pima County is also seeking to address and cover at least 43 other rare and/or sensitive species that occur in the County. Unlisted species that are considered as if they were listed, and that the Service finds are adequately conserved by the Pima County MSCP, will be automatically permitted for incidental take should they be listed as federally threatened or endangered species in the future. Numerous other listed and sensitive species for which Pima County is not seeking permit coverage will also benefit from the conservation measures provided in the Pima County MSCP through protection of similar or overlapping habitat conditions and ecosystem functions.

Alternatives

The proposed action and alternatives that will be developed in the EIS will be assessed against the No Action/No Project alternative, which assumes that some or all of the current and future projects proposed in Pima County would be implemented individually, one at a time, and be in compliance with the Act. The No Action/No Project alternative implies that the impacts from these potential projects on sensitive species and habitats would be evaluated and mitigated on a project-by-project basis, as is currently the case. For any activities involving take of listed species due to non-federal projects/actions, individual Section 10(a)(1)(B) permits would be required. Without a coordinated, comprehensive ecosystem-based conservation approach for the region, listed species may not be adequately addressed by individual project-specific mitigation requirements, unlisted candidate and sensitive species would not receive proactive action intended to preclude the need to list them in the future, and project-specific mitigation would be piecemeal and less cost effective in helping Federal and non-federal agencies work toward recovery of listed species. Current independent conservation actions would continue, although some of these are not yet funded.

Other alternatives that may be considered in the EIS include issuance of an incidental take permit for only the 9 currently listed species, plus those species that would be adequately addressed by the conservation measures enacted for those 9 species; issuance of an incidental take permit for an undetermined number of listed and unlisted species within the 55 identified vulnerable species; and issuance of an incidental take permit for the species within the 55 identified vulnerable species that are currently listed as threatened and endangered or are candidates or proposed for listing. In addition, alternatives may consider varying levels of take anticipated and amount and location of mitigation.

Environmental Review

The primary issue to be addressed during the scoping and planning process for the MSCP and EIS is how to resolve potential conflicts between development or land management practices and listed and sensitive species in Pima County. We have identified a preliminary list of probable environmental issues and effects associated with the proposed action. Other issues may be identified during the development of the Pima County MSCP and through the public scoping process. Until a firm proposal and alternatives with specific actions and locations are developed, it is difficult to predict more specific impacts. The preliminary list is as follows:

Urban land uses, including residential, commercial, and industrial development. Transportation, Water resources, including watershed function and water quality. Agriculture, air resources, cultural and historic resources, recreation. Ranching practices and livestock grazing, mineral resources, utility rights-of-way, fire Management, social and economic resources, environmental justice

We will conduct an environmental review that analyzes the proposed action, as well as a range of reasonable alternatives and the associated impacts of each. The EIS will be the basis for the Service's evaluation of impacts to the species and the range of alternatives to be addressed. The EIS is expected to provide biological descriptions of the affected species and habitats and an analysis of the socioeconomic effects of the proposed action.

This notice is being furnished in accordance with 40 CFR 1501.7. Comments and suggestions are invited from all interested parties to ensure that a range of issues and alternatives related to the proposed action are identified. The review of this project will be conducted according to the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws, regulations, policies, and guidance, and Service procedures for compliance with those regulations.

After the environmental review is complete, we will publish a notice of availability and a request for comment on the draft EIS and Pima County's permit application, which will include the Pima County MSCP.

The draft EIS is expected to be completed and available to the public by December 2003.

Bryan Arroyo,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 03–23355 Filed 9–11–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
071227	Robert W. Ehle	68 FR 32075; May 29, 2003	August 21, 2003
071584	Harry D. Brickley	68 FR 33179; June 3, 2003	August 21, 2003
072007	Felix G. Widlacki	68 FR 33734; June 5, 2003	August 21, 2003

Dated: August 29, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–23221 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Fish and Wildlife Service announces a meeting designed to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The meeting will be held on Wednesday, September 24, 2003, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Florida Sea Base, 73800 Overseas Highway, Islamorada, Florida 33036; telephone (305) 664–5628.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–4036–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Laury Parramore, Council Coordinator, at (703) 358–1711.

SUPPLEMENTARY INFORMATION: The Sport Fishing and Boating Partnership Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, about sport fishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council includes the Director of the Service and the president of the International Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, aquatic resource outreach and education, and tourism. The Council will convene to discuss: (1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic vision for its Fisheries Program; (2) the Council's work in its role as a facilitator of discussions with Federal and State agencies and other sportfishing and boating interests concerning a variety of national boating and fisheries management issues; and (3) the Council's role in providing the Interior Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program. The Interior Secretary approved the Strategic Plan in February 1999, as well as the five-year, $36-million federally funded outreach campaign authorized by the 1998 Sportfishing and Boating Safety Act that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization.

Dated: September 4, 2003.

Steve Williams,

Director.

[FR Doc. 03–23233 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–075–1830–XZ]

Change of Address/Relocation and Public Room Closure: Idaho BLM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Effective on or about October 14, 2003, the Pocatello Field Office will be relocating to 4350 Cliffs Drive, Pocatello, Idaho 83204. Please address all correspondence to this address after October 10, 2003.

Because of the relocation of the BLM Pocatello Field Office, certain records will be unavailable for inspection and the Public Room will be closed on the following dates: October 8 through October 22, 2003. We plan to have the Public Room open for business and records review on October 27, 2003 from 7:45 a.m. to 4:15 p.m., normal Public Room hours. Records and services associated with the Public Claim Records and Computerized Reports, GLO Survey Records, Patent Records, Right-of-Way Records, and Map Sales will be unavailable for approximately 1 week during the records transfer to the new location. For records availability dates, contact the Pocatello Field Office at (208) 478–6340.

EFFECTIVE DATE: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Philip Damon, BLM, Pocatello Field Office, 1111 North 8th Street, Pocatello, Idaho 83201, (208) 478–6341.

Dated: September 8, 2003.

K. Lynn Bennett,

State Director.

[FR Doc. 03–23242 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans.

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Maine Prairie Water District.
- City of Santa Barbara.
- Solano Irrigation District.

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). Note: For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to comment on the preliminary determinations. Public comment on Reclamation's preliminary (*i.e.,* draft) determination is invited at this time.

DATES: All public comments must be received by October 14, 2003.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.,* draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the ''Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria must be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, and we will honor such request to the extent allowable by law. There also may be circumstances in which Reclamation would elect to withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety. If you wish to review a copy of these Plans, please contact Mr. White to find the office nearest you.

Dated: July 21, 2003.

Donna E. Tegelman,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 03–23241 Filed 9–11–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–498]

In the Matter of Certain Insect Traps; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 8, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of American Biophysics Corporation of East Greenwich, Rhode Island. A supplement to the complaint was filed on August 27, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insect traps by reason of infringement of claims 1–3, 5–7, 9, 13, 28, 31–33, 35–37, 39–41, and 43–45 of U.S. Patent No. 6,286,249 B1 and claims 1–4, 7, 15–19, and 21–39 of U.S. Patent No. 6,145,243. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade

Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 8, 2003, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain home vacuum packaging machines by reason of infringement of claims 1–3, 5–7, 9, 13, 28, 31–33, 35–37, 39–41, or 43–45 of U.S. Patent No. 6,286,249 B1 or claims 1–4, 7, 15–19, or 21–39 of U.S. Patent No. 6,145,243 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

American Biophysics Corporation, 2240 South County Trail,Greenwich, RI 02818–1536.

(b) The respondent is the following company alleged to be in violation of section 337, and is a party upon which the complaint is to be served:

Blue Rhino Corporation, 104 Cambridge Plaza Drive, Winston-Salem, NC 27104.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: September 8, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–23219 Filed 9–11–03; 8:45 am]

7020–02–P

DEPARTMENT OF LABOR

Employment and Training 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 and Training Administration is soliciting comments concerning the proposed extension of the collection of the ETA 9048, Worker Profiling and Reemployment Services Activity, and the ETA 9049, Worker Profiling and Reemployment Services Outcomes. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 12, 2003.

ADDRESSES: Diane Wood, Office of Workforce Security, 200 Constitution Ave. NW., Room S–4231, Washington, DC 20210; telephone 202–693–3212; fax 202–693–3229 (these are not toll-free numbers) or e-mail *wood.diane@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Diane Wood at *wood.diane@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Worker Profiling and Reemployment Services (WPRS) program allows for the targeting of reemployment services to those most in need of services. The ETA 9048 and ETA 9049 are the only means of tracking the activities in the WPRS program. The ETA 9048 reports on the numbers and flows of claimants at the various stages of the WPRS system from initial profiling through the completion of specific reemployment services. This allows for evaluation and monitoring of the program. The ETA 9049 gives a limited, but inexpensive, look at the reemployment experience of profiled claimants who were referred to services by examining the state's existing wage record files to see in which quarter the referred individuals became employed, what wages they are earning and if they have changed industries.

II. Desired Focus of Comments

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

This collection continues to be needed to evaluate and monitor the WPRS program.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Worker Profiling and Reemployment Services Activity, and Worker Profiling and Reemployment Services Outcomes.

OMB Number: 1205–0353.

Agency Number: ETA 9048 and ETA 9049.

Affected Public: State Governments.

Total Respondents: 53.

Frequency: Quarterly.

Total Responses: 424.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 106 hours.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request and will become a matter of public record.

Dated: September 5, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–23247 Filed 9–11–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determinations decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be

found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 4th day of September 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–22894 Filed 9–11–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COMMUNICATIONS SYSTEM

Proposed Collection; Comment Request

AGENCY: National Communications System (NCS).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the National Communications System announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 12, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to National Communications System, Code NC3, Attn: Deborah Bea, 701 South Court House Road, Arlington, VA, 22204–2198.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Office of Priority Telecommunications at 703–607–4933.

Title; Associated Forms; and OMB Number: Telecommunication Service Priority (TSP) System Revalidation for Service Users, Standard Form 314; OMB Number 0704–0305; Telecommunications Service Priority (TSP) System TSP Request for Service Users, Standard Form 315, OMB Number 0704–0305; Telecommuni8cations Service Priority (TSP) System (TSP) Action Appeal for Service Users, Standard Form 317, OMB Number 0704–0305; Telecommunications Service Priority (TSP) System TSP Service Confirmation for Service Vendors, Standard Form 318, OMB Number 0704–l0305; Telecommunications Service Priority (TSP) System TSP Service Reconciliation for Service Vendors, Standard Form 319; OMB Number 0704–0305.

Needs and Use: The Telecommunications Service Priority (TSP) System forms are used to determine participation in the TSP system, facilitate TSP system administrative requirements, and to maintain TSP system database accuracy.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions, the Federal Government, and State and local governments.

Average Burden Hours: 18,463.

Number of Respondents: 194.

Responses per Respondent: 1,198.

Average Burden per Response: 12.3 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The purpose of the TSP system is to provide a legal basis for telecommunications vendors to provide priority provisioning and restoration of telecommunications service supporting national security or emergency preparedness functions. The information gathered via the TSP system forms is the minimum necessary for the NCS to effectively manage the TSP system.

Dr. Peter M. Fonash,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 03–23212 Filed 9–11–03; 8:45 am]

BILLING CODE 500–08–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Exemption

1.0 Background

The Omaha Public Power District (the licensee) is the holder of Facility Operating License No. DPR–40 which authorizes operation of the Fort Calhoun Station, Unit 1 (FCS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Washington County in Nebraska.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 20, section 20.1003 states that the definition of total effective dose equivalent (TEDE) is the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The proposed exemption would change the definition of TEDE to mean the sum of the effective dose equivalent or the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The licensee requests the exemption because the current method of calculating TEDE, under certain conditions (such as when there is a non-uniform exposure), can significantly overestimate the dose received.

In summary, the licensee's application dated January 8, 2003, requests an exemption from the 10 CFR 20.1003 definition of TEDE.

3.0 Discussion

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant exemptions from the requirements of 10 CFR part 20 if it determines the exemptions are authorized by law and would not result in undue hazard to life or property.

The staff examined the licensee's rationale to support the exemption request and concluded that the new method for calculating TEDE, under certain conditions, is a more accurate means of estimating worker radiation exposure and therefore would not result in undue hazard to the workers. The basis for this follows.

4.0 Regulatory Evaluation

By letter dated January 8, 2003, the licensee requested an exemption from the current definition, and the approval to use an alternate definition of TEDE. The licensee requested that the definition of TEDE, as used in 10 CFR 20.1003 (*i.e.*, for the purpose of complying with the dose recording requirements, dose reporting requirements, or the dose limits), be changed to mean the sum of the effective dose equivalent or the deep dose equivalent (for external exposures), and the committed effective dose equivalent (for internal exposures). The licensee also requested approval to use a method for estimating the effective dose equivalent for external exposures (EDE_{ex}) published by the Electric Power Research Institute (EPRI) in Technical Report TR–101909, Volumes 1 and 2, and Implementation Guide TR–109446. The effect of granting this request would be to allow the licensee the option to control TEDE using EDE_{ex} in those cases where it is a more accurate predictor of the risk from occupational radiation exposure.

The radiation protection approach and dose limits contained in 10 CFR part 20 are based on the recommendations of the International Commission on Radiation Protection (ICRP) in their 1977 publication No. 26 (ICRP 26). For stochastic effects, the ICRP-recommended dose limitation is based on the principle that the risk should be equal, whether the whole body is irradiated uniformly or whether there is non-uniform irradiation (such as when radioactive materials are taken into the body and, depending on their physical and chemical properties, concentrate in certain tissues and organs). This condition will be met if

$$\Sigma_T \omega_T H_T \leq H_{wb,L}$$

where $_{WT}$ is a weighting factor representing the proportions of the stochastic risk resulting from tissue ($_T$) to the total risk, when the whole body is irradiated uniformly; H_T is the annual dose equivalent in tissue ($_T$); and $H_{wb,L}$ is the recommended annual dose-equivalent limit for uniform irradiation of the whole body, namely 5 rem (50 mSv). The sum$\Sigma\omega_{TWTT}H_T$ is called effective dose equivalent (EDE). The values for ω_T are given in ICRP 26, for the various tissues ($_T$), and are codified in 10 CFR part 20.

For the purposes of implementing workplace controls, and due to the difference in dosimetry, 10 CFR part 20 breaks this total EDE, or TEDE, into two components: (1) dose resulting from radioactive sources internal to the body, and (2) dose resulting from sources external to the body. For radioactive material taken into the body, the occupational dose limit is based on the resulting dose equivalent integrated over 50 years (H_{50}) of exposure such that

$$\Sigma_T \omega_T H_{50,\ T} \leq H_{wb,L.}$$

This quantity $\Sigma_T \omega_T H_{50,T}$ is called the committed effective does equivalent (CEDE) in 10 CFR part 20.

Demonstrating compliance with the dose limits from internal exposures is accomplished using direct measurements of concentrations of radioactivity in the air in the work areas, or quantities of radionuclides in the body, or quantities of radionuclides excreted from the body, or a combination of these. Having determined the quantities of radionuclides present or taken into the body, these can be compared to secondary or tertiary limits (*e.g.*, annual limits on intake or derived air concentrations) listed in Appendix B to 10 CFR part 20. These secondary and tertiary limits have been calculated using standard assumptions of the physical and chemical forms of the radionuclides, the standard physiological parameters from the Reference Man, and the bio-kinetic models adopted in ICRP 26. Alternatively, the regulations allow the licensee to adjust certain of these standard assumptions and calculate CEDE directly, using appropriate models.

The normal practice for determining radiation dose from external sources is to measure the radiation intensity at the surface of the body with a monitoring device (dosimeter) calibrated to read in terms of a tissue dose equivalent at a specified tissue depth. In 1991, when 10 CFR part 20 was revised to adopt the ICRP 26 recommendations on limits and controls, there was little guidance on how to determine the dose to the several tissues necessary to calculate EDE_{ex}. It is impractical to separately monitor (or measure) the dose received by the various organs and tissues that contribute to TEDE. As a practical, conservative simplification, 10 CFR part 20 limits the dose from external sources in terms of deep dose equivalent (DDE). The DDE is the dose equivalent at a tissue depth of one centimeter, and is required (by 10 CFR part 20.1201(c)) to be determined for the part of the body receiving the highest exposure. The TEDE annual limit is met if

$$DDE + \Sigma_T \omega_T H_{50,T} \leq 5 \text{ rem (50 mSv).}$$

In addition to the annual limit on TEDE, 10 CFR part 20 provides a non-stochastic annual limit of 50 rem (0.5 Sv) for each individual tissue such that

$$DDE + H_{50,\ T} \leq 50 \text{ rem (0.50 Sv)}$$

for all tissues except the skin and lens of the eye.

Using the highest DDE, to bound the individual tissue doses from radioactive sources outside the body, generally results in a slightly conservative estimate of EDE_{ex} from uniform exposures. However, it can be overly conservative for non-uniform exposure situations. Since many high-dose jobs at nuclear power plants are performed under non-uniform exposure conditions, this can lead to a significant overestimation of the actual TEDE dose, and the risk, to the workers. To address this issue, the licensee has requested approval to provide a more accurate dose assessment by replacing DDE with EDE_{ex} when calculating TEDE from non-uniform exposures, where the EDE_{ex} is determined with a method developed by EPRI.

In developing this method, the EPRI investigators used mathematical equations developed by Cristy and Eckerman to model standard, adult human male and female subjects (phantoms). The Monte Carlo radiation transport computer code MCNP was used to calculate the dose to individual tissues modeled in the phantoms, and simulated dosimeter readings, for a range of different exposure geometries. Dosimeters with an isotropic response were modeled at several locations on the surface of the phantoms. Both broad beam and point radiation sources (with selected photon energies) were considered. Indicated doses (*e.g.*, simulated dosimeter readings) and the actual EDE_{ex} (*e.g.*, the sum of the products of the calculated phantom tissue doses and their respective ICRP 26 weighting factors) were calculated for

photons incident on the phantoms from various locations. Empirical algorithms were developed to relate the EDE_{ex} resulting from the full range of exposure situations to the indicated doses that could be measured at the surface of the body. Two algorithms were developed to estimate EDE_{ex} from just two dosimeters worn on the trunk of the whole body (front and back, respectively). The first algorithm is a simple, non-weighted averaging of the front and back dosimeter readings. The second algorithm weights the higher of the two dosimeter readings.

5.0 Technical Evaluation

The staff reviewed the technical descriptions of the EPRI method for estimating EDE_{ex}; the resulting data and conclusions contained in Technical Report TR–101909, Volumes 1 and 2; Implementation Guide TR–109446 and the supporting technical papers published by the principal EPRI investigators. The staff also performed independent calculations to verify a sampling of the results tabulated in these documents.

The EPRI work indicates that a single dosimeter (calibrated to read DDE), worn on the chest, provides a reasonably accurate estimate of EDE_{ex} when the individual is exposed to a number of randomly distributed radiation sources during the monitoring period. This is consistent with current allowable dosimetry practices and requires no special approval. The alternate definition of TEDE requested, would allow the licensee the option to monitor worker dose with a single DDE measurement as currently required, or to control TEDE using EDE_{ex} (as determined by the EPRI two badge method) in situations where monitoring the highest DDE would require moving, or supplementing, the single badge.

The data presented in the EPRI reports indicate that the weighted two-dosimeter algorithm provides a reasonably conservative estimate of EDE_{ex}. However, the non-weighted algorithm does not always give a conservative result. The licensee has stated that it will only use the weighted two-dosimeter algorithm such that;

$$EDE_{ex} = \tfrac{1}{2}\,(MAX + \tfrac{1}{2}\,(R_{front} + R_{back}))$$

where R_{front} is the reading of the dosimeter on the front of the body, R_{back} is the reading of the dosimeter on the back of the body, and MAX is the higher of the front or back dosimeter readings.

Additional issues and limitations noted in the staff's review are included in the following paragraphs.

Partial-body irradiations, that preferentially shield the dosimeter, could bias the EPRI method results in the non-conservative direction. The licensee has stated that they will ensure that the dosimeters are worn so that at least one of the two badges ''sees'' the source(s) of radiation. In other words, the radiological work will be conducted, and the dosimeters worn in such a way, so that no shielding material is present, between the radioactive source(s) and the whole body, that would cast a shadow on the dosimeter(s) not cast over other portions of the whole body.

Isotropic dosimeters (*e.g.*, dosimeters that respond independently of the angle of the incident radiation) are impractical and not widely available commercially. Therefore, the licensee must implement the EPRI method using dosimeters that will have an angular dependent response. If the dosimeter reading decreases more rapidly than EDE_{ex}, with increasing exposure angle, the resulting EDE_{ex} estimate will be biased in the non-conservative direction. The EPRI principle investigators have addressed this issue of angular dependance in their published technical paper entitled ''A Study of the Angular Dependence Problem In Effective Dose Equivalent Assessment'' (*Health Physics* Volume 68. No. 2, February 1995, pp. 214–224). The licensee has stated that the dosimeters used to estimate EDE_{ex} will have demonstrated angular response characteristics at least as good as that specified in this technical paper. In addition, the dosimeters will be calibrated to indicate DDE at the monitored location, to ensure their readings reflect electronic equilibrium conditions.

The EPRI method for estimating EDE_{ex} from two dosimeter readings is not applicable to exposure situations where the sources of radiation are nearer than 12 inches (30 cm) from the surface of the body. Tables 5 thru 7 in EPRI TR–101909, Volume 2, provide calculated EDE_{ex} values resulting from exposure to point sources in contact with the torso of the body. However, the staff review determined that the information provided in these tables does not bound all of the pertinent point source exposure situations. The licensee has stated that the use of EDE_{ex}, to determine compliance with the TEDE limit, resulting from point sources (*i.e.*, hot particles) on, or near the surface of the body, is outside the scope of this request.

Table 8 in TR–101909, Volume 2, provides a summary of the EDE_{ex}, and dosimeter (front and back) readings calculated for parallel beams and point sources used to develop the EPRI algorithms. However, the magnitude of the units for the parallel beam dose factors listed are low by five orders of magnitude (*e.g.*, ''E–15 rad-cm squared per photon'' instead of the correct ''E–10 rad-cm squared per photon''). This error does not effect the conclusions drawn from the data. However, the specific dose factors listed in Table 8 should not be used to calculate EDE_{ex}.

When EDE is used to calculate TEDE under the revised definition, the requirement in 10 CFR part 20.1201(c), that DDE be determined for the part of the body receiving the highest exposure, is not applicable. However, when TEDE is calculated using the DDE (*i.e.*, from a single dosimeter reading), 10 CFR 20.1201(c) does apply.

The exemption applies only to the definition (and methods for calculating) TEDE . It does not modify the dose limits for any individual organ or tissue, or the methods for complying, specified in 10 CFR part 20 (*i.e.*, 10 CFR 20.1201(a)(1)(ii), (a)(2) and 10 CFR 20.1208). The licensee is still required to provide surveys and monitoring necessary to demonstrate compliance with these requirements.

6.0 Evaluation Summary

The staff concludes that calculating TEDE using EDE_{ex} as proposed by the licensee in place of DDE provides a more accurate estimate of the risk associated with the radiation exposures experienced by radiation workers at a nuclear power plant. Additionally, the staff finds that the proposal to limit TEDE such that

$$EDE_{ex} + CEDE \leq 5 \text{ rem}$$

is consistent with the basis for the limits in 10 CFR part 20. Therefore, subject to the limitations noted above and agreed to by the licensee, defining TEDE to mean the sum of EDE_{ex} or DDE (for external exposures) and CEDE (for internal exposures), in lieu of the current 10 CFR 20.1003 definition, is acceptable.

Additionally, the staff concludes that the methods for estimating EDE_{ex} described in EPRI Technical Report TR–101909, Volumes 1 and 2, and Implementation Guide TR–109446 are based on sound technical principles. The proposed EPRI weighted, two-dosimeter algorithm provides an acceptably conservative estimate of EDE_{ex} with a degree of certainty that is comparable to that inherent in the methods allowed by 10 CFR part 20 for estimating CEDE. Therefore, subject to the limitations noted above, using the EPRI weighted, two-dosimeter algorithm so that

$$EDE_{ex} = \tfrac{1}{2}\,(MAX + \tfrac{1}{2}\,R_{front} + R_{back}))$$

for the purposes of demonstrating compliance with 10 CFR 20.1003 is acceptable.

7.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption is authorized by law and would not result in undue hazard to life or property. Therefore, the Commission hereby grants Omaha Public Power District an exemption from the requirements of 10 CFR 20.1003 for Fort Calhoun Station, Unit 1. The exemption changes the definition of TEDE to mean the sum of EDE_{ex} or DDE (for external exposures) and CEDE (for internal exposures). This exemption is granted to allow the licensee the option to monitor worker dose using EDE_{ex} based on the following conditions:

1. Only the EPRI weighted, two-dosimeter algorithm will be used such that

$$EDE_{ex} = \frac{1}{2}\,(MAX + \frac{1}{2}\,R_{front} + R_{back}))$$

where R_{front} is the reading of the dosimeter on the front of the body, R_{back} is the reading of the dosimeter on the back of the body, and MAX is the higher of the front or back dosimeter readings.

2. The radiological work will be conducted and the dosimeters worn in such a way, so that no shielding material is present between the radioactive source(s) and the whole body, that would cast a shadow on the dosimeter(s) and not over other portions of the whole body.

3. The dosimeters used to estimate EDE_{ex} will have demonstrated angular response characteristics at least as good as that specified in the technical paper entitled, ''A Study of the Angular Dependence Problem In Effective Dose Equivalent Assessment'' (Health Physics Volume 68. No. 2, February 1995, pp. 214–224). Also, the dosimeters will be calibrated to indicate DDE at the monitored location, to ensure their readings reflect electronic equilibrium conditions.

4. The EPRI method for estimating EDE_{ex} from two dosimeter readings is not applicable to exposure situations where the sources of radiation are nearer than 12 inches (30 cm) from the surface of the body.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment(68 FR 52801).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of September, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–23255 Filed 9–11–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License (FOL) Nos. NPF–76 and NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of South Texas Project (STP), Units 1 and 2, respectively. STP, Units 1 and 2, are located in Matagorda County, Texas.

The proposed amendments would delete the antitrust conditions contained in Appendix C to the FOLs for STP, Units 1 and 2. According to the application, the antitrust license conditions attached to the STP, Units 1 and 2, FOLs relate generally to transmission access, market power protection, or unique case-specific matters. In its application, the licensee states primarily that the antitrust license conditions relating to transmission access and market power are no longer necessary because of Texas's adoption of a comprehensive electric restructuring system that guards against anticompetitive practices in the transmission market as well as abuses in generation market power. The licensee also indicates that the changes in the electric industry render unnecessary the application of these antitrust conditions. The licensee maintains that, in addition to being unnecessary, the existing antitrust conditions could operate to thwart the intent and purpose of the Texas restructuring legislation.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by Title 10 of the Code of Federal Regulations (10 CFR), section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, this request will have no impact on the probability or consequences of any type of accident: new, different, or previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (*i.e.*, fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, safety systems settings, or any limiting

conditions of operations. Therefore, this request will not impact [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and notes that it does not agree that the requested amendments can properly be characterized as involving only ''administrative changes.'' Nevertheless, based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied notwithstanding its view that the requested amendments do not involve only administrative changes. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration. The staff previously made this conclusion which was published in the **Federal Register** (67 FR 61685 dated October 1, 2002).

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area, O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 14, 2003, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject FOLs and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, Public File Area, 0–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr.* If there are problems in accessing the document, contact the Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with

the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Alvin H. Gutterman, *Esq.,* Morgan, Lewis, & Bockius, 1111 Pennsylvania NW., Washington, DC 20004, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 20, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of September, 2003.

For the Nuclear Regulatory Commission

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–23252 Filed 9–11–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to delete the anti-trust conditions contained in Appendix C to Facility Operating Licenses (FOLs) Nos. NPF–76 and NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of South Texas Project (STP), Units 1 and 2, respectively. STP, Units 1 and 2, are located in Matagorda County, Texas. Therefore, as required by Title 10 of the Code of Federal Regulations, Section 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete the antitrust conditions contained in Appendix C to the FOLs for STP, Units 1 and 2.

The proposed action is in accordance with the licensee's application dated August 20, 2002.

The Need for the Proposed Action

The proposed action is needed, according to the licensee's application, in order to, among other things, remove certain requirements that are no longer necessary following Texas's adoption of a comprehensive restructuring system.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed license amendments represent administrative actions which have no effect on plant equipment or operation.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are the same.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for STP, Units 1 and 2, dated August 1986.

Agencies and Persons Consulted

On August 27, 2003, the staff consulted with the Texas State official, Mr. Arthur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 20, 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, Public File Area Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and

Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of September, 2003.

For the Nuclear Regulatory Commission

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–23254 Filed 9–11–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on September 30, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 30, 2003—12:30 p.m. Until the Conclusion of Business

The purpose of this meeting is to review the license renewal application for the H. B. Robinson nuclear power plant Unit 2 and the associated draft Safety Evaluation Report prepared by the NRC staff. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Carolina Power & Light Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Bhagwat P. Jain (telephone (301) 415–7270), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 8, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–23256 Filed 9–11–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Briefing on Data System Changes

AGENCY: Postal Rate Commission.

ACTION: Notice of public briefing; correction.

SUMMARY: The starting time for a United States Postal Service briefing on a proposed merger of two major data reporting systems (previously noticed at 68 FR 52802) has been changed. Instead of beginning at 10 a.m. on September 17, 2003, the briefing will begin at 2 p.m. in the Postal Rate Commission's hearing room. The briefing is open to the public and is expected to last about two hours.

DATES: September 17, 2003, at 2 p.m.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street NW., Washington, DC 20268–0001, Suite 300.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 03–23232 Filed 9–11–03; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: RUIA Investigations and Continuing Entitlement, OMB 3220–0025. Under section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accrues to the claimant. Also section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following four forms to obtain information from railroad employers, nonrailroad employers and claimants, that are needed to determine whether a claimed days or days of unemployment or sickness were improperly or fraudulently claimed: Form ID–51, Letter to Non-Railroad Employers on Employment and Earnings of a Claimant; Form ID–5R(SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; Form ID–49R, Letter to Railroad Employer for Payroll Information; and Form UI–48, Claimant's Statement Regarding Benefit Claim for Days of Employment. Completion is voluntary. One response is requested of each respondent. The RRB proposes no changes to these forms.

To qualify for unemployment or sickness benefits payable under section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of

railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following form(s) to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, Applicant's Statement of Employment and Wages, Form UI–23, Claimant's Statement of Service for Railroad Unemployment Insurance Benefits, Form UI–44, Claim for Credit for Military Service (RUIA), Form ID–4F, Advising of Ineligibility for RUIA Benefits, Form ID–4U, Advising of Service/Earnings Requirements for RUIA Benefits, Form ID–4X, Advising of Service/Earnings Requirements for Sickness Benefits, Form ID–4Y, Advising of Ineligibility for Sickness Benefits, Form ID–20–1, Advising that Normal Unemployment Benefits Are About to Be Exhausted, Form ID–20–2, Advising that Normal Sickness Benefits Are About to Be Exhausted, and Form ID–20–4, Advising That Normal Sickness Benefits Are About to Be Exhausted/Non-Entitlement. Completion of these forms is required to obtain or retain a benefit. One response is required of each respondent. The RRB proposes no changes to these forms.

The burden associated with the information collection is estimated as follows:

Form #	Annual responses	Completion time (minutes)	Burden hours
ID–5I	4,500	15	1,125
ID–5R(SUP)	900	10	150
ID–49R	250	15	63
UI–48	250	12	50
UI–9	800	10	133
UI–23	600	5	50
UI–44	150	5	13
ID–4F	25	5	2
ID–4U	150	5	13
ID–4X	100	5	8
ID–4Y	25	5	2
ID–20–1	50	5	4
ID–20–2	100	5	8
ID–20–4	5	5	1
Total	7,905		1,622

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–23215 Filed 9–11–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48444; File No. SR–NASD–98–74]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 3 and 4 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to NASD Rule 3110(f) Governing Use of Predispute Arbitration Agreements With Customers

September 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 22, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 4 to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. Notice of the proposal, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on November 29, 1999.[3] The Commission received two comment letters on the proposal.[4] On April 30, 2002, NASD submitted a response to comments and Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 3110(f) to: require additional disclosure

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See Securities Exchange Act Release No. 42160 (November 19, 1999), 64 FR 66681.

[4] See letters from Barry D. Estell, dated December 15, 1999 (''Estell Letter''), and John J. Miller, dated December 27, 1999 (''Miller Letter'').

[5] See letter from Sarah J. Williams, Office of General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 30, 2002 (''Amendment No. 3''). In Amendment No. 3, NASD responded to comments and changed the effective date provision of the proposal.

in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and clarify the rule regarding use of choice of law provisions in predispute arbitration agreements. In Amendment No. 4, NASD proposes to change the effective date of the proposed rule change to be 90 days following publication of a Notice to Members announcing approval by the Commission of the proposed rule change; NASD will issue such Notice to Members within 60 days of Commission approval. Below is the text of the proposed rule change. Proposed new language is *in italics;* proposed deletions are in brackets.

* * * * *

Rules of the Association

3000. Responsibilities Relating to Associated Persons, Employers, and Others' Employees

3110. Books and Records

(f) Requirements When Using Predispute Arbitration Agreements [With] *for* Customer *Accounts*

(1) Any predispute arbitration agreement clause shall be highlighted and shall be immediately preceded by the following [disclosure] language [(printed] in outline form [as set forth herein) which shall also be highlighted].

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) [Arbitration is final and binding on the parties.] *All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.*

(B) [The parties are waiving their right to seek remedies in court, including the right to a jury trial.] *Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.*

(C) [Pre-arbitration discovery is generally more limited than and different from court proceedings.] *The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.*

(D) [The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings of the arbitrators is strictly limited.] *The arbitrators do not have to explain the reason(s) for their award.*

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(2)(A) [Immediately preceding the signature line,] *In any agreement containing a predispute arbitration agreement,* there shall be a *highlighted* statement immediately preceding any signature line or other place for indicating agreement [which shall be highlighted] that *states that* the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(B) At the time of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(3) [A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.]

(A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request.

(B) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) [No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.]

(A) No predispute arbitration agreement shall include any condition that:

(i) limits or contradicts the rules of any self-regulatory organization;

(ii) limits the ability of a party to file any claim in arbitration;

(iii) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(iv) limits the ability of arbitrators to make any award.

(B) No member may seek to enforce any choice-of-law provision unless there is a significant contact or relationship between (i) the law selected and (ii) either the transaction at issue or one or more of the parties.

(5) [The requirements of subparagraphs (1) through (4) shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.] *If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.*

(6) All agreements shall include a statement that ''No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) The class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.''

(7) [The requirements of subparagraph (6) shall apply only to new agreements signed by an existing or new customer of a member after October 28, 1993.] *The provisions of this Rule shall become effective on (effective date). The provisions of subparagraph (3) shall apply to all members as of the effective date of this Rule regardless of when the customer agreement in question was executed. Otherwise, agreements signed by a customer before (effective date) are subject to the provisions of this Rule in effect at the time the agreement was signed.*

(g)—(h) Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is threefold: to require additional disclosure in predispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims; to require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; and to clarify the rule regarding use of choice-of-law provisions in predispute arbitration agreements.

Procedural History of Rule Filing

In 1997, NASD filed three separate rule filings with the Commission relating to predispute arbitration agreements. The first rule filing related to the eligibility of claims for arbitration, the second rule filing proposed a cap on punitive damages in arbitration disputes,[6] and the third, SR–NASD–98–74 (this rule filing) related to increased disclosure with respect to predispute arbitration agreements.[7] In July 1999, the effective date provisions of the three rule filings were linked to avoid the cost to firms, and the potential confusion to customers, of requiring multiple amendments to customer agreements in a relatively short period of time.

On November 19, 1999 the Commission published the proposed rule change for comment in the **Federal Register**.[8] This Notice incorporated Amendment Nos. 1 and 2 to the proposed rule change. The Commission received two comment letters on the proposed rule change.[9] On April 30, 2002, NASD submitted a Response to Comments and Amendment No. 3 to the proposed rule change.

NASD subsequently withdrew the Eligibility Rule Filing on December 17, 2002, and the Punitive Damages Rule Filing on May 9, 2003. As a result, NASD is proposing to revise the effective date of SR–NASD–98–74 so that the proposed rule change may proceed.

Background

The proposed rule change is intended to increase the disclosure required in predispute arbitration agreements. Many broker-dealers require that customers seeking to open accounts, particularly margin and option accounts or accounts with a checking or money market feature, agree in writing to arbitrate disputes concerning the account, typically in a self-regulatory organization (''SRO'') sponsored forum. These agreements, called ''predispute arbitration agreements,'' are generally part of the non-negotiated customer agreement drafted by the firm.

To ensure that customers are advised about what they are agreeing to when they sign predispute arbitration agreements, NASD Rule 3110(f) requires that such agreements contain highlighted disclosure about the differences between arbitration and litigation, including notice that by agreeing to arbitrate their disputes, customers may be waiving certain rights that would be available in court. Rule 3110(f) also requires that the agreement itself be highlighted, and that a copy of the agreement be given to the customer and acknowledged by the customer in writing.

Despite these precautions, investor representatives have expressed concern that many customers who sign predispute arbitration agreements still do not adequately understand what they are agreeing to. For example, some predispute arbitration agreements contain ''choice-of-law'' provisions that specify that the law of a certain state will govern disputes arising out of the agreement. In some cases, the member knows that the law of the chosen state may limit the ability of a customer to bring a claim or obtain an award, but the customer would not be aware of these restrictions from the face of the agreement. By signing an agreement that contained a choice-of-law provision, a customer might inadvertently waive certain rights and remedies. Customers' perceptions of unfairness are heightened by the fact that, when customers must sign predispute arbitration agreements in order to open accounts, their participation in SRO-sponsored arbitration may be involuntary.

Consequently, in its 1996 report, Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors, National Association of Securities Dealers, Inc. (''Task Force Report''), the Arbitration Task Force, chaired by David Ruder (formerly Chairman of the SEC and a former NASD Board member), recommended that members be required to provide more disclosure about arbitration to customers who sign predispute arbitration agreements, and that the use of certain provisions that limit rights and remedies be restricted.

Proposed Amendments

Required Disclosure and Notice of Possible Restrictions on Eligibility

Currently, paragraph (f)(1) of Rule 3110 mandates certain disclosure language about the differences between litigation and arbitration that must be included in predispute arbitration agreements. The proposed amendments would simplify the language in some existing provisions and would add new provisions.

One of the most significant new provisions concerns notice of possible limits in some arbitration forums on the time for bringing claims. Paragraph (f)(1)(F) would require disclosure that the rules of some arbitration forums may impose time limits for bringing claims in arbitration, and that, in some cases, claims that are ineligible for arbitration may be brought in court. This provision is intended to give notice to customers of NASD Rule 10304 relating to eligibility of claims submitted to arbitration, as well as the rules in other forums.

[6] On June 24, 1997, NASD submitted a proposed rule change concerning the eligibility of claims for arbitration (''Eligibility Rule Filing''). *See* Securities Exchange Act Release No. 39487 (December 23, 1997), 63 FR 588 (January 6, 1998) (SR–NASD–97–44). On July 7, 1997, NASD submitted a proposal to cap punitive damages in arbitration disputes (''Punitive Damages Rule Filing''). *See* Securities Exchange Act Release No. 39371 (November 26, 1997), 62 FR 64428 (December 5, 1997) (SR–NASD–97–47). The Eligibility Rule Filing was withdrawn on December 17, 2002, and the Punitive Damages Rule Filing was withdrawn on May 9, 2003.

[7] This proposal, SR–NASD–98–74, was initially filed with the Commission on October 6, 1998. On May 26, 1999, NASD submitted Amendment No. 1 to delete provisions from the proposed rule change relating to punitive damages so that all such provisions could be separately considered in connection with the Punitive Damages Rule Filing. On July 27, 1999, NASD submitted Amendment No. 2 to clarify the proposed rule language regarding permissible limitations in predispute arbitration agreements, and changed the effective date of the proposed rule change to coincide with the Eligibility Rule Filing and Punitive Damages Rule Filing then pending before the Commission (SR–NASD–97–44 and SR–NASD–97–47).

[8] *See supra* note.

[9] *See supra* note.

Applicability of Disclosure Requirements to New and Existing Account Agreements

Members would be required to add the new disclosure requirements to all new customer account agreements containing predispute arbitration agreements as of the effective date of the rule. The proposed rule does not require members to replace existing agreements with current customers.

Incorporation of Arbitration Forum Rules

Paragraph (f)(1)(G) would provide that the rules of the arbitration forum in which a claim is brought, and any amendments thereto, shall be incorporated into the agreement. The purpose of this provision is to ensure that the rules of a forum apply to cases brought in that forum, and to avoid having to execute new agreements each time a forum changes its rules. For example, if a customer filed a complaint in an NASD arbitration forum, NASD's arbitration rules would apply in all respects to the agreement.

Requirement That Members Provide Copies of Customer Agreements and Information Regarding Arbitration Forums to Customers Upon Request

In some cases, customers have complained that they have not been able to obtain copies of the predispute arbitration agreements they have signed from members in a timely manner, and that they had unequal access to information about the respective rules of the arbitration forums in which claims may be filed under a given agreement. Under the proposed amendments, paragraph (f)(3)(A) would require that, within ten days of receiving a request, members must provide a customer with a copy of any predispute arbitration agreement clause or agreement that the customer had signed, or inform the customer that the member does not have a copy of the agreement. In addition, paragraph (f)(3)(B) would require that, upon request of a customer, a member must provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

Restrictions on Provisions That Limit Rights and Remedies

Much of the criticism of predispute arbitration agreements has focused on the use of choice-of-law provisions. A choice-of-law provision specifies that the law of a certain state will govern disputes arising out of an agreement. In some cases, the law of a state might limit the availability of certain remedies, such as punitive damages, or the ability of a customer to bring a claim. For example, previously under New York law, courts could award punitive damages, but arbitrators could not. A customer who agreed to arbitrate disputes under New York law could inadvertently forfeit the ability to obtain punitive damages that might have been available in court. (New York law on this subject has begun to shift in favor of arbitrators being able to award punitive damages.) Customers have argued that it is unfair for members to include provisions in predispute arbitration agreements that limit the availability of remedies, particularly when the effects of the provisions are not explained in the agreement.

Currently, Rule 3110(f) prohibits any choice-of-law provision that limits or contradicts the rules of any SRO, or that limits the ability of a party to file any claim in arbitration or of arbitrators to make any award. However, the application of this provision has not always been consistent or clear. In addition, some investors have expressed concern that choice-of-law provisions select arbitrary jurisdictions that have no relationship to the customer or the transaction at issue.

To address these concerns, paragraph (f)(4) of the Rule would be amended to clarify the prohibition against provisions that limit rights or remedies, including provisions that would circumvent the eligibility rule. The amended rule would also state that no choice-of-law provision would be enforceable unless there is a significant contact or relationship between the law selected and either the transaction at issue or one or more of the parties.

In response to the **Federal Register** publication of SR–NASD–98–74 in November, 1999,[10] two commenters expressed the view that the laws of the state in which the customer resides should apply in arbitration disputes.[11] NASD believes that it should not dictate to the parties of a predispute arbitration agreement the law that would govern their agreement. NASD believes the approach taken by the proposed rule change effectively balances the rights of parties to contractually agree on the law that will govern their disputes with the concerns expressed by customers regarding choice-of-law provisions in predispute arbitration agreements.

Non-Bifurcation Provision

NASD is proposing to amend Rule 3110(f) to include a provision prohibiting members from seeking to compel arbitration of some but not all of a customer's court-filed claims, in order to prevent members from forcing customers to litigate in two forums when they filed a complaint in court that contained both eligible and ineligible claims.[12] Therefore, NASD is proposing to add a new paragraph (f)(5) to Rule 3110 that would require members seeking to compel arbitration of claims filed in court to agree to arbitrate all of the claims contained in the court-filed complaint, even if some of the claims would be ineligible for arbitration under the eligibility rule. The purpose of these provisions in Rule 3110(f) is to give the customer control over whether claims are bifurcated.

Effective Date Provisions

The proposed amendments to Rule 3110(f) would require various changes to the customer agreements used by member firms. In order to provide enough time for firms to modify customer agreements, NASD has determined that this rule filing, if approved, should take effect 90 days after publication of a *Notice to Members* announcing Commission approval of the proposed rule change. NASD would issue the Notice to Members within 60 days of receiving Commission approval.

The proposed amendments to Rule 3110(f) would also provide that agreements signed before the effective date of the Rule as amended would be subject to the provisions of 3110(f) in effect at the time the agreement was signed.

Restriction of Rule to Customer Account Agreements

Some members of NASD's National Arbitration and Mediation Committee expressed concern that the rule, which currently applies to all predispute arbitration clauses in any agreement between member firms and customers, could be construed to apply to agreements between a member firm and large institutional clients with whom they had face-to-face negotiations over the terms of the agreement. To address this concern, the rule would be amended to clarify that it only applies

[10] *See supra* note.

[11] *See* Estell Letter and Miller Letter, *supra* note.

[12] In June 2003, NASD filed proposed amendments to Rule 10304 relating to time limits for the submission of claims to arbitration. The proposed rule change seeks to amend Rule 10304 to provide that by requesting dismissal of a claim on eligibility grounds in the NASD forum, the requesting party is agreeing that the claimant may withdraw all related claims without prejudice and may pursue all of the claims in court. The proposed provision seeks to protect parties against involuntary bifurcation of claims. The filing is currently pending with the Commission. *See* Securities Exchange Act Release No. 48225 (July 25, 2003), 68 FR 45299 (August 1, 2003) (SR–NASD–2003–101).

to customer accounts and not to other agreements between member firms and large institutional clients with whom they had negotiated contract terms.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed amendments to Rule 3110(f) will serve the public interest by providing customers with more complete information about the arbitration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 NASD. All submissions should refer to File No. SR–NASD–98–74 and should be submitted by October 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23224 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48438; File No. SR–NASD–2003–74]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

September 4, 2003.

On April 16, 2003, the National Association of Securities Dealers, Inc. (''NASD'') 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: (i) amend NASD Rules 3130, 3131 and the Rule 9410 Series to expand NASD's authority to take expedited action against all member firms with capital deficiencies and to permit NASD to suspend a member that operates for any period of time with inadequate net capital, and (ii) delete subparagraph (g) of NASD Rule 9160 because NASD's Department of Member Regulation staff does not participate as an adjudicator in an NASD Rule 9410 decision. On June 17, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] On July 9, 2003, NASD submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendment No. 1 and Amendment No. 2, was published for comment in the **Federal Register** on July 31, 2003.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[6] Specifically, the Commission believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed amendments adequately address those circumstances where limiting an NASD member's business operations would be futile. Specifically, the Commission believes that because the proposal permits NASD to suspend any member that operates for any period of time with inadequate net capital, as required by Rule 15c3–1 under the Act, and § 402.2 of the rules of the Treasury Department, the proposed rule change should protect investors, market participants, and the general public from the risks posed by members operating securities businesses without appropriate levels of capital.

The Commission believes that the proposal to apply NASD Rules 3130 and 3131 to all members regardless of their minimum capital requirements should protect investors and the public interest. The Commission believes that any firm that operates with inadequate capital poses a risk to other firms and investors. Accordingly, the Commission believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 17, 2003 (''Amendment No. 1'').

[4] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated July 8, 2003 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 48227 (July 25, 2003), 68 FR 44980.

[6] 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).

[7] 15 U.S.C. 78*o*–3(b)(6).

that the NASD should have the authority to take action against any member that is not in capital compliance.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2003–74), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23225 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48442; File No. SR–NASD–2003–98]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Clarify Reporting Requirements for Transactions Conducted Through Electronic Communications Networks

September 4, 2003.

On June 19, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') submitted to 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 clarify the reporting requirements applicable to transactions conducted through electronic communication networks (''ECNs''). On July 11, 2003, Nasdaq submitted Amendment No. 1 to the proposal.[3] The **Federal Register** published the proposal, as amended, for comment on August 4, 2003.[4] The Commission received one comment letter supporting the proposal.[5]

Nasdaq has stated that it allows ECNs to adopt different methodologies for reporting transactions to the Automated Confirmation Transaction Service (''ACT'') in order to accommodate their varying business needs. Nasdaq believes, however, that the absence of clearly defined rules on the ACT trade reporting requirements has created some confusion for ECNs and their subscribers. Nasdaq proposed these rule changes to provide greater clarity and certainty regarding the ACT trade reporting requirements for ECNs and their subscribers. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[6] and, in particular, the requirements of section 15A(b)(6) of the Act,[7] which requires, among other things, that the rules of a national securities association foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The Commission believes that the proposed rules will provide ECNs and subscribers with necessary guidelines to facilitate their compliance with ACT trade reporting requirements. Therefore, the Commission finds the proposed rule changes are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2003–98), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23226 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John M. Yetter, Associate General Counsel, Nasdaq to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated July 10, 2003 (''Amendment No. 1''). Nasdaq filed Amendment No. 1 to revise portions of the proposed rule text contained in the original filing.

[4] Securities Exchange Act Release No. 48239 (July 28, 2003), 68 FR 45871.

[5] *See* Letter from William O'Brien, Chief Operating Officer, Brut, LLC to the Commission, dated August 25, 2003.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48452; File No. SR–NASD–2003–118]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By the National Association of Securities Dealers, Inc. To Introduce Fees for Persons That Are Not NASD Members Using the Financial Information Exchange Protocol to Connect to Nasdaq

September 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 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. 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

Nasdaq is filing this proposed rule change to propose connectivity and testing fees for persons that are not NASD members wishing to use the Financial Information Exchange (''FIX'') protocol to connect to Nasdaq.[3] Nasdaq proposes to implement the change to Rule 7050(d) for non-members immediately upon Commission approval, and to implement the change to Rule 7010(f) for non-members on the later of August 25, 2003, or the date of Commission approval of the proposed rule change.

The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in [brackets].

7000. Charges For Services and Equipment

Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq is also submitting a proposed rule change to introduce these fees for NASD members. *See* Securities Exchange Act Release No. 48387 (August 21, 2003), 68 FR 51619 (August 27, 2003) (SR–NASD–2003–117).

(2) The following charges shall apply for each [CTCI] subscriber *using CTCI and/or FIX:*

Options	Price
Option 1: Dual 56kb lines (one for redundancy), [and] single hub and router, *and optional single FIX port*.	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), [and] dual routers (one for redundancy), *and optional single FIX port*.	$1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), [and] dual routers (one for redundancy), *and optional single FIX port*. Includes base bandwidth of 128kb.	$8000/month *(CTCI or CTCI/FIX lines).* *$4000/month (FIX-only lines).*
FIX Port Charge	$300/port/month.
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option: Single 56kb line with single hub and router *and optional single FIX port.* (For remote disaster recovery sites only).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$600/month per 64kb increase above 128kb T1 base.
Installation Fee	$2000 per site for dual hubs and routers; $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	$1700 per relocation.

(g)–(s) No change.

* * * * *

7050. Other Services

(a)–(c) No change.

(d) Nasdaq Testing Facility

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), *Financial Information Exchange (FIX) interface,* or market data vendor feeds through the Nasdaq Testing Facility (NTF) shall pay the following charges:

$285/hour—For an Active Connection for CTCI/NWII API/*FIX* testing during the normal operating hours of the NTF;

$75/hour—For an Idle Connection for CTCI/NWII API/*FIX* testing during the normal operating hours of the NTF, unless such an IdleConnection is over a dedicated circuit;

No charge—For an Idle Connection for CTCI/NWII API/*FIX* testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF;

$333/hour—For CTCI/NWII API/*FIX* testing (for both Active and Idle Connections) at all times other than the normal operating hours of the NTF.

(2) (A) An ''Active Connection'' commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.

(B) An ''Idle Connection'' commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber's connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A ''Period of Inactivity'' is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between 5 minutes and 10 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3) The foregoing hourly fees shall not apply to market data vendor feed testing, or testing occasioned by:

(A) new or enhanced services and/or software provided by Nasdaq;

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency; or

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

(4) Subscribers that conduct CTCI/API/*FIX* or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	Price
NTF Market Data	Test Market Data Vendor Feed over a 56kb dedicated circuit.	$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit.	$1,100/circuit/month.
NTF CTCI/*FIX*	CTCI *and/or FIX* service over a 56kb dedicated circuit	$1,100/circuit/month.
NTF Test Suite	NWII API service, *FIX* and CTCI service over two 56kb circuits (128 kb).	$1,800/2 circuits/month.
NTF Circuit Installation	Installation of any service option including SDP configuration.	$700/circuit/installation.

(5) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.

(6) ''New NTF subscribers'' are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

(e) No change.

* * * * *

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

Nasdaq currently offers market participants and other Nasdaq subscribers two messaging protocols for communicating with Nasdaq systems: Computer-to-computer interface (''CTCI'') and application programming interface (''API''). Effective August 25, 2003, Nasdaq expanded the connectivity options available to its subscribers by introducing the FIX protocol as a means of accessing SuperMontage. The FIX protocol was first developed in 1992, and since that time has become the dominant protocol for messaging among equity market participants. FIX is now used by over 50% of all U.S. firms in the equity securities business, and its users include market makers and other broker-dealers, institutional investors, electronic communications networks (''ECNs''), and national securities exchanges.

Nasdaq proposes to amend Rule 7010(f) to reflect the various pricing options that will be available to firms that connect through FIX. Firms that already have dedicated CTCI circuits will be able to use FIX over their existing circuits. Thus, these firms will be able to begin using FIX immediately, without having to incur the costs or delays associated with installation of new circuits. Moreover, the charges for circuits used to support both FIX and CTCI will be the same as the current charges for CTCI-only circuits (although a firm that increases its bandwidth usage as a result of using FIX may have to install additional circuits or pay the existing bandwidth enhancement fee of $600 per 64 kilobit per second increase if it exhausts its existing available bandwidth).[4] However, Nasdaq will assess a ''port charge'' of $300 per month for each port (*i.e.*, a connection to a server that operates off of the circuit) that uses FIX, with the first port provided free of charge to firms with direct connections. Each customer will determine the number of ports that it requires, based on its message traffic needs.

A firm that does not currently have CTCI circuits will be able to obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI circuits, or will be able to obtain dual 128 kb circuits to support FIX only at a reduced rate of $4,000 per month (compared with the $8,000 per month charge of 128 kb circuits that support CTCI and FIX). The lower fee reflects the lower costs to Nasdaq of supporting FIX (as compared with CTCI), as well as the more limited range of functionality that will be accessible to firms through FIX.[5] Firms will also be able to connect to Nasdaq indirectly through service bureaus and third-party private networks that provide the option of FIX connectivity to their subscribers. In such cases, Nasdaq will charge for FIX or CTCI/FIX circuits if any must be supplied by Nasdaq to establish connectivity, and will also charge the end user a port charge of $300 per month for each port that it requires, based on its message traffic needs.

Firms wishing to use FIX were able to begin testing FIX connectivity during the month of August 2003. Accordingly, Nasdaq also proposes to amend Rule 7050(d), which lists the fees for the Nasdaq Testing Facility (''NTF''). The NTF will be available for testing FIX connectivity at the same rates that currently apply to CTCI/API testing. The fees for testing without a dedicated testing circuit are: (i) $285 per hour for an active connection during the normal operating hours of the NTF, (ii) $75 per hour for an idle connection during normal operating hours; and (iii) $333 per hour for an active or idle connection at times other than normal operating hours. In addition, firms have the option of obtaining dedicated 56kb testing circuits at a rate of $1,100 for one CTCI/FIX circuit or $1,800 for two circuits usable for API, CTCI, and FIX. Hourly fees also apply to testing through dedicated circuits, with the exception of the charge for idle connections during normal operating hours. Pursuant to Rule 7050(d)(3)(A), however, the hourly fees will not be applied to testing conducted prior to August 25, 2003. Moreover, pursuant to Rule 7050(d)(3)(C), the hourly fees will not be applied thereafter to a new FIX subscriber until 30 days after it commences testing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] including Section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to subscriber needs and market demands, the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

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.

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

[4] The term ''bandwidth'' refers to the amount of data that can be transmitted over a circuit in one second. Accordingly, bandwidth enhancements allow a subscriber to send and receive a greater volume of data over a circuit.

[5] CTCI and API can be used to access a range of Nasdaq systems, including SuperMontage, ACT and Nasdaq InterMarket. At the time of its introduction in late August 2003, however, FIX may be used solely to access SuperMontage. Based on user demand, Nasdaq will evaluate whether to make additional Nasdaq functionality available through FIX in the future.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–118 and should be submitted by September 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23228 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No.34–48450; File No. SR–NASD–2003–105]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Implement a Six-Month Pilot Program Establishing Fees for Written Interpretations of Nasdaq Listing Rules

September 4, 2003.

On July 3, 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''), 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 implement a six-month pilot program to establish fees for written interpretations of Nasdaq listing rules.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on August 4, 2003.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

Nasdaq currently provides written interpretations regarding the application of its listing rules to particular sets of facts, at no cost, to issuers who request them. According to Nasdaq, the transactions for which issuers are seeking interpretations have grown in complexity and have resulted in its staff spending an increased amount of time on interpretation letters. In order to address the associated costs, Nasdaq proposes to charge, on a six-month pilot basis, fees for providing written interpretations. Under the pilot, Nasdaq would charge $2,000 for interpretation letters, with a response generally provided within four weeks. Additionally, Nasdaq would charge a $10,000 fee for expedited interpretation letters, with a response generally provided within one to four weeks. Nasdaq would not impose fees for requests related to initial listing on Nasdaq or requests for an exception from NASD Rule 4350(i)(2). The Nasdaq Board of Directors will also have the discretion to defer or waive all or any part of the written interpretation fee. Nasdaq has proposed to make the pilot program effective on the latter of October 1, 2003 or the date of Commission approval.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons. The Commission believes that the written interpretation fee is reasonably related to the purpose of covering the costs of providing written interpretations and is fairly allocated among issuers. The Commission also notes that the fee is being implemented on a six-month pilot basis and that Nasdaq will evaluate its impact on issuers at the end of the pilot period and report to the Commission its findings.

Finally, the rule proposal provides the Nasdaq Board of Directors or its designee with the discretion to defer or waive all or any part of the written interpretation fee in order to address exceptional situations where the payment of a fee for an interpretation letter would be inequitable under the circumstances (*e.g.*, in cases of economic hardship). The Commission notes that such discretion may not be used in generally applicable or frequently-replicated situations.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2003–105) be, and it hereby is, approved, as a six-month pilot, through March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland

Deputy Secretary

[FR Doc. 03–23288 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b—4.

[3] The Commission notes that Nasdaq submitted two amendments to its Form 19b-4 to indicate the review and approval of the proposed rule change by the NASD Board of Governors. The amendments were technical in nature and did not require notice and comment. *See* letters from John D. Nachmann, Senior Attorney, Nasdaq to Katherine England, Assistant Director, Commission, dated July 23, 2003 and August 1, 2003.

[4] *See* Securities Exchange Act Release No. 48236 (July 28, 2003), 68 FR 45865.

[5] In approving this proposal, 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. 78o–3(b)(5).

[7] *See* letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to T. Grant Callery, Executive Vice President and General Counsel, NASD (March 27, 2003).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48456; File No. SR–PCX–2003–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Processing of Market Orders Prior to the Opening of the Primary Market

September 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 2003, the Pacific Exchange, Inc. (''PCX'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'') proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, PCX proposes to amend its rules related to Market Order processing for exchange-listed securities and Nasdaq securities.[3] Specifically, the proposed rule change would set forth: (1) The processing of Market Orders for exchange-listed securities and Market Orders for Nasdaq securities during the Market Order Auction (''MOA'') and transition to the Core Trading Session;[4] and (2) the circumstances under which Market Orders for exchange-listed securities would be converted into Primary Only Orders (''PO Orders'')[5] following the conclusion of the MOA.

The text of the proposed rule change is below. Proposed additions are in italics and proposed deletions are in [brackets].

PCX Equities, Inc.

Rule 7; Equities Trading; Opening Session Auctions

Rule 7.35(a)–(d)—(No change.)

Rule 7.35(e) Transition to Core Trading Session.

(1) *For exchange-listed securities:*

(A) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(B) [(2)] Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C)*, Rule 7.35(e)(1)(E) or Rule 7.35(e)(1)(F).*

(C) [(3)] Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(D) Market orders entered before 6:28 am (Pacific Time), but unmatched during the Market Order Auction, shall be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, and thereafter routed to the primary market for execution.

(E) Market orders entered on the same side of the Imbalance between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction are eligible for the Market Order Auction and shall be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, and thereafter routed to the primary market for execution.

(F) If no Imbalance exists between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, any market orders entered during that time are ineligible for the Market Order Auction and shall be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, and thereafter routed to the primary market for execution.

(G) Market orders entered at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, but before the primary market has opened, shall be converted into PO Orders and thereafter routed to the primary market for execution.

(2) For Nasdaq securities:

(A) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(B) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which is eligible for either the Market Order Auction or the Core Trading Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.35(c)(2)(C), Rule 7.35(e)(1)(E) or Rule 7.35(e)(1)(F).

(C) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(D) Market orders entered before 6:28 am (Pacific Time), but unmatched during the Market Order Auction, shall become eligible for execution in the Core Trading Session at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.

(E) Market orders entered on the same side of the Imbalance between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction are ineligible for the Market Order Auction and shall be queued until 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, at which time the queued market orders shall become eligible for execution during the Core Trading Session.

(F) If no Imbalance exists between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, any market orders entered during that time shall be queued until 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, at which time those market orders shall become eligible for execution during the Core Trading Session.

(f)—(No change.)

* * * * *

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

With this filing, PCX proposes to amend its rules related to Market Order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rule 1.1(aa) for the definition of ''Nasdaq Security.''

[4] ArcaEx operates three trading sessions each day the PCXE is opened for business. The trading sessions are: (1) Opening Session; (2) the Core Session; and (3) the Late Trading Session. *See* PCXE Rule 7.34(a). The MOA occurs during the Opening Session. *See* PCXE Rule 7.34(a)(2) and PCXE Rule 7.35(c) for a detailed discussion of the Market Order Auction.

[5] For exchange-listed securities only, a PO Order is ''a market order that is to be routed as a market order to the primary market. Such PO Orders may be entered until a cut-off time as determined from time to time by the Corporation* * *'' *See* PCXE Rule 7.31(x).

processing of exchange-listed securities and Nasdaq securities. Specifically, PCX intends to amend PCXE 7.35(e) to set forth the treatment of Market Orders following the MOA and during the transition to the Core Trading Session.

a. Exchange-listed Securities

Currently, Market Orders for exchange-listed securities that are entered on the same side of the Imbalance [6] during the time period 6:28 a.m. to 6:30 a.m. (Pacific Time) (hereinafter referred to as the ''Core Freeze'') are queued for execution and released into the market following the MOA. Accordingly, at the conclusion of the MOA (6:30 a.m. Pacific Time), the orders are released for execution in the ArcaEx system even though the primary markets (New York Stock Exchange and American Stock Exchange) are not open. This may result in trades being executed at prices outside of normal parameters. Currently, in such circumstances, the PCXE will either modify or cancel the execution price of a transaction that results from a ''Clearly Erroneous'' execution in accordance with PCXE Rules 7.10 and 7.11.

In order to prevent the Market Orders for exchange-listed securities from executing at disparate prices and subsequently printing the erroneous prices to the consolidated tape, the PCX now proposes to amend PCXE Rule 7.35(e) to state that Market Orders that are entered on the same side of the Imbalance during the Core Freeze will be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the MOA, whichever is later, and thereafter routed to the primary market for execution. Once the primary market has opened, those orders would be processed in a manner consistent with how those order types are currently processed during the Core Trading Session.[7]

Likewise, if no Imbalance exists during the Core Freeze, any Market Orders for exchange-listed securities entered during that time are ineligible for the MOA. Instead, those Market Orders will also be converted into PO Orders at 6:30 am (Pacific Time) or at the conclusion of the MOA, whichever is later, and thereafter routed to the primary market for execution.

Additionally, Market Orders for exchange-listed securities that are: (1) Entered before 6:28 a.m. (Pacific Time) but unmatched during the MOA; or (2) are entered at 6:30 a.m. (Pacific Time) or at the conclusion of the MOA, whichever is later, but before the primary market has opened, shall be converted into a PO Order and thereafter routed to the primary market for execution.

b. Nasdaq Securities

The PCX proposes to amend PCXE Rule 7.35(e) to provide for additional criteria for processing Market Orders for Nasdaq securities. Accordingly, Market Orders for Nasdaq securities entered before 6:28 a.m. (Pacific Time) but unmatched during the MOA, shall become eligible for execution at 6:30 a.m. (Pacific Time) or at the conclusion of the MOA, whichever is later.

Market Orders for Nasdaq securities entered on the same side of the Imbalance during the Core Freeze, are ineligible for the MOA and shall be queued until 6:30 a.m. (Pacific Time) or the conclusion of the MOA, whichever is later, at which time the queued Market Orders shall become eligible for execution during the Core Trading Session.

Finally, if no Imbalance exists during the Core Freeze, any Market Orders for Nasdaq securities entered during that time shall be queued until 6:30 a.m. (Pacific Time) or at the conclusion of the MOA, whichever is later, at which time those Market Orders shall become eligible for execution during the Core Trading Session.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with Section 6(b) [8] of the Act, in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that: (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 have the effect of limiting the access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A) [10] of the Act and Rule 19b–4(f)(5) [11] thereunder,

At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–45 and should be submitted by October 3, 2003.

[6] *See* PCXE Rule 1.1(q) and PCXE Rule 1.1(r) for a definition of the terms ''Imbalance' and ''Indicative Match Price,'' respectively.

[7] Once routed to an away market, the orders will be subject to the applicable trading rules of the relevant primary market.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23289 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–U

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48449; File No. SR–Phlx–2003–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. to Revise Its Schedule of Dues, Fees and Charges to Adopt a Registered Representative Termination Fee

September 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to 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 Phlx amended its proposal on August 21, 2003[3] and August 28, 2003.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter (with exhibits) from Murray L. Ross, Vice President and Corporate Secretary, Phlx, to Cyndi Rodriguez, Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 21, 2003 (''Amendment No. 1''). In Amendment No. 1, the Phlx added a footnote in its schedule of dues, fees and charges clarifying the group of individuals that would be covered under its fees for the registered representative categories and provided an anticipated implementation date for the registered representative termination fee.

[4] *See* letter (with exhibits) from Murray L. Ross, Vice President and Corporate Secretary, Phlx, to Cyndi Rodriguez, Special Counsel, Division, Commission, dated August 28, 2003, replacing Form 19b–4 in its entirety (''Amendment No. 2''). In Amendment No. 2, the Phlx made technical changes to its schedule of dues, fees and charges to comply with Form 19b–4 and clarified in its discussion that the implementation date for the proposal was August 18, 2003 and that proposed footnote twenty (20) in its fee schedule would specify that the registered representatives categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom limited general securities registered representatives and shall not apply to ''off-floor'' traders, as defined in Phlx Rule 604(e).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to adopt a registered representative[5] termination fee of $30.00.[6] The Exchange implemented this registered representative termination fee on August 18, 2003, a date agreed upon with the National Association of Securities Dealers, Inc. (''NASD''), which notified the Exchange that they were prepared to bill and collect the termination fee consistent with current practice.[7]

Furthermore, the Exchange proposes to add new footnote number twenty (20) and renumbered former footnote number twenty (20) as footnote number twenty-one (21). New footnote number twenty (20) specifies that the registered representatives categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom limited general securities registered representatives and shall not apply to ''off-floor'' traders, as defined in Phlx Rule 604(e), thereby clarifying coverage of the fees.

The schedule of dues, fees and charges is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[5] Registered representative categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom limited general securities registered representatives.

[6] *See* Exchange Rule 604, Registration and Termination of Registered Persons. This proposal, as amended, does not apply to ''off-floor'' traders, as defined in Phlx Rule 604(e). The Phlx states that off-floor traders are assessed a separate fee and are not charged the Exchange's registered representative initial, renewal, or transfer fees. *See* Securities Exchange Act Release No. 47124 (January 3, 2003), 68 FR 1497 (January 10, 2003) (SR–Phlx–2002–84).

[7] The termination fee was charged beginning on August 18, 2003. Currently, the NASD bills and collects the Exchange's as well as other exchanges' registered representative initial, renewal and transfer fees.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to amend its schedule of dues, fees and charges to adopt a registered representative termination fee of $30.00. The Exchange states that the purpose of the proposed rule change, as amended, is to generate revenue for the Exchange, which should, in turn, help to offset the cost of increased regulatory efforts by the Exchange. The Exchange represents that this fee is comparable to one imposed by the Chicago Board Options Exchange, Inc. and the American Stock Exchange LLC.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments on the proposed rule change, as amended, were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder[12] because it establishes or

[8] *See* Securities Exchange Act Release Nos. 46266 (July 25, 2002), 67 FR 49969 (August 1, 2002) (SR–CBOE–2002–37) and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (SR–Amex–2001–22). Both exchanges charge a $30 registered representative termination fee.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, as amended, 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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 Phlx. All submissions should refer to File No. SR–Phlx–2003–55 and should be submitted by October 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23227 Filed 9–11–03; 8:45 am]

BILLING CODE 8010–01–P

[13] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on August 28, 2003, the date at which the Exchange filed Amendment No. 2.

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P012]

State of Florida; Amendment #2

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 22, 2003, August 29, 2003, and September 3, 2003, the above numbered declaration is hereby amended to include Hernando County in the State of Florida as a disaster area due to damages caused by severe storms and flooding, and to establish the incident period for this disaster as beginning June 13, 2003 and continuing through August 22, 2003.

In addition, the above numbered declaration is hereby amended to include Dixie and Taylor Counties in the State of Florida for emergency protective measures (Category B) under the Public Assistance program.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 29, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: September 8, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–23279 Filed 9–11–03; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3540]

State of Nevada

Clark County and the contiguous counties of Lincoln and Nye in the State of Nevada; Mohave County in the State of Arizona; and San Bernardino and Inyo Counties in the State of California constitute a disaster area due to widespread flash flooding that occurred on August 19, 2003, in the City of Las Vegas and portions of Clark County. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 3, 2003, and for economic injury until the close of business on June 4, 2004, at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795,

Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.125
Homeowners without credit available elsewhere	2.562
Businesses with credit available elsewhere	6.199
Businesses and non-profit organizations without credit available elsewhere	3.100
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.100

The number assigned to this disaster for physical damage is 354006 for Nevada; 354106 for Arizona; and 354206 for California. The number to this disaster for economic injury damage is 9W8400 for Nevada; 9W8500 for Arizona; and 9W8600 for California.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 4, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–23278 Filed 9–11–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Public Meeting

The SBA Advisory Committee on Veterans Business Affairs

The U.S. Small Business Administration (SBA), pursuant to the Veterans Entrepreneurship and Small Business Development Act of 1999 (Public Law 106–50), will be hosting its third meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be held on September 22–23, 2003 from 9am–5pm at the SBA located at 409 3rd Street, SW., Washington, DC 20416 in the Eisenhower Conference Room located on the 2nd Floor. On September 24, 2003, the meeting will be held from 9am–12pm in the Office of the General Counsel's conference room, located on the 5th floor at the same location.

If you have any questions or concerns regarding the meeting, please contact Cheryl Clark in The Office of Veterans Business Development (OVBD) at (202) 205–6773.

Scott R. Morris,

Deputy Chief of Staff.

[FR Doc. 03–23277 Filed 9–11–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4482]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rembrandt's Journey: Painter, Draftsman, Etcher''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19,1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Rembrandt's Journey: Painter, Draftsman, Etcher,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Boston, MA, from on or about October 26, 2003, to on or about January 18, 2004, Art Institute of Chicago, Chicago, IL, from on or about February 14, 2004, to on or about May 9, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 5, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–23285 Filed 9–11–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4481]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Raphael, Cellini and a Renaissance Banker: The Patronage of Bindo Altoviti''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Raphael, Cellini and a Renaissance Banker: The Patronage of Bindo Altoviti,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Isabella Stewart Gardner Museum, Boston, MA, from on or about October 7, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 5, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–23284 Filed 9–11–03; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 4412]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces a meeting of the U.S. Advisory Commission on Public Diplomacy on Thursday, September 25, 2003, in Room 1105, U.S. Department of State, Washington, DC from 10 a.m. to 12 p.m.

The Commission, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will have discussion about recent public diplomacy occurrences.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles ''Tre'' Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information or to attend the meeting, please contact Matt Lauer at (202) 203–7880.

Dated: September 5, 2003.

Matthew Lauer,

U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03–23282 Filed 9–11–03; 8:45 am]

BILLING CODE 4710–11–U

DEPARTMENT OF STATE

[Public Notice 4480]

Department of State Performance Review Board Members (At Large Board)

In accordance with section 4314 (c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following individuals to the Department of State Performance Review Board (At-Large):

Janice H. Brambilla, Senior Advisor, Office of the Under Secretary for Public Diplomacy and Public Affairs, Department of State;

David S. Mathias, Assistant Legal Advisor, Office of the Legal Advisor, United Nations Affairs, Department of State;

Cathleen E. Lawrence, Executive Director, Bureau of Nonproliferation, Department of State;

Lawrence R. Baer (Outside Member), Dean, School of Professional and Area Studies, Foreign Service Institute, Department of State;

William E. Todd, Controller/Executive Director, Bureau for International Narcotics and Law Enforcement, Department of State;

James L. Millette, Deputy Assistant Secretary, Bureau of Resource Management, Department of State.

Dated: September 5, 2003.

Ruth A. Whiteside,

Acting Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 03–23283 Filed 9–11–03; 8:45 am]

BILLING CODE 4710–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–54]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on September 9, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No. FAA–2002–11998.

Petitioner: Bombardier Aerospace.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/Disposition: To provide relief from the general occupant protection requirements of § 25.785(b) for persons occupying multiple-place side-facing seats during takeoff and landing on Bombardier Model BD100–1A10 airplanes manufactured prior to January 1, 2004.

Grant, 09/02/2003, Exemption No.7884A.

Docket No.: FAA–2002–13385.

Petitioner: Bombardier Aerospace.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/Disposition: To provide relief from the general occupant protection requirements of § 25.785(b) for persons occupying multiple-place side-facing seats during takeoff and landing on Bombardier Model BD700–1A10 airplanes manufactured prior to January 1, 2004.

Grant, 09/02/2003, Exemption No.7120C.

[FR Doc. 03–23295 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order—TSO–C39c, 9g Transport Airplane Seats Certified by Static Testing

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on a proposed Technical Standard Order (TSO) C39c, 9g Transport Airplane Seats Certified by Static Testing. The proposed TSO–C39c prescribes the minimum performance standard (MPS) that a seat to be used in a 9g transport category airplane must meet in order to bear the TSO number on its identification plate. This notice also proposes how existing TSO–C39b will be approved for future TSO applications for seats used in normal, utility and acrobatic airplanes and rotorcraft.

DATES: Comments must identify the TSO and be received on or before October 15, 2003.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Hal Jensen, AIR–120. Or, deliver comments to: Federal Aviation Administration, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Jensen, FAA, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs Branch, AIR–120, Room 835, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–8807; fax: (202) 267–5340; e-mail *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO by submitting such written data, views, or arguments, as they desire, to the aforementioned specified address. Comments received on the proposed TSO may be examined, before the closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

In response to a recommendation the Federal Aviation Administration (FAA) streamline the aircraft seat certification processes, we issued a proposed Technical Standard Order (TSO)—C39c, Aircraft Seats and Berths, dated July 12, 2003. The purpose of the proposed TSO–C39c, was to improve the consistent application and interpretation in certifying the 9g static requirement for aircraft seats, and those aircraft seats that must meet the 9g static and 16g dynamic requirements of TSO–C127 and TSO–C127a (TSO–C127/127a).

After considering the comments received, based on our July 12, 2003, request, we decided the FAA and the public would not benefit by combining the static requirements of TSO–C39c with the static requirements of TSO–C127a in this proposed revision. Therefore, proposed TSO–C39c will reference the Society of Automotive Engineers (SAE) Aerospace Standard (AS) 8049, Performance Standards for Seats in Civil Rotorcraft, Transport Aircraft, and General Aviation Aircraft, Rev. A., resulting in the TSO applying only to 9g transport category airplane seats certified by static testing. Note however, the applicability of TSO–C39b, referencing the National Aircraft Standard (NAS) 809, Specification—Aircraft Seats and Berths, will apply to approval of aircraft berths and 9g seats in normal and utility (Type II), acrobatic (Type III), and rotorcraft (Type IV) only.

Although this proposal splits the TSO–C39 by revisions based on the seat's aircraft applicability, we believe it will resolve more issues than other options would introduce. Therefore, based on the public comments received, we determined the technical and procedural issues of standardizing the static requirements of TSO–C39b and

TSO–C127/127a for transport airplanes is achievable. We also determined standardizing would provide little benefit and potentially higher cost for manufacturers of aircraft seats used in non-transport category airplanes. We accomplish this by referencing the proper industry standard, NAS 809 or SAE AS8049, based on seat ''Type'' used in TSO–C39b and TSO–C39c respectively.

How To Obtain Copies

A copy of the proposed TSO may be obtained via the Internet at, *http://www.faa.gov/certification/aircraft/TSOA.htm,* or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Dated: Issued in Washington, DC, on September 8, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–23302 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2003 16113]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 12, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Lesnick, Maritime Administration, (MAR–830), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–1624, FAX: 202–366–6988; or E–MAIL: *keith.lesnick@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Port Facility Conveyance Information.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0524.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Public Law 103–160, which is included in 40 U.S.C. 554 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program.

Need and Use of the Information: The information collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment plan; (2) the plan is in the best interests of the public, and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Description of Respondents: Eligible state and local public entities.

Annual Responses: Six respondents.

Annual Burden: 768 burden hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or 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*.

Dated: September 8, 2003.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–23281 Filed 9–11–03; 8:45 am]

BILLING CODE 4910–81–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–16042]

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Emergency **Federal Register** notice.

SUMMARY: NHTSA has submitted the following request for emergency processing of a public collection of information to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the collection of information and its expected burden on the public.

This document describes a collection of information by special order for tire pressure monitoring system (TPMS) data from major motor vehicle manufacturers and TPMS suppliers that have a presence in the USA. NHTSA seeks OMB approval of that collection.

Comments: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: Desk Officer for the National Highway Traffic Safety Administration.

DATES: OMB approval was granted on September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Dorothy Nakama, Office of the Chief Counsel, NHTSA, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Ms. Nakama's telephone number is (202) 366–2992.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Special Order for Tire Pressure Monitoring Systems.

OMB Clearance Number—2127–0633.

Expiration Date of Approval—December 31, 2003.

Summary of Collection of Information—The information requested from the vehicle manufacturers includes a list of all vehicle models available for sale or lease in the USA that indicates the motor vehicle manufacturers' actual or planned TPMS for each vehicle model for model years (MY) 2001 to 2008. The information requested from TPMS suppliers includes current and future production capability of TPMSs for motor vehicles available for sale in the USA.

Description of the Likely Respondents (Including Estimated Number and Frequency of Responses to the Collection of Information)

The tire pressure monitoring system data will be collected from:

(1) Vehicle manufacturers that sell light vehicles having a gross vehicle weight rating of less than 10,000 pounds (except motorcycles, low-speed vehicles, and trailers) in the United States.

(2) TPMS suppliers that manufacture for sale TPMSs for the above vehicles.

This information will be provided by the respondents in a prescribed electronic readily available format, such as Microsoft Word and Microsoft Excel, for ease of searching, storing, and evaluation.

For both groups of manufacturers, the company that historically reports phase-in compliance information to the agency will collect the data from their respective subsidiaries or affiliates. This comports with the manner in which each manufacturer complies with other phase-in requirements.

This information will be used by NHTSA to determine the lead-time and phase-in schedule needed by vehicle manufacturers to comply with a Federal Motor Vehicle Safety Standard (FMVSS) concerning TPMSs.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information

NHTSA estimates that the requested information is readily available from records already kept and maintained by the potential respondents. NHTSA believes that the burden incurred by vehicle manufacturers will be limited to a review of actual production or planned production previously determined by the respondent to determine the type of TPMS that was or will be installed in the vehicles. For TPMS suppliers, the burden should be less, as they will state current capacity and estimate future capacity to supply vehicle manufacturers. Also, this is a one-time request with no recurring costs. Taking these factors into account, NHTSA estimates that 65 burden-hours of time per vehicle manufacturer are sufficient for even the largest manufacturers with several makes and models. For TPMS suppliers, the burden is less since the suppliers are not as complex as vehicle manufacturers. As such, NHTSA estimates that 30 burden-hours per TPMS supplier are sufficient for even the largest supplier. It is estimated that this collection affects approximately 27 respondents. The estimates of the burden-hours on the respondents is as follows:

Automobile manufacturers that sell light vehicles in the U.S. that weigh less than 10,000 pounds GVWR (except motorcycles, low-speed vehicles, and trailers).	General Motors DaimlerChrysler Toyota etc., for a total of 14 manufacturers.	65 hours per company.
TPMS manufacturers that sell original equipment TPMs for the above vehicles.	TRW Delphi Visteon etc., for a total of 13 suppliers.	30 hours per company.
Total	27 companies	1300 burden-hours.

Estimate of the Total Annual Costs of the Collection of Information

There are no annual or recurring costs to respondents associated with this one-time data collection. The only cost incurred by the Federal Government, beyond normal overhead costs associated with the daily activities of NHTSA's Office of Rulemaking, is 20 hours for agency personnel to analyze the data received as a result of this collection. Each hour is estimated to cost $40.00 for a total cost of $800 ($40.00 × 20).

Issued: September 10, 2003.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 03–23409 Filed 9–10–03; 1:01 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34390]

Winchester and Western Railroad Company, New Jersey Division—Acquisition Exemption—Line of Consolidated Rail Corporation

Winchester and Western Railroad Company (W&W), New Jersey Division, a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 1.4 miles of railroad from Consolidated Rail Corporation (Conrail), known as a portion of the Millville Industrial Track. The trackage extends between milepost 39.4, located between Conrail's Millville Yard and Second Street, and milepost 40.8, located south of the intersection of Sixth and Smith Streets, in Millville, Cumberland County, NJ. The property to be acquired also includes a short stub-ended spur track.[1] W&W currently operates over the line under an interchange agreement with Conrail.

W&W certifies that its projected annual revenues as a result of this transaction will not exceed $5 million, and thus the transaction will not result in the creation of a Class I or Class II rail carrier.

W&W intended to consummate this transaction on or about September 2, 2003.[2]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34390, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on applicant's representative: John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–23170 Filed 9–11–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Conrail has reserved for itself a permanent freight operating easement beginning at milepost 39.4 and extending south and consisting of sufficient footage of track solely to accommodate headroom or tailroom for an approximate 100-car unit train, being approximately 6,000 feet in length. The purpose of this easement will be to facilitate Conrail switching and train movements in the yard.

[2] The effective date of the exemption was September 1, 2003 (7 days after the exemption was filed).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34386]

R.J. Corman Equipment Company, LLC—Acquisition Exemption—Lines of CSX Transportation, Inc.

R.J. Corman Equipment Company, LLC (RJCE), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT), approximately 100.04 miles of rail line in Kentucky. Pursuant to an agreement to be entered into between RJCE and CSXT, RJCE will acquire CSXT's line of railroad, known as the Old Road, extending between approximately milepost 12.49 at HK Tower in Anchorage, KY (near Louisville), and approximately milepost 113.81 in Winchester, KY, a distance of approximately 91.48 miles.[1] In addition, RJCE will acquire the following associated branch lines: (1) The Bloomfield Branch, extending from a connection with the Old Road main line at milepost 30.64 to milepost 33.71, a distance of approximately 3.07 miles, in Shelbyville, KY; and (2) the Chilesburg Branch, extending from a connection with the Old Road main line at milepost 643.90 in Lexington, KY (milepost 97.74 on the Old Road main line), to milepost 638.41 near Cadentown, KY, a distance of approximately 5.49 miles. RJCE will also acquire certain industrial, spur and yard tracks in Lexington and Frankfort, KY. RJCE states that it will purchase the track and materials from CSXT and will lease the underlying real estate from CSXT for 15 years. CSXT will retain restricted overhead trackage rights on the portion of the Old Road between Winchester and Lexington for the operation of unit coal trains.

Based on projected annual revenues for the line, RJCE states that it expects to remain a Class III rail carrier after consummation of the proposed transaction. It certifies that its projected annual revenues do not exceed those that would qualify it as a Class III rail carrier. Nevertheless, RJCE certified to the Board on July 31, 2003, that a 60-day notice of this transaction, pursuant to 49 CFR 1150.42(e), was posted at the workplace of the employees on the Old Road line and was served on the national offices of the labor unions with employees on the Old Road.

[1] RJCE states that there are milepost equations on the line: At Christianburg, KY, where milepost 39.52 = milepost 49.46; at Lexington, KY, where milepost 93.43 = milepost 96.89; and near Montrose, KY, where milepost 102.76 = milepost 99.20.

RJCE states that it intends to consummate the transaction on September 30, 2003 (60 days after its certification to the Board under 49 CFR 1150.42(e)).

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34387, *R.J. Corman Railroad Company/Central Kentucky Lines—Lease Exemption—Lines of R.J.Corman Equipment Company, LLC*, wherein R.J. Corman Railroad Company/Central Kentucky Lines (RJCK) will lease and operate the line and associated branch lines being acquired by RJCE.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34386, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Ronald A. Lane, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2875.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*''.

Decided: September 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–23257 Filed 9–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34387]

R.J. Corman Railroad Company/Central Kentucky Lines—Lease and Operation Exemption—Lines of R.J. Corman Equipment Company, LLC

R.J. Corman Railroad Company/Central Kentucky Lines (RJCK), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from R.J. Corman Equipment Company, LLC (RJCE) and to operate 100.04 miles of RJCE's line of railroad and associated branch lines. The line extends from approximately milepost 12.49 at HK Tower in Anchorage, KY (near Louisville), to approximately milepost 113.81 in Winchester, KY, a distance of approximately 91.48 miles.[1] The associated branch lines include: (1) The Bloomfield Branch, extending from a connection with the Old Road main line at milepost 30.64 to milepost 33.71, a distance of approximately 3.07 miles, in Shelbyville, KY; and (2) the Chilesburg Branch, extending from a connection with the Old Road main line at milepost 643.90 in Lexington, KY (milepost 97.74 on the Old Road main line), to milepost 638.41 near Cadentown, KY, a distance of approximately 5.49 miles. RJCK will also lease and operate certain industrial, spur and yard tracks in Lexington and Frankfort, KY. RJCK will operate and provide all rail common carrier service on the Old Road. CSXT will retain overhead trackage rights on the portion of the Old Road between Winchester and Lexington.

Based on projected annual revenues for the line, RJCK states that it expects to remain a Class III rail carrier after consummation of the proposed transaction. It certifies that its projected annual revenues do not exceed those that would qualify it as a Class III rail carrier. Nevertheless, RJCK certified to the Board on July 31, 2003, that it had posted a 60-day notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line and that it had served a copy of the notice of intent on the national offices of all labor unions with employees on the rail line. *See* 49 CFR 1150.42(e).

RJCK states that it intends to consummate the transaction on September 30, 2003 (60 days after its certification to the Board under 49 CFR 1150.42(e)), and commence operations on October 1, 2003.

This transaction is related to STB Finance Docket No. 34386, *R.J. Corman Equipment Company, LLC—Acquisition Exemption—Lines of CSX Transportation, Inc.*, wherein RJCE seeks to acquire the line and associated branch lines from CSX Transportation, Inc.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34387, must be filed with the Surface Transportation Board, 1925

[1] There are milepost equations at Christianburg, KY, where milepost 39.52 = milepost 49.46; at Lexington, KY, where milepost 93.43 = 96.89; and near Montrose, KY, where milepost 102.76 = milepost 99.20.

K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Ronald A. Lane, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2875.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–23258 Filed 9–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Allocation Availability Inviting Applications for the New Markets Tax Credit Program: Change of Certain Deadlines; New Markets Tax Credit Program Allocation Application: CDE Registration

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Allocation Availability (''NOAA'') inviting applications for the second round of the New Markets Tax Credit (''NMTC'') Program: Change of Certain Deadlines; NMTC Program Allocation Application: CDE Registration.

Change of Certain Deadlines: On July 18, 2003, the Community Development Financial Institutions Fund (the ''Fund'') announced in a NOAA for the NMTC Program (68 **Federal Register** 42806) that a request for a paper application must be made using the NMTC Paper Application Submission Form (available from the Fund's Web site at *http://www.cdfifund.gov*), and that the request must be received by the Fund by September 15, 2003. The NOAA also announced that the Fund will provide programmatic and information technology support related to the allocation application through September 26, 2003. Lastly, under the Eligibility section of the NOAA, the Fund announced that a prior Allocatee of the NMTC Program is not eligible to receive a NMTC Allocation pursuant to the NOAA unless the Allocatee can demonstrate via the Fund's allocation tracking system that, as of February 17, 2004, it has issued and the Allocatee has received cash from its investors for 50 percent of its Qualified Equity Investments relating to its prior NMTC Allocation. The February 17, 2004 deadline also applied if a prior Allocatee controls the applicant, is controlled by the applicant or shares common management officials with the applicant.

This notice is to announce that, due to delays in the development of the electronic application and related documents, and delays in the delivery of the allocation agreements to prior Allocatees, the Fund is extending the aforesaid deadlines as follows:

(1) *Paper Applications:* If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application using the NMTC Paper Application Submission Form, and the request must be received by the Fund by September 19, 2003. The NMTC Paper Application Submission Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by e-mail at *cdfihelp@cdfi.treas.gov* or by calling the Fund's NMTC Program help desk at (202) 622–7373. The completed NMTC Paper Application Submission Form should be directed to the Fund's Chief Financial Officer and must be sent by facsimile to (202) 622–8911.

The deadline for receipt of a paper application, including the requisite original signature page and all attachments, at the designated location is 5 p.m. ET on September 30, 2003. Paper applications received after that date and time will not be accepted for consideration and will be returned to the sender. Applications sent by facsimile or by e-mail will not be accepted.

(2) *Program and Information Technology Support:* The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through September 29, 2003. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on September 29, 2003, until after the allocation application deadline of September 30, 2003. Programmatic support can be obtained by calling (202) 622–7373 or through e-mail by sending questions or requests for programmatic assistance to *cdfihelp@cdfi.treas.gov.* Information technology support can be obtained by calling (202) 622–2455 or through e-mail by sending questions or requests for information technology assistance to *ithelpdesk@cdfi.treas.gov.*

(3) *Entities That Have Received NMTC Allocations in the Prior NMTC Program Allocation Round:* Applicants are hereby notified that success in a prior round of the NMTC Program or any of the Fund's other programs is not a predictor of success under the NOAA. A prior Allocatee of the NMTC Program is not eligible to receive a NMTC Allocation pursuant to the NOAA unless the Allocatee can demonstrate via the Fund's allocation tracking system that, as of March 5, 2004, it has issued and the Allocatee has received cash from its investors for 50 percent of its Qualified Equity Investments relating to its prior NMTC Allocation. Further, an entity is not eligible to receive a NMTC Allocation pursuant to the NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), has not, as of March 5, 2004, issued and received cash from its investors for 50 percent of its Qualified Equity Investments relating to a prior NMTC Allocation. For purposes of this section of the NOAA, the Fund will only count as ''issued'' those Qualified Equity Investments that have been recorded in the Fund's allocation tracking system by March 5, 2004. Allocatees and their Subsidiary transferees, if any, are advised to access the Fund's allocation tracking system to record each Qualified Equity Investment that they issue to an investor in exchange for cash.

CDE Registration: The Applicant Instructions section of the 2003 NMTC Program Allocation Application states that an applicant that is a Community Development Financial Institution (CDFI) or Specialized Small Business Investment Company (SSBIC) and is not currently certified as a qualified community development entity (CDE) must register as a CDE on the Fund's Web site by 5 p.m. ET on August 29, 2003 in order to be eligible to apply for an NMTC *Allocation.* The Fund has recently learned that some CDFIs or SSBICs may have experienced technical issues with accessing the Fund's CDE registration database which may have prevented such entities from registering as CDEs by the August 29, 2003 deadline. Such applicants are advised to contact Matthew Josephs, the Acting NMTC Program Manager, so that the Fund may determine whether they will be eligible to apply for a NMTC Allocation. All other information and requirements set forth in the July 18, 2003 NOAA for the NMTC Program and the 2003 NMTC Program Allocation Application shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: Applications and other information regarding the Fund and its programs

may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its website responses to questions of general applicability regarding the NMTC Program. If you have any general questions about the NMTC Program, contact Matthew Josephs, the Fund's Acting NMTC Program Manager. The Acting NMTC Program Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–7373, by facsimile at (202) 622–8911, or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue, NW, Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1T.

Dated: September 8, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–23280 Filed 9–11–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–43 and Revenue Ruling 97–39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1, and Revenue Ruling 97–39, Mark-to-Market Accounting Method for Dealers in Securities.

DATES: Written comments should be received on or before November 12, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure and revenue ruling should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1, and Revenue Ruling 97–39, Mark-to-Market Accounting Method for Dealers in Securities.

OMB Number: 1545–1558.

Revenue Procedure Number: Revenue Procedure 97–43.

Revenue Ruling Number: Revenue Ruling 97–39.

Abstract: Revenue Procedure 97–43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under regulation section 1.475(c)–1, subject to certain terms and conditions. Revenue Ruling 97–39 provides taxpayers additional mark-to-market guidance under section 475 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure or revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23319 Filed 9–11–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–130477–00: REG–130481–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–130477–00; REG–130481–00 (TD 8987) Required Distributions From Retirement Plans (§§ 1.401(a)(9)–1 and 1.401(a)(9)–4).

DATES: Written comments should be received on or before November 12, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington,

DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Required Distributions From Retirement Plans.

OMB Number: 1545–1573.

Regulation Project Number: REG–130477–00 and REG–130481–00.

Abstract: This regulation permits a taxpayer to name a trust as the beneficiary of the employee's benefit under a retirement plan and use the life expectancies of the beneficiaries of the trust to determine the required minimum distribution, if certain conditions are satisfied.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23320 Filed 9–11–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–37, Reverse Like-Kind Exchanges.

DATES: Written comments should be received on or before November 12, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reverse Like-Kind Exchanges.

OMB Number: 1545–1701.

Revenue Procedure Number: Revenue Procedure 2000–37.

Abstract: Revenue Procedure 2000–37 provides a safe harbor for reverse like-kind exchanges in which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under section 1031 of the Internal Revenue Code.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 1,600.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23321 Filed 9–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2000–35

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–35, Section 1445 Withholding Certificates.

DATES: Written comments should be received on or before November 12, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Carol.A.Savage@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 1445 Withholding Certificates.

OMB Number: 1545–1697.

Revenue Procedure Number: Revenue Procedure 2000–35.

Abstract: Revenue Procedure 2000–35 provides guidance concerning applications for withholding certificates under Code section 1445.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 60,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23322 Filed 9–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Multilingual Initiative Issue (MLI) Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Multilingual Initiative Issue Committee of the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, October 3, 2003 from 1 p.m. EDT to 4:30 pm EDT.

FOR FURTHER INFORMATION CONTACT: Inez De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Multilingual Initiative Issue Committee of the Taxpayer Advocacy Panel will be held Friday, October 3, 2003, from 1 pm EDT to 4:30 pm EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977. The agenda will include various IRS issues.

Dated: Septemebr 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–23323 Filed 9–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self-Employed E-Filing Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self-Employed E-Filing Issue Committee of the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, October 3, 2003 from 1 p.m. EDT to 4:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or 414–297–1619.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self-Employed E-Filing Issue Committee of the Taxpayer Advocacy Panel will be held Friday, October 3, 2003, from 1 p.m. EDT to 4:30 pm EDT at Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Written comments will be accepted by mail. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 414–297–1619, or write Mary Ann Delzer, TAP Office, 310 West Wisconsin Avenue Stop 1006MIL, Milwaukee, WI 53203–2221. Ms. Delzer can be reached at 1–888–912–1227 or 414–297–1619. The agenda will include various IRS issues.

Dated: September 5, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–23324 Filed 9–11–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold a meeting on September 24–25, 2003, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. On September 24, the meeting will begin at 8:30 a.m. and adjourn at 5 p.m. On September 25, the meeting will begin at 8 a.m. and adjourn at 2:30 p.m. The meeting is open to the public.

The purpose of the Commission is to provide advice and make recommendations to Congress and the Secretary of Veterans Affairs regarding legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA. The Commission is required to submit to Congress and the Secretary of Veterans Affairs a report, not later than two years from May 8, 2002, on its findings and recommendations.

On September 24, the Commission will discuss its final report, analyze key drivers of staff satisfaction/retention, and determine who should review the final Commission report. On September 25, the Commission will discuss recommendations for its final report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Commission in advance of the meeting, to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at the Department of Veterans Affairs (108N), 810 Vermont Avenue, NW, Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst, at (202) 273–4944.

Dated: September 5, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–23262 Filed 9–11–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Medical Research Service Merit Review Committee will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for—	Date(s)	Location
Cardiovascular Studies	October 16–17, 2003	Marriott Residence Inn.
Nephrology	October 20, 2003	Governor's House.
Respiration	October 20–21, 2003	Holiday Inn Central.
Neurobiology—B & D	October 23–24, 2003	Holiday Inn Central.
Gastroenterology	October 23–24, 2003	Marriott Residence Inn.
Hematology	October 27, 2003	Governor's House.
Epidemiology	November 6, 2003	Holiday Inn Central.
Neurobiology—C	November 14, 2003	Holiday Inn Central.
Neurobiology—A	December 1–2, 2003	Holiday Inn Central.
Oncology—A & B	December 4–5, 2003	Holiday Inn Central.

The addresses of the hotels are:
Governor's House, 1615 Rhode Island Avenue, NW, Washington, DC.
Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC.
Marriott Residence Inn (Thomas Circle), 1199 Vermont Avenue, NW., Washington, DC.

These subcommittee meetings are for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the pubic for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c) (6(and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, Ph.D., Chief, Program Review Division, Medical Research Service (121F), Department of Veterans Affairs, Washington, DC, (202) 408–3630.

Dated: September 5, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–23263 Filed 9–11–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e) notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently known as ''Health Administration Center Civilian

Health and Medical Care Records—VA (54VA17)'' as set forth in 65 FR 81572–81575, Dec. 26, 2000. VA is amending the system by renumbering the system of records to 54VA16 and revising the paragraphs for Categories of Individuals Covered by the System; Authority for Maintenance of the System; Purpose; Routine Uses or Records Maintained in the System, including Categories of Users and the Purposes of Such Uses; System Manager(s) and Address; and Record Source Categories. VA is republishing the system notice in its entirety at this time.

DATES: Comments on the amendment of this system of records must be received no later than October 14, 2003. If no public comment is received, the amended system will become effective October 14, 2003.

ADDRESSES: You may mail or hand-deliver written comments concerning the amended system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20240; or fax comments to (202) 273–9289; or email comments to *''OGCRegulations@mail.va.gov''.* All relevant material received before October 14, 2003 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

VA is renumbering the system of records from 54VA17 to 54VA16 to reflect organizational changes in the Department.

The Categories of Individuals Covered by the System has been amended to include eligible veterans and their dependents in the following programs administered by the Health Administration Center (HAC):

- Public Law 103–446, Title I: Persian Gulf War Veterans, § 107, mandates that the Secretary conduct a program to evaluate the health status of spouses and children of Persian Gulf War veterans.
- Title 38 U.S.C. 1803 requires VA to provide health care benefits to any birth child of a veteran who served in Vietnam during the Vietnam War and that child was born with the medical condition of spina bifida.
- Title 38 U.S.C. 1724 requires VA to manage health care benefits to veterans outside the United States if such care and services are needed for the treatment of a service-connected disability or as part of an approved VA vocational rehabilitation program.
- Title 38 U.S.C. 1813 requires VA to provide health care benefits to a birth child born with certain covered birth defects to a female Vietnam veteran.
- Title 38 U.S.C. Sections 1703, 1725 and 1728 govern VA payment for hospital care and medical services to veterans' authorized Non-VA health care.

The Authority for Maintenance of the System has been amended to provide updated regulatory and public law references. Public Law 107–135, Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, re-designated the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) program from 38 U.S.C. 1713 to 38 U.S.C. 1781.

The Purpose of this system of records is amended to include evaluation of health status of dependents of Persian Gulf War veterans, dependents of veterans eligible for Spina Bifida and Children of Women Vietnam Veterans health care, and veterans eligible to receive foreign medical benefits and Non-VA health care under VA auspices.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses is amended as follows:

- The word ''CHAMPVA'' in routine use number 1 is deleted. The routine use applies to all programs (categories of individuals covered by the system and categories of records in the system) administered by the Health Administration Center. CHAMPVA is only one of the programs in this system of records. The other programs are Foreign Medical Program, Spina Bifida Healthcare, Children of Women Vietnam Veterans Healthcare, Fee claims and Persian Gulf examination claims. Because the routine use disclosure authority will be applicable to all programs, unless otherwise designated, reference to the particular program has been deleted.
- In routine use number 1, a description of the means of disclosure has been added to reflect that the eligibility and claim information may be disclosed via call service center, general correspondence and interactive web-page. An additional phrase has also been inserted for the disclosure of information in response to inquiries that are made by a claimant's next of kin or person with whom the claimant has a meaningful relationship. This addition is being made to make the routine use authority compatible with the Health Insurance Portability and Accountability Act (HIPAA) provisions.
- Routine use number 3 has been amended in its entirety. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to state or local agencies charged with protecting the public's health as set forth in state law.
- Routine use number 4 has been amended to add the wording ''upon its request for use'' for VA to disclose records from this system of records to a Federal agency in the issuance of a security clearance, the investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting Agency, to the extent that the information is relevant and necessary to the requesting Agency's decision on the matter.
- Former routine uses numbers 5 and 6 have been deleted from this system of record. Upon review, it has been determined that these routine uses are no longer applicable to this system and, as such, are no longer required.
- Routine uses numbers 7 through 24 have been renumbered from 5 through 22.
- In routine use number 8 (formerly routine use number 10), the wording ''in order for the foregoing activities to prosecute or defend litigation involving or pertaining to the United States'' has been replaced with ''in order to prosecute or defend litigation involving or pertaining to the United States, or in which the United States has an interest'' to make the routine use more concise with its application.
- In routine use number 9 (formerly routine use number 11), the wording ''Any information in this system of records may be disclosed to a Federal

grand jury, a Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency'' has been replaced with ''Any information in this system of records may be disclosed to a Federal agency or party to an administrative proceeding being conducted by a Federal agency.'' The wording ''in order for VA to respond to and comply with the issuance of a Federal court order'' has been replaced with ''in order for VA to respond to and comply with the issuance of an order by that Federal agency requiring production of the information.'' The changes have been made to make the routine use more concise in the application of its function.

• The word ''CHAMPVA'' in routine use number 22 (formerly routine use number 24) is deleted and replaced with the wording ''veteran and beneficiary.'' The intention of this word change is to provide access information to veterans and beneficiaries who request assistance in locating medical providers who accept VA payment for health care services.

• Routine use number 23 is added to permit disclosure of relevant information from this system to other entities with which VA has a contract or agreement to perform such services, as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

• Routine use number 24 is added to permit disclosure of relevant information from this system to Claims Processing Quality Review Organizations or Accreditation Organizations in connection with their review of claims, or in connection with studies or other review activities conducted pursuant to VA requests to the organization for certification or accreditation to national standards.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR Parts 160 and 164. The Veterans Health Administration (VHA) may not disclose individually-identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

The System Manager(s) and Address is amended to account for recent organizational changes. The Record Source Categories is updated to include VA Medical Centers.

The Report of Intent to Publish an Amended System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: August 28, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

54VA16

SYSTEM NAME:

Health Administration Center Civilian Health and Medical Program Records–VA.

SYSTEM LOCATION:

Records are maintained at the Health Administration Center (HAC), 300 South Jackson Street, Denver, Colorado 80209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system include the following:

1. Dependents of veterans who seek health care under 38, U.S.C. 1781, 1802 and 1803, 1813 and Pub. L. 103–446, section 107.

2. Veterans seeking health care services in a foreign country, excluding services provided in Canada and the Philippines, under 38 U.S.C. 1724.

3. Veterans receiving community fee for service benefits at VA expense under Title 38, U.S.C 1703, 1725 and 1728.

4. Health care providers treating individuals who receive care under 38 U.S.C. 1724, 1781, 1803, 1813, and Pub.L. 103–446 section 107.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system include medical benefit application and eligibility information concerning the veteran and, when applicable, their spouse and/or dependent(s), other health insurance information, correspondence concerning individuals and documents pertaining to claims for medical services, information related to claims processing and third party liability recovery actions taken by VA and/or TRICARE. The record may include the name, address and other identifying information concerning health care providers, services provided, amounts claimed and paid for health care services, medical records, and treatment and payment dates. Additional information may include veteran, spouse and/or dependent identifying information (*e.g.*, name, address, social security number, VA claims file number, date of birth), and military service information concerning the veteran sponsor (*e.g.*, dates, branch and character of service, medical information).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501(a) and 501(b), 1703, 1724, 1725, 1728 1781, 1802 and 1803, 1813, and Pub. L. 103–446 section 107.

PURPOSE(S):

Records may be used for purposes of establishing and monitoring eligibility to receive VA benefits and processing medical claims for payment for eligible beneficiaries and veterans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. Eligibility and claim information from this system of records may be disclosed verbally and in writing. For example, disclosure may be made via correspondence, call service center or by interactive web page, in response to

an inquiry made by the claimant, claimant's guardian, claimant's next of kin or person with whom the claimant has a meaningful relationship, health care provider, trading partner or contractor. Purposes of these disclosures are to assist the provider or claimant in obtaining reimbursement for claimed medical services, to facilitate billing processes, to verify beneficiary eligibility for requested services, and to provide payment information regarding claimed services. Eligibility or entitlement information disclosed may include the name, authorization number (social security number), effective dates of eligibility, reasons for any period of ineligibility, and other health insurance information of the named individual. Claim information disclosed may include payment information such as payment identification number, date of payment, date of service, amount billed, amount paid, name of payee, or reasons for non-payment.

2. Statistical and other data may be disclosed to Federal, state, and local government agencies and national health organizations to assist in the development of programs that will be beneficial to health care recipients, to protect their rights under the law, and to ensure that they are receiving all health benefits to which they are entitled.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. A record from this system of records may be disclosed to a Federal agency upon its request for use in the issuance of a security clearance, the investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting Agency's decision on the matter.

5. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

6. Disclosure may be made to National Archives and Records Administration (NARA), and the General Services Administration (GSA) in records management inspections conducted under authority of title 44 United States Code.

7. Any relevant information in this system of records may be disclosed to attorneys, insurance companies, employers, and to courts, boards, or commissions; such disclosures may be made only to the extent necessary to aid VA in preparation, presentation, and prosecution of claims authorized under Federal, state, or local laws, and regulations promulgated hereunder.

8. Any information in this system of records may be disclosed to the United States Department of Justice or United States Attorneys in order to prosecute or defend litigation involving or pertaining to the United States, or in which the United States has an interest.

9. Any information in this system of records may be disclosed to a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for VA to respond to and comply with the issuance of an order by that Federal agency requiring production of the information.

10. Any information in this system of records may be disclosed to a state or municipal grand jury, a state or municipal court or a party in litigation, or to a state or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, provided that any disclosure of claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

11. Any information concerning the claimant's indebtedness to the United States by virtue of a person's participation in a benefits program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purposes of these disclosures may be to assist VA in collection of costs of services provided individuals not entitled to such services and to initiate legal actions for prosecuting individuals who willfully or fraudulently obtain Title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

12. Any relevant information from this system of records may be disclosed to TRICARE, the Department of Defense (DoD) and the Defense Eligibility Enrollment Reporting System (DEERS) to the extent necessary to determine eligibility for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) or TRICARE benefits, to develop and process CHAMPVA or TRICARE claims, and to develop cost-recovery actions for claims involving individuals not eligible for the services or claims involving potential third-party liability.

13. The name and address of a veteran or dependent, and other information as is reasonably necessary to identify such individual, may be disclosed to a consumer reporting agency for the purpose of locating the individual or obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States by virtue of the individual's participation in a benefits program administered by VA, provided that the requirements of 38 U.S.C. 5701(g)(2) have been met.

14. The name and address of a veteran or dependent, and other information as is reasonably necessary to identify such individual, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the individual's indebtedness to the United States by virtue of the individual's participation in a benefits program administered by VA, may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the requirements of 38 U.S.C. 5701(g)(4) have been met.

15. In response to an inquiry about a named individual from a member of the general public, disclosure of information may be made from this system of records to report the amount of VA monetary benefits being received by the individual. This disclosure is consistent with 38 U.S.C. 5701(c)(1).

16. The name and address of a veteran or dependent may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency, for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

17. Any information in this system of records relevant to a claim of a veteran

or dependent, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information and military service and active duty separation information may be disclosed at the request of the claimant to accredited service organizations, VA approved claim agents and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation and prosecution of claims under the laws in the development and presentation of claims for benefits administered by VA. The name and address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of the accredited service organization, claims agent or an attorney.

18. Any information in this system, including medical information, the basis and nature of claim, the amount of benefits and personal information may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a claimant only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

19. The individual's name, address, social security number and the amount (excluding interest) of any indebtedness which is waived under 38 U.S.C. 3102, compromised under 4 CFR Part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

20. The name of a veteran or dependent, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of Title 38, U.S.C. benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

21. The name, date of birth and social security number of a veteran, spouse or dependent, and other identifying information as is reasonably necessary may be disclosed to Social Security Administration and Centers for Medicare & Medicaid Services, Department of Health and Human Services, for the purpose of validating social security numbers and Medicare information.

22. The name and address of any health care provider in this system of records who has received payment for claimed services in behalf of a veteran and beneficiary may be disclosed in response to an inquiry from a member of the general public.

23. Relevant information from this system of records may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA in order for the contractor or subcontractor to perform the services of the contract or agreement.

24. Relevant information from this system of records may be disclosed to an accrediting Quality Review and Peer Review Organization in connection with the review of claims or other review activities associated with VA Health Administration Center accreditation to professionally accepted claims processing standards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEMSTORAGE:

Records are stored electronically, in paper folders, magnetic discs, and magnetic tape. Paper documents may be scanned/digitized and stored for viewing electronically.

RETRIEVABILITY:

Paper records are retrieved by name or VA claims file number or social security number of the veteran sponsor. Computer records are retrieved by name or social security number of the veteran sponsor, spouse, and/or dependent, or VA claims file number of the veteran sponsor.

SAFEGUARDS:

Working spaces and record storage areas at the HAC are secured during all business and non-business hours. All entrance doors require an electronic pass card for entry. The HAC Security Officer issues electronic pass cards. HAC staff control visitor entry by door release and escort. The building is equipped with an intrusion alarm system monitored by HAC security staff during business hours and by a security service vendor during non-business hours. Records are stored in an electronic controlled storage filing area. Records in work areas are stored in locked file cabinets or locked rooms. Access to record storage areas is restricted to VA employees on a ''need-to-know'' basis. Access to the computer room is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are generally placed in secure areas or are otherwise protected. Authorized VA employees may access information in the computer system by a series of individually unique passwords/codes.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Paper records that are scanned and digitized for viewing electronically are destroyed after they have been scanned onto optical disks, and the electronic copy determined to be an accurate and complete copy of the paper record scanned.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Business Office (16), Department of Veterans Affairs, Veterans Health Administration, VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Official Maintaining the System: Director, Health Administration Center, Department of Veterans Affairs, PO Box 65020, Denver, CO 80206–9020.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to Director, VA Health Administration Center, PO Box 65020, Denver, Colorado 80206–9020, or apply in person to the Director, VA Health Administration Center, 300 South Jackson Street, Denver, Colorado 80209. Inquiries should include the veteran sponsor's full name and social security and VA claims file numbers, and the spouse or dependent's name, social security number and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name in this system may write or visit the Director, VA Health Administration Center.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The veteran sponsor, spouse and/or dependent, military service departments, private medical facilities and health care professionals, electronic trading partners, contractors, DoD,

TRICARE, DEERS, other Federal agencies, VA Regional Offices, Veterans Benefits Administration (VBA) automated record systems, and VA Medical Centers.

[FR Doc. 03–23259 Filed 9–11–03; 8:45 am]
BILLING CODE 8320–01–P

Federal Register

Friday,
September 12, 2003

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Albert F. Lowas, Jr., Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209–2802; (703) 696–5501; ARMY: Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ME, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; COAST GUARD: United States Coast Guard, Attn: Teresa Sheinberg, Room 6109, 2100 Second Street, SW, Washington DC 20593–0001; (202) 267–6142; ENERGY: Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW, MS5512, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: September 4, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 9/12/03

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 6165
Elmendorf AFB
Elmendorf AFB Co: AK 99506—
Landholding Agency: Air Force
Property Number: 18200230007
Status: Unutilized
Comment: 15970 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 6173
Elmendorf AFB
Elmendorf Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230008
Status: Unutilized
Comment: 16290 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 7525
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200230009
Status: Unutilized
Comment: 26,226 sq. ft., need rehab, possible asbestos/lead paint, most recent use—dormitory, off-site use only

California

Calexico Border Patrol Station
813 Andrade Ave.
Calexico Co: CA 92231–

Landholding Agency: GSA
Property Number: 54200320012
Status: Excess
Comment: 5600 sq. ft. main bldg., and 6845 sq. ft. parking/garage structure, need repairs, GSA Number: 9–J–CA–1539

Bldg. 199
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200310003
Status: Excess
Comment: 2186 sq. ft., gold pro shop, presence of asbestos/lead paint

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS Co: HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comment: 462 sq. ft., concrete storage facility

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Illinois

Soc. Sec. Admin. Ofc.
525 18th Street
Rock Island Co: IL
Landholding Agency: GSA
Property Number: 54200310017
Status: Surplus
Comment: 5800 sq. ft., most recent use—office
GSA Number: 1–G–IL–730

Indiana

Federal Building
610 Connecticut Street
Gary Co: IN 46402–
Landholding Agency: GSA
Property Number: 54200310011
Status: Excess
Comment: 30,478 sq. ft., needs repair, presence of asbestos, most recent use—office
GSA Number: 1–G–IN–591

Soc. Sec. Admin. Ofc.
327 West Marion
Elkhart Co: IN
Landholding Agency: GSA
Property Number: 54200310016
Status: Surplus
Comment: 6600 sq. ft., most recent use—office
GSA Number: 1–G–IN–596

Iowa

Fed. Bldg./Bldg. 87
6921 Chaffee Road
Ft. Des Moines Co: Polk IA 50315–
Landholding Agency: GSA
Property Number: 54200310022
Status: Surplus
Comment: 8375 sq. ft., presence of asbestos, most recent use—storage
GSA Number: 7–G–IA–501

Post Office/Fed. Bldg.
101 Parkside
West Branch Co: Cedar IA 52358–
Landholding Agency: GSA
Property Number: 54200310023
Status: Surplus
Comment: 9500 sq. ft.
GSA Number: 7–G–IA–505

Maryland

9 Housing Units
U.S. Naval Station
Annapolis Co: Anne Arundel MD 21402–
Landholding Agency: Navy
Property Number: 77200240005
Status: Excess
Comment: size varies, brick veneer wood frame on slab, off-site use only

Michigan

Detroit Job Corp Center
10401 E. Jefferson
1265 St. Clair
Detroit Co: Wayne MI
Landholding Agency: GSA
Property Number: 54200230012
Status: Surplus
Comment: Parcel One = 80,590 sq. ft. bldg., needs repair, presence of asbestos; Parcel Two = 5140 sq. ft. bldg.
GSA Number: 2–L–MI–757

Missouri

Bldgs. 90A/B, 91A/B, 92A/B
Jefferson Barracks Housing
St. Louis Co: MO 63125–
Landholding Agency: Air Force
Property Number: 18200220002
Status: Excess
Comment: 6450 sq. ft., needs repair, includes 2 acres

Federal Building
1520 Market Street
St. Louis Co: MO 63103–
Landholding Agency: GSA
Property Number: 54200330012
Status: Excess
Comment: 4 story + basement, most recent use—office, will be vacant 2004
GSA Number: 7–G–MO–0636

New Jersey

Bldg. MA–1
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310007
Status: Unutilized
Comment: 7200 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. 5A
Naval Weapons Station
Colts Neck Co: NJ
Landholding Agency: Navy
Property Number: 77200310008
Status: Unutilized
Comment: 687 sq. ft., most recent use—storage, off-site use only

Bldg. R–17
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310009
Status: Unutilized
Comment: 1134 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. C–32A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310010
Status: Unutilized
Comment: 255 sq. ft., off-site use only

Bldg. S–331
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310011
Status: Unutilized
Comment: 256 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 513
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310012
Status: Unutilized
Comment: 1647 sq. ft., presence of asbestos/lead paint, off-site use only

New York

Lockport Comm. Facility
Shawnee Road
Lockport Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200040004
Status: Excess
Comment: 2 concrete block bldgs., (415 & 2929 sq. ft.) on 7.68 acres

Fed. Bldg. #2
850 Third Ave.
Brooklyn Co: NY 11232–
Landholding Agency: GSA
Property Number: 54200240005
Status: Surplus

Comment: est. cost to repair $1.4 million, potential for sanitary facs/electricity, safety concerns at present time, Federal prison/heavy industrial/commercial area, presence of asbestos/lead paint
GSA Number : 1–G–NY–0872

Hancock Army Complex
Track 4
Stewart Drive West
Cicero Co: Onondaga NY 13039–
Landholding Agency: GSA
Property Number: 54200310013
Status: Excess
Comment: 3 bunker-style structures and several small outbuildings, presence of asbestos, possible lead paint, most recent use—admin/training/storage
GSA Number : 1–D–NY–803

Ohio

USCG Old ANT Huron
110 Wall Street
Huron Co: OH
Landholding Agency: GSA
Property Number: 54200310004
Status: Excess
Comment: 2780 sq. ft., licensed to City, activities may be restricted, most recent use—admin/office/storage
GSA Number : 1–U–OH–686B

South Dakota

West Communications Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Number: 18199340051
Status: Unutilized
Comment: 2 bldgs. on 2.37 acres, remote area, lacks infrastructure, road hazardous during winter storms, most recent use—industrial storage

Virginia

Bldg. 1443 & Adj. Bldg.
NSS Norfolk Naval Shipyard
Portsmouth Co: VA 23704–
Landholding Agency: Navy
Property Number: 77200310060
Status: Excess
Comment: approx. 400 sq. ft. each, most recent use—storage, off-site use only

Land (by State)

Alaska

37.109 acres
U.S. Coast Guard
Gibson Cove Co: Kodiak AK
Landholding Agency: GSA
Property Number: 54200320001
Status: Surplus
Comment: easements for highway, electrical and communication lines, historical landmark
GSA Number: 9–U–AK–783

Florida

Homestead Communications Annex
Homestead Co: Dare FL 33033–
Landholding Agency: Air Force
Property Number: 18200210015
Status: Excess
Comment: 20 acres w/concrete bldg., consist of wetlands/100 year floodplain, most recent use—high frequency regional broadcasting system

Navy Site Alpha
Homestead Co: Miami/Dade FL
Landholding Agency: GSA
Property Number: 54200330009
Status: Surplus
Comment: undeveloped wetlands, designated as ''Environmental Protection'', permit restriction, low elevation, remore location
GSA Number: 4–N–FL–1079

Nebraska

Hastings Radar Bomb Scoring
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 18199810027
Status: Unutilized
Comment: 11 acres

New Mexico

H Marker Facility
Roswell Co: Chaves NM 88201–
Landholding Agency: GSA
Property Number: 54200330011
Status: Surplus
Comment: 12.398 acres, subject to existing easements
GSA Number: 7–U–NM–0587

South Dakota

S. Nike Ed. Annex Land
Ellsworth AFB
Pennington Co: SD 57706–
Landholding Agency: Air Force
Property Number: 18200220010
Status: Unutilized
Comment: 7 acres w/five foundations from demolished bldgs. remain on site; with a road and a parking lot

Texas

Former VORTAC Facility
Bridgeport Co: Wise TX
Landholding Agency: GSA
Property Number: 54200320006
Status: Surplus
Comment: 0.23 acres w/73.34 acres of easements, limited access
GSA Number: 7–U–TX–1072

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Coosa River Storage Annex
Anniston Army Depot
Talladega Co: AL 35161–
Landholding Agency: GSA
Property Number: 54200230001
Status: Excess
Comment: 136 storage igloos, two cemeteries, sentry bldg., ofc. bldg., admin. bldg. in poor condition on 2834 acres
GSA Number: 4–J–AL–541

California

Merced Federal Bldg.
415 W. 18th St.
Merced Co: CA 95340–
Landholding Agency: GSA
Property Number: 54200220012
Status: Surplus
Comment: 15,492 sq. ft., presence of asbestos/lead paint, Historic Preservation Covenant will be included in deed, relocation issue
GSA Number: 9–G–CA–1567

Fed. Bldg./Post Office
1125 I Street
Modesto Co: CA 95354–
Landholding Agency: GSA
Property Number: 54200310010
Status: Excess
Comment: 23,770 sq. ft., presence of asbestos/lead paint, controlled access, Federal tenants occupy portion of bldg., National Register of Historic Places
GSA Number: 9–G–CA–1576

Bell Federal Service Center
5600 Rickenbacker Road
Bell Co: Los Angeles CA 90201–
Landholding Agency: GSA
Property Number: 54200320009
Status: Excess
Comment: Correction/Republished: 7 bldgs., various sq. ft., need repair, portion occupied, restricted access, presence of asbestos/lead paint/PCBs, most recent use—warehouse/office
GSA Number: 9–G–CA–06984

Colorado

Bldg. 100
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230001
Status: Excess
Comment: 7760 sq. ft., most recent use—admin/electronic equip. maintenance

Bldg. 101
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230002
Status: Excess
Comment: 336 sq. ft., most recent use—storage

Bldg. 102
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230003
Status: Excess
Comment: 1056 sq. ft., most recent use—storage

Bldg. 103
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230004
Status: Excess
Comment: 784 sq. ft., most recent use—storage

Bldg. 104
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230005
Status: Excess
Comment: 312 sq. ft., most recent use—storage

Bldg. 106
La Junta Strategic Range
La Junta Co: Otero CO 81050–9501
Landholding Agency: Air Force
Property Number: 18200230006
Status: Excess
Comment: 100 sq. ft., most recent use—storage

Florida

Federal Building
98 3rd St., SW
Winter Haven Co: Polk FL 33880–
Landholding Agency: GSA

Property Number: 54200320013
Status: Excess
Comment: 7335 sq. ft., existing lease
GSA Number : 4–G–FL–1210

Idaho

Bldg. 224
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840008
Status: Unutilized
Comment: 1890 sq. ft., no plumbing facilities, possible asbestos/lead paint, most recent use—office

Illinois

LaSalle Comm. Tower Site
1600 NE 8th St.
Richland Co: LaSalle IL 61370–
Landholding Agency: GSA
Property Number: 54200020019
Status: Excess
Comment: 120 sq. ft. cinder block bldg. and a 300′ tower
GSA Number : 1–D–IL–724

Iowa

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110–
Landholding Agency: Air Force
Property Number: 18199310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process

Maryland

29 Bldgs.
Walter Reed Army Medical Center
Forest Glen Annex, Linden Lane
Silver Spring Co: Montgomery MD 20910–1246
Location: 24 bldgs. are in poor condition, presence of asbestos/lead paint, most recent use—hospital annex, lab, office
Landholding Agency: GSA
Property Number: 54200130012
Status: Excess
Comment: Historic Preservation Covenants will impact reuse, property will not be parcelized for disposal, high cost associated w/maintenance, estimated cost to renovate $17 million
GSA Number: 4–D–MD–558–B

Michigan

Pontiac Federal Bldg.
142 Auburn Ave.
Pontiac Co: Oakland MI
Landholding Agency: GSA
Property Number: 54200220005
Status: Surplus
Comment: 11,910 sq. ft., most recent use—office
GSA Number: 1–G–MI–809

Minnesota

GAP Filler Radar Site
St. Paul Co: Rice MN 55101–
Landholding Agency: GSA
Property Number: 54199910009
Status: Excess
Comment: 1266 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage, zoning requirements, preparations for a Phase I study underway, possible underground storage tank
GSA Number: 1–GR(1)–MN–475

MG Clement Trott Mem. USARC
Walker Co: Cass MN 56484–
Landholding Agency: GSA
Property Number: 54199930003
Status: Excess
Comment: 4320 sq. ft. training center and 1316 sq. ft. vehicle maintenance shop, presence of environmental conditions
GSA Number: 1–D–MN–575

Missouri

Hardesty Federal Complex
607 Hardesty Avenue
Kansas City Co: Jackson MO 64124–3032
Landholding Agency: GSA
Property Number: 54199940001
Status: Excess
Comment: 7 warehouses and support buildings (540 to 216,000 sq. ft.) on 17.47 acres, major rehab, most recent use—storage/office, utilities easement
GSA Number: 7–G–MO–637

New Jersey

Chapel Hill Front Range Light
N. Lenard Ave.
Middletown Co: Monmouth NJ
Landholding Agency: GSA
Property Number: 54200240011
Status: Excess
Comment: steel tower on 0.40 acres, possible flood hazard, wetlands & possible endangered species
GSA Number: 1–U–NJ–0627

New York

Bldg. 1225
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220014
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1226
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220015
Status: Unutilized
Comment: 7500 sq. ft., most recent use—storage

Bldg. 1227
Verona Text Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220016
Status: Unutilized
Comment: 1152 sq. ft., presence of asbestos/lead paint, most recent use—power station

Bldg. 1231
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220017
Status: Unutilized
Comment: 3865 sq. ft., presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—research lab

Bldg. 1233
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220018
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—power station

Bldgs. 1235, 1239
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220019
Status: Unutilized
Comment: 144/825 sq. ft., need repairs, presence of lead paint, most recent use—electric switch station

Bldg. 1241
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220020
Status: Unutilized
Comment: 159 sq. ft., presence of lead paint, most recent use—sewage pump station

Bldg. 1243
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220021
Status: Unutilized
Comment: 25 sq. ft., most recent use—waste treatment

Bldg. 1245
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220022
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1247
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220023
Status: Unutilized
Comment: 576 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—power station

Bldg. 1250 + land
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220024
Status: Unutilized
Comment: 11,766 sq. ft. offices/lab with 495 acres, presence of asbestos/lead paint/wetlands

Bldg. 1253
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220025
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint/volatile organic compounds, access requirements, most recent use—research lab

Bldg. 1255
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220026
Status: Unutilized

Comment: 576 sq. ft., needs repair, presence of lead paint/volatile organic compounds, access requirement, most recent use—power station

Bldg. 1261
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220027
Status: Unutilized
Comment: 3835 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1263
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220028
Status: Unutilized
Comment: 576 sq. ft. needs repair, presence of lead paint, most recent use—power station

Bldgs. 1266, 1269
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220029
Status: Unutilized
Comment: 3730/3865 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1271
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220030
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1273
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220031
Status: Unutilized
Comment: 87 sq. ft., presence of asbestos, most recent use—sewage pump station

Bldg. 1277
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220032
Status: Unutilized
Comment: 3865 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1279
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220033
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Bldg. 1285
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220034
Status: Unutilized
Comment: 4690 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—research lab

Bldg. 1287
Verona Test Annex
Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18200220035
Status: Unutilized
Comment: 1152 sq. ft., needs repair, presence of lead paint, most recent use—power station

Social Sec. Admin. Bldg.
517 N. Barry St.
Olean Co: NY 10278–0004
Landholding Agency: GSA
Property Number: 54200230009
Status: Excess
Comment: 9174 sq. ft., poor condition, most recent use—office
GSA Number: 1–G–NY–0895

Army Reserve Center
205 Oak Street
Batavia Co: NY 14020–
Landholding Agency: GSA
Property Number: 54200240004
Status: Excess
Comment: 9695 sq. ft., presence of asbestos/lead paint, most recent use—admin/storage, proximity of wetlands
GSA Number: 1–D–NY–890

North Carolina

Tarheel Army Missile Plant
Burlington Co: Alamance NC 27215–
Landholding Agency: GSA
Property Number: 54199820002
Status: Excess
Comment: 31 bldgs., presence of asbestos, most recent use—admin., warehouse, production space and 10.04 acres parking area, contamination at site—environmental clean up in process
GSA Number: 4–D–NC–593

Vehicle Maint. Facility
310 New Bern Ave.
Raleigh Co: Wake NC 27601–
Landholding Agency: GSA
Property Number: 54200020012
Status: Excess
Comment: 10,455 sq. ft., most recent use—maintenance garage
GSA Number : NC076AB

Pennsylvania

Bldg. 201
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240014
Status: Excess
Comment: 310 sq. ft., most recent use—storage

Bldg. 203
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240015
Status: Excess
Comment: 4163 sq. ft., most recent use—vehicle maint. shop

Bldg. 208
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240016
Status: Excess
Comment: 144 sq. ft., most recent use—storage

Bldg. 210
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240017
Status: Excess
Comment: 263 sq. ft., most recent use—storage

Bldg. 211
Pittsburgh IAP
Corapolis Co: Allegheny PA 15108–
Landholding Agency: Air Force
Property Number: 18200240018
Status: Excess
Comment: 1731 sq. ft., most recent use—office

Puerto Rico

7.5 Naval Reservation
Munoz Rivera Ave.
San Juan Co: PR
Landholding Agency: GSA
Property Number: 54200240012
Status: Excess
Comment: multi-use structures including admin. and residential, presence of asbestos/lead paint, exhibits historical and archeological significance
GSA Number: 1–N–PR–497

Tennessee

3 Facilities, Guard Posts
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930011
Status: Surplus
Comment: 48–64 sq. ft., most recent use—access control, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

4 Bldgs.
Volunteer Army Ammunition Plant
Railroad System Facilities
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930012
Status: Surplus
Comment: 144–2,420 sq. ft., most recent use—storage/rail weighing facilities/dock, potential use restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

200 bunkers
Volunteer Army Ammunition Plant
Storage Magazines
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930014
Status: Surplus
Comment: approx. 200 concrete bunkers covering a land area of approx. 4000 acres, most recent use—storage/buffer area, potential use restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

Bldg. 232
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930020
Status: Surplus
Comment: 10,000 sq. ft., most recent use—office, presence of asbestos, approx. 5 acres associated w/bldg., potential use

restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

2 Laboratories
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930021
Status: Surplus
Comment: 2000–12,000 sq. ft., potential use/lease restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

3 Facilities
Volunteer Army Ammunition Plant
Water Distribution Facilities
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930022
Status: Surplus
Comment: 256–15,204 sq. ft., 35.86 acres associated w/bldgs., most recent use—water distribution system, potential use/lease restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

Federal Bldg.
118 East Locust Street
Lafayette Co: Macon TN 37083–
Landholding Agency: GSA
Property Number: 54200220010
Status: Excess
Comment: 12,605 sq. ft., most recent use—office, portion occupied by U.S. Postal Service
GSA Number: 4–G–TN–656

Virginia

Federal Building
103 South Main Street
Farmville Co: Prince Edward VA 23901–
Landholding Agency: GSA
Property Number: 54200310020
Status: Excess
Comment: 7686 sq. ft., historic preservation covenants, most recent use—office
GSA Number: 4–G–VA–732

Wisconsin

Wausau Federal Building
317 First Street
Wausau Co: Marathon WI 54401–
Landholding Agency: GSA
Property Number: 54199820016
Status: Excess
Comment: 30,500 sq. ft., presence of asbestos, eligible for listing on the Natl Register of Historic Places, most recent use—office
GSA Number: 1–G–WI–593

Land (by State)

Florida

Communications Annex Site
S. Allapattah Road
Homestead Co: Miami-Dade FL
Landholding Agency: GSA
Property Number: 54200310008
Status: Excess
Comment: approx. 20 acres w/deteriorated building, no public water, within 100-year floodplain, approx. 17 acres identified as wetlands, subject to all applicable laws/regulations
GSA Number: 4–D–FL–1078–4A

Georgia

Land w/highway interchange
Fort Benning
I–185 and Hwy 27/280
Columbus Co: Muscogee GA 31905-
Landholding Agency: GSA
Property Number: 54200320002
Status: Excess
Comment: 113 acres—98 acres of this land encumbered by highway interchange
GSA Number: 4–D–GA–0872

Hawaii

Parcels 9, 2, 4
Loran Station Upolu Point
Hawi Co: Hawaii HI
Location: Resubmitted to **Federal Register** for publication
Landholding Agency: GSA
Property Number: 54200220002
Status: Surplus
Comment: parcel 9 = 6.242 acres/encumbered by utility and road access easements, parcel 2 = 1.007 acres; parcel 4 = 5.239 acres
GSA Number: 9–U–HI–0572

Kentucky

Site 12A
Licking River Access Site
Wilder Co: Campbell KY 41071–
Landholding Agency: GSA
Property Number: 54200330010
Status: Excess
Comment: 20.61 acres, periodic flooding
GSA Number: 4–D–KY–0613

New Jersey

Belle Mead Depot
Rt. 206/Mountain View Rd.
Hillsborough Co: Somerset NJ 08502–
Landholding Agency: GSA
Property Number: 54200210014
Status: Excess
Comment: approx. 400 acres, property will not be subdivided, contaminants of concern present, lease restriction on 7 acres, 44 miles of railroad track, remediation activity, potential restriction of property f
GSA Number: 1–G–NJ–0642

North Carolina

Oak Island Light Tower
Caswell Beach Co: Brunswick NC 28465–
Landholding Agency: GSA
Property Number: 54200320003
Status: Excess
Comment: 5.36 acres w/light tower, endangered species and wetlands, controlled access
GSA Number: 4–U–NC–742

South Dakota

Tract 133
Ellsworth AFB
Box Elder Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
Comment: 53.23 acres

Tract 67
Ellsworth AFB
Box Elder Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
Comment: 121 acres, bentonite layer in soil, causes movement

Tennessee

1500 acres
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930015
Status: Surplus
Comment: scattered throughout facility, most recent use—buffer area, steep topography, potential use restrictions, property was published in error as available on 2/11/00
GSA Number: 4–D–TN–594F

Virginia

1.0 acre
Naval Station
St. Juliens Creek Annex
Portsmouth Co: VA
Landholding Agency: Navy
Property Number: 77200320033
Status: Unutilized
Comment: grassy field, restricted access

West Virginia

Kennedy Park & Marina
523 Harrison Street
Newell Co: Hancock WV
Landholding Agency: GSA
Property Number: 54200310006
Status: Excess
Comment: 13.02 acres, subject to lease
GSA Number: 4–G–PA–0545

Suitable/To Be Excessed

Buildings (by State)

New York

Bldg. 1
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530048
Status: Excess
Comment: 4955 sq. ft., 2 story concrete block, needs rehab, most recent use—administration

Bldg. 2
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530049
Status: Excess
Comment: 1476 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 6
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530050
Status: Excess
Comment: 2466 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop

Bldg. 11
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530051
Status: Excess
Comment: 1750 sq. ft., 1 story wood frame, needs rehab, most recent use—storage

Bldg. 8
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530052
Status: Excess

Comment: 1812 sq. ft., 1 story concrete block, needs rehab, most recent use—repair shop communications

Bldg. 14
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530053
Status: Excess
Comment: 156 sq. ft., 1 story wood frame, most recent use—vehicle fuel station

Bldg. 30
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530054
Status: Excess
Comment: 3649 sq. ft., 1 story, needs rehab, most recent use—assembly hall

Bldg. 31
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530055
Status: Excess
Comment: 8252 sq. ft., 1 story concrete block, most recent use—storage

Bldg. 32
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530056
Status: Excess
Comment: 1627 sq. ft., 1 story concrete block, most recent use—storage

South Carolina

5 Bldgs.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 101 Vector Ave., 112, 114, 116, 118 Intercept Ave.
Landholding Agency: Air Force
Property Number: 18199830035
Status: Unutilized
Comment: 1433 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 102 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830036
Status: Unutilized
Comment: 1545 sq. ft. + 345 sq. ft. carport, lead base paint/exterior most recent use—residential

1 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 103 Vector Ave.
Landholding Agency: Air Force
Property Number: 18199830037
Status: Unutilized
Comment: 1445 sq. ft. + 346 sq. ft. carport, lead base paint/exterior most recent use—residential

18 Bldg.
Charleston AFB Annex Housing
N. Charleston SC 29404–4827
Location: 104–107 Vector Ave., 108–111, 113, 115, 117, 119 Intercept Ave., 120–122 Radar Ave.
Landholding Agency: Air Force
Property Number: 18199830038
Status: Unutilized
Comment: 1265 sq. ft. + 353 sq. ft. carport, lead base paint/exterior most recent use—residential

Land (by State)

New York

14.90 Acres
Hancock Field
Syracuse Co: Onandaga NY 13211–
Landholding Agency: Air Force
Property Number: 18199530057
Status: Excess
Comment: Fenced in compound, most recent use—Air Natl. Guard Communication & Electronics Group

Unsuitable Properties

Buildings (by State)

Alabama

Sand Island Light House
Gulf of Mexico
Mobile AL
Landholding Agency: GSA
Property Number: 54199610001
Status: Excess
Reason: Inaccessible
GSA Number: 4–U–AL–763

Alaska

Bldg. 15532
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200220001
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area

Bldg. 8354
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200240001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11827
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200240002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 7537
Elmendorf Air Force Base
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200320001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9340
Elmendorf Air Force Base
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200320002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9342
Elmendorf Air Force Base
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200320003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12737
Elmendorf Air Force Base
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200320004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 13251
Elmendorf Air Force Base
Elemendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200320005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 29453
Elmendorf Air Force Base
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200320006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6527
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200330001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12739
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200330002
Status: Unutilized
Reason: Extensive deterioration

Warehouse
Naval Arctic Research Lab
Cape Sabine Co: AK
Landholding Agency: Navy
Property Number: 77200320001
Status: Excess
Reason: Extensive deterioration

Operations Bldg.
Naval Arctic Research Lab
Cape Sabine Co: AK –
Landholding Agency: Navy
Property Number: 77200320002
Status: Excess
Reason: Extensive deterioration

Warehouse
Naval Arctic Research Lab
Point McIntyre Co: AK
Landholding Agency: Navy
Property Number: 77200320019
Status: Excess
Reason: Extensive deterioration

Garage
Naval Arctic Research Lab
Point McIntyre Co: AK
Landholding Agency: Navy
Property Number: 77200320020
Status: Excess
Reason: Extensive deterioration

Operations Bldg.
Naval Arctic Research Lab
Point McIntyre Co: AK
Landholding Agency: Navy
Property Number: 77200320021
Status: Excess
Reason: Extensive deterioration

Arizona

Patrol Station

S. of U.S. Hwy 85
Gila Bend Co: AZ
Landholding Agency: GSA
Property Number: 54200230006
Status: Excess
Reason: Within airport runway clear zone
GSA Number : 9–J–AZ–821

California

Bldg. 30101
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210019
Status: Unutilized
Reason: Secured Area

Bldgs. 30131, 30709
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210020
Status: Unutilized
Reason: Secured Area

Bldgs. 30137, 30701
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210021
Status: Unutilized
Reason: Secured Area

Bldg. 30235
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210022
Status: Unutilized
Reason: Secured Area

Bldgs. 30238, 30446
Vandenberg AFB
Vandenberg Co: Santa Barbara CA
Landholding Agency: Air Force
Property Number: 18200210023
Status: Unutilized
Reason: Secured Area

Bldgs. 30239, 30444
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210024
Status: Unutilized
Reason: Secured Area

Bldgs. 30306, 30335, 30782
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210025
Status: Unutilized
Reason: Secured Area

Bldgs. 30339, 30340, 30341
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210026
Status: Unutilized
Reason: Secured Area

Bldg. 30447
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210027
Status: Unutilized
Reason: Secured Area

Bldg. 30524
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210028
Status: Unutilized
Reason: Secured Area

Bldg. 30647
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210029
Status: Unutilized
Reason: Secured Area

Bldgs. 30710, 30717
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210030
Status: Unutilized
Reason: Secured Area

Bldgs. 30718, 30607
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210031
Status: Unutilized
Reason: Secured Area

Bldgs. 30722, 30735
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210032
Status: Unutilized
Reason: Secured Area

Bldgs. 30775, 30777
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210033
Status: Unutilized
Reason: Secured Area

Bldgs. 30830, 30837
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210034
Status: Unutilized
Reason: Secured Area

Bldgs. 30839, 30844, 30854
Vandenberg AFB
Vandenberg Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200210035
Status: Unutilized
Reason: Secured Area

Bldg. 2413
Edwards Air Force Base
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18200310001
Status: Unutilized
Reason: Secured Area

Bldg. 2418
Edwards Air Force Base
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18200310002
Status: Unutilized
Reason: Secured Area

Bldg. 2410
Edwards Air Force Base
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18200320007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

20 Bldgs.
Edwards AFB
Edwards AFB Co: Kern CA 93524–
Landholding Agency: Air Force
Property Number: 18200330003
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 06522
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 18200330004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

U.S. Customs House
300 South Ferry St.
Terminal Island Co: Los Angeles CA 90731–
Landholding Agency: GSA
Property Number: 54200310001
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material GSA Number : 9–G–CA–1569

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration

Bldg. 23025
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200030001
Status: Unutilized
Reason: Secured Area

Bldg. 23027
Marine Corps Air Station
Miramar Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200030002
Status: Unutilized
Reason: Secured Area

Bldg. 33023
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77200120115
Status: Excess
Reason: Extensive deterioration

Bldg. 6
Navy Marine Corps Rsv Ctr
Sacramento Co: CA 95828–
Landholding Agency: Navy
Property Number: 77200210017
Status: Unutilized
Reason: Secured Area

Bldg. 799
Naval Air Station
North Island Co: CA
Landholding Agency: Navy
Property Number: 77200210064
Status: Excess
Reason: Extensive deterioration

Bldg. 799
Naval Air Station
North Island Co: CA
Landholding Agency: Navy
Property Number: 77200210124
Status: Excess

Reason: Extensive deterioration

Bldg. 41308
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220031
Status: Excess
Reason: Extensive deterioration

Bldgs. 154, 157
Navy Region South West
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200220072
Status: Excess
Reason: Extensive deterioration

Bldg. P–1019
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220073
Status: Excess
Reason: Extensive deterioration

Bldg. P–4039
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220074
Status: Excess
Reason: Extensive deterioration

Bldg. P–5011
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220075
Status: Excess
Reason: Extensive deterioration

Bldg. P7058
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220076
Status: Excess
Reason: Extensive deterioration

Bldgs. 18412, 18413, 18414
Marine Warfare Training Ctr
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200230040
Status: Excess
Reason: Extensive deterioration

Bldg. 394
Space & Naval Warfare Systems Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200240041
Status: Unutilized
Reason: Extensive deterioration

Bldg. 428
Space & Naval Warfare Systems Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200240042
Status: Unutilized
Reason: Extensive deterioration

Bldg. 513
Naval Postgraduate School
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200310004
Status: Excess
Reason: Extensive deterioration

Bldg. 1232
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310036
Status: Excess
Reason: Extensive deterioration

Bldg. 2297
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310037
Status: Excess
Reason: Extensive deterioration

Bldg. 25037
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310038
Status: Excess
Reason: Extensive deterioration

Bldg. 25168
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310039
Status: Excess
Reason: Extensive deterioration

Bldg. 31339
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310040
Status: Excess
Reason: Extensive deterioration

Bldg. 31350
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310041
Status: Excess
Reason: Extensive deterioration

Bldg. 31628
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310042
Status: Excess
Reason: Extensive deterioration

Bldg. 31629
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310043
Status: Excess
Reason: Extensive deterioration

Bldg. 31753
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310044
Status: Excess
Reason: Extensive deterioration

Bldg. 31754
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310045
Status: Excess
Reason: Extensive deterioration

Bldg. 31764
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310046
Status: Unutilized
Reason: Extensive deterioration

Bldg. 52540
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310047
Status: Excess
Reason: Extensive deterioration

Bldg. 220178
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200310048
Status: Excess
Reason: Extensive deterioration

Bldg. 232
Naval Air Facility
El Centro Co: CA 92243–
Landholding Agency: Navy
Property Number: 77200310055
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2203
Marine Corps Base
Camp Pendleton Co: CA
Landholding Agency: Navy
Property Number: 77200320022
Status: Excess
Reason: Extensive deterioration

Bldg. 2683
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320023
Status: Excess
Reason: Extensive deterioration

Bldg. 2685
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320024
Status: Excess
Reason: Extensive deterioration

Bldg. 2692
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320025
Status: Excess
Reason: Extensive deterioration

Bldg. 20735
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320026
Status: Excess
Reason: Extensive deterioration

Bldg. 21546
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320027
Status: Excess
Reason: Extensive deterioration

Bldg. 26034
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200320028
Status: Excess
Reason: Extensive deterioration

Bldg. 141MG
Naval Recreation Center
Naval Base
San Diego Co: CA

Landholding Agency: Navy
Property Number: 77200320054
Status: Excess
Reason: Extensive deterioration

Bldg. F
Coast Guard Air Station
San Bruno Co: San Mateo CA 94066–
Landholding Agency: Coast Guard
Property Number: 88200330007
Status: Underutilized
Reason: Secured Area

Bldg. H
Coast Guard Air Station
San Bruno Co: San Mateo CA 94066–
Landholding Agency: Coast Guard
Property Number: 88200330008
Status: Unutilized
Reason: Secured Area

Colorado

Bldg. 105
Peterson AFB
Colorado Springs Co: El Paso CO 80914–
Landholding Agency: Air Force
Property Number: 18200310003
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Florida

Bldg. 1345
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 24451
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 55122
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200210018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1705
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200330005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 55215
Cape Canaveral AFS
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18200330006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

U.S. Customs House
1700 Spangler Boulevard
Hollywood Co: Broward FL 33316–
Landholding Agency: GSA
Property Number: 54200140012
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
GSA Number : 4–G–FL–1173

U.S. Classic Courthouse
601 N. Florida Ave
Tampa Co: FL 33602–
Landholding Agency: GSA
Property Number: 54200240018
Status: Excess
Reason: contamination—toxic mold
GSA Number : 4–G–FL–1208–1A

Bldg. C–26
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200240043
Status: Unutilized
Reason: Extensive deterioration

Bldg. F–44
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200240044
Status: Unutilized
Reason: Extensive deterioration

Bldg. 292
Naval Air Facility
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200310058
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1481
Naval Air Station
Milton Co: FL 32570–6001
Landholding Agency: Navy
Property Number: 77200310059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

8 Bldgs.
Naval Air Station
Milton Co: FL 32570–6001
Location: 1440, 1440A, 1437, 1444, 1444A, 1444G, 2927, 2886
Landholding Agency: Navy
Property Number: 77200320055
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Georgia

Bldgs. 03720, 03737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200330200
Status: Excess
Reason: Extensive deterioration

Bldg. 14
Naval Air Station
Marietta Co: Cobb GA 30060–
Landholding Agency: Navy
Property Number: 77200310049
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 15
Naval Air Station
Marietta Co: Cobb GA 30060–
Landholding Agency: Navy
Property Number: 77200310050
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 109
Naval Air Station
Marietta Co: Cobb GA 30060–
Landholding Agency: Navy
Property Number: 77200310051
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Guam

Bldg. 138
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210100
Status: Unutilized
Reason: Secured Area

Bldg. 460
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210101
Status: Unutilized
Reason: Secured Area

Bldg. 1741
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210102
Status: Unutilized
Reason: Secured Area

Bldg. 1742
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210103
Status: Underutilized
Reason: Secured Area

Bldg. 1743
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210104
Status: Underutilized
Reason: Secured Area

Bldg. 6012
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200210105
Status: Unutilized
Reason: Secured Area

Bldg. 6011
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200220024
Status: Unutilized
Reason: Secured Area

Bldgs. 23, 25 29
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 31, 36, 38
US Naval Ship Repair Facility

Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 93–1, 94
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2001A, 2004
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration,

Bldgs. 2008, 2062
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2010, 2013, 2028
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2039–2044
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2049
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2053, 2054, 2055
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2061, 2068, 2069
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2070, 2071, 2074
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2081
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2100, 2102
US Naval Ship Repair Facility
Marianas Co: GU
Landholding Agency: Navy
Property Number: 77200320015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Hawaii

Bldg. 503
Bellows AFS
Bellows AFS Co: HI
Landholding Agency: Air Force
Property Number: 18200330007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 907
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 954
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 980
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330011
Status: Unutilized
Reason: Secured Area

Bldg. 992
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330012
Status: Unutilized
Reason: Secured Area

Bldg. 1035
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330013
Status: Unutilized
Reason: Secured Area

Bldgs. 1709, 1721
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2041
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2044
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2104
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330017
Status: Unutilized
Reason: Secured Area

Bldg. 3018
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3202
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 3338, 3356
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3432
Hickam AFB
Hickam AFB Co: HI
Lanholding Agency: Air Force
Property Number: 18200330021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3375
Hickam AFB
Hickam AFB Co: HI
Landholding Agency: Air Force
Property Number: 18200330031
Status: Unutilized
Reason: Secured Area

Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Lanholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. X5
Nanumea Road

Pearl Harbor Co: Honolulu HI 96782–
Lanholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area

Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Lanholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area

Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Lanholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Lanholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 40
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 50
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration

Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037
Status: Unutilized
Reason: Extensive deterioration

Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration

Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Lanholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area

Facility SX30
Navy Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Lanholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. T47
Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 77200240045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 621
Naval Station, Pearl Harbor
Honolulu Co: HI 96860–
Landholding Agency: Navy
Property Number: 77200310001
Status: Excess
Reason: Extensive deterioration

Bldg. 1G
Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 77200310056
Status: Excess
Reason: Secured Area

Bldg. 27
Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–5350
Landholding Agency: Navy
Property Number: 77200310057
Status: Excess
Reasons: Secured Area, Extensive deterioration

Change Room
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320059
Status: Excess
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material

Electric Generator Bldg.
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320060
Status: Excess
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material

Compressor Shed
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320061
Status: Excess
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material

System Shed
Base Camp
Kahoolawe Co: Maui HI
Landholding Agency: Navy
Property Number: 77200320062
Status: Excess
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material

Idaho

Bldg. 1328
Mountain Home AFB
Mountain Home Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18200240003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Federal Bldg./Post Office
222 S. Seventh Street
St. Maries Co: ID 83861–
Landholding Agency: GSA
Property Number: 54200310002
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–ID–550

Federal Bldg./Post Office
304 North 8th Street
Boise Co: ID 83724–
Landholding Agency: GSA
Property Number: 54200310003
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 9–G–ID–549

Illinois

Bldg. 945
Fermi Natl Accelerator Lab
Batavia Co: DuPage IL 60510–
Landholding Agency: Energy
Property Number: 41200330004
Status: Excess
Reason: Extensive deterioration

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured Area

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025

Status: Unutilized
Reason: Secured Area

Bldg. 910
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area

Bldg. 2600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area

Kansas

Sunflower AAP
Desoto Co: Johnson KS 66018–
Landholding Agency: GSA
Property Number: 54199830010
Status: Excess
Reason: Estensive deterioration

GSA Number: 7–D–KS–0581

Maine

Bldg. 499
Bangor IAP
Bangor Co: Penobscot ME 04401–
Landholding Agency: Air Force
Property Number: 18200320008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. M–4
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240012
Status: Excess
Reason: Secured Area

Bldg. M–6
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240013
Status: Excess
Reason: Secured Area

Bldg. M–9
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240014
Status: Excess
Reason: Secured Area

Bldg. M–10
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240015
Status: Excess
Reason: Secured Area

Bldg. M–11
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240016
Status: Excess
Reason: Secured Area

Bldg. M–18
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240017
Status: Excess
Reason: Secured Area

Bldg. H–29
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 33
Portsmouth Naval Shipyard Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240019
Status: Excess
Reason: Secured Area

Bldg. 34
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240020
Status: Excess
Reason: Secured Area

Bldg. 41
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240021
Status: Excess
Reason: Secured Area

Bldg. 55
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240022
Status: Excess
Reason: Secured Area

Bldg. 62/62A
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240023
Status: Excess
Reason: Secured Area

Bldg. 63
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240024
Status: Excess
Reason: Secured Area

Bldg. 65
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240025
Status: Excess
Reason: Secured Area

Bldg. 158
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240026
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 188
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240027
Status: Excess
Reason: Secured Area

Bldg. 189
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240028
Status: Excess
Reason: Secured Area

Bldg. 237
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240029
Status: Excess
Reason: Secured Area

Massachusetts

Wayland Army Natl Guard Fac.
Oxbow Road
Wayland Co: MA 01778–
Landholding Agency: GSA
Property Number: 54200240007
Status: Excess
Reason: Extensive deterioration
GSA Number : 1–D–MA–0725

Michigan

Bldg. 550
Selfridge Outer Marker Site
Selfridge ANGB Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18200230017
Status: Unutilized
Reason: Extensive deterioration

Facilities 90004, 911146
Selfridge Outer Marker Site
Selfridge ANGB Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 18200230018
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230027
Status: Unutilized
Reason: Secured Area

Bldgs. 10, 15
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230028
Status: Unutilized
Reason: Secured Area

Bldgs. 31, 33, 38
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230029
Status: Unutilized
Reason: Secured Area

Bldg. 44
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230030
Status: Unutilized
Reason: Secured Area

Bldg. 53
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230031
Status: Unutilized
Reason: Secured Area

Bldg. 219
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230032
Status: Unutilized
Reason: Secured Area

Bldgs. 302, 304, 305
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230033
Status: Unutilized
Reason: Secured Area

Bldg. 321
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230034
Status: Unutilized
Reason: Secured Area

Bldgs. 330–333
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230035
Status: Unutilized
Reason: Secured Area

Bldgs. 402, 414
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230036
Status: Unutilized
Reason: Secured Area

Bldg. 4020
Alpena CRTC
Alpena Co: MI 49707–
Landholding Agency: Air Force
Property Number: 18200230037
Status: Unutilized
Reason: Secured Area

Stroh Army Reserve Center
17825 Sherwood Ave.
Detroit Co: Wayne MI 00000–
Landholding Agency: GSA
Property Number: 54200040001
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 1–D–MI–798

Pipe Island Lighthouse
St. Mary's River
Chippewa Co: MI
Landholding Agency: GSA
Property Number: 54200310007
Status: Excess
Reason: Not accessible by road
GSA Number: 1–U–MI–413A

Minnesota

Nike Battery Site, MS–40
Castle Rock Township
Farmington Co: Dakota MN 00000–
Landholding Agency: GSA
Property Number: 54200020004
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–I–MN–451–B

Parcel B
Twin Cities Army Ammunition Plant
Arden Hills Co: MN 55112–3938
Landholding Agency: GSA
Property Number: 54200240015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–MN–0578B

Mississippi

Bldgs. 239, 240
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240060
Status: Unutilized
Reason: Secured Area

Bldg. 248
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240061
Status: Unutilized
Reason: Secured Area

Bldg. 412
Naval Air Station
Meridian Co: Lauderdale MS 39309–
Landholding Agency: Navy
Property Number: 77200240062
Status: Unutilized
Reason: Secured Area

146 Units
Naval Air Station
Meridian Co: MS 39309–
Landholding Agency: Navy
Property Number: 77200310005
Status: Unutilized
Reason: Secured Area

Montana

Bldg. 347
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200220011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 3064
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200220013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 547
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 769
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1084
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2025
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200240007
Status: Unutilized
Reason: Secured Area

Bldg. 1700
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200330022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 13403
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 18200330023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration

Nevada

6 Bldgs.
Dale Street Complex
300, 400, 500, 600, Block Bldg, Valve House
Boulder City Co: NV 89005–
Landholding Agency: GSA
Property Number: 54200020017
Status: Excess
Reason: Extensive deterioration
GSA Number: LC–00–01–RP

New Hampshire

Bldg. 40
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200240031
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

New Jersey

Former NIKE Missile Battery
Site PH–58
Woolwich Co: Gloucester NJ
Landholding Agency: GSA
Property Number: 54200310012
Status: Excess
Reason: Extensive deterioration
GSA Number : 1–GR–NJ–0538

Bldg. 263
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77200310002
Status: Unutilized
Reason: Extensive deterioration

Bldg. GB–1
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310013
Status: Unutilized
Reason: Extensive deterioration

Bldg. D–5
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310015
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–14
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310016
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–31
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310017
Status: Unutilized
Reason: Extensive deterioration

Bldg. C–36
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310018
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–179
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310019
Status: Unutilized
Reason: Extensive deterioration

Bldg. 531
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310020
Status: Unutilized
Reason: Extensive deterioration

Bldg. 569
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310021
Status: Unutilized
Reason: Extensive deterioration

Bldg. 570
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310022
Status: Unutilized
Reason: Extensive deterioration

Bldg. 589
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200310023
Status: Unutilized
Reason: Extensive deterioration

New Mexico

Bldg. 14170
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230010
Status: Unutilized
Reason: Secured Area

Bldg. 14240
Cannon AFB
Cannon AFB Co: NM
Landholding Agency: Air Force
Property Number: 18200230011
Status: Unutilized
Reason: Secured Area

Bldg. 14270
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230012
Status: Unutilized
Reason: Secured Area

Bldg. 14330
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230013
Status: Unutilized
Reason: Secured Area

Bldg. 14350
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230014
Status: Unutilized
Reason: Secured Area

Bldg. 14370
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230015
Status: Unutilized
Reason: Secured Area

Bldg. 14390
Cannon AFB
Cannon AFB Co: Curry NM
Landholding Agency: Air Force
Property Number: 18200230016
Status: Unutilized
Reason: Secured Area

Bldg. 524
Holloman AFB
Otero Co: NM 88330–
Landholding Agency: Air Force
Property Number: 18200330024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1076
Holloman AFB
Otero Co: NM 88330–
Landholding Agency: Air Force
Property Number: 18200330025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1190
Holloman AFB
Otero Co: NM 88330–
Landholding Agency: Air Force
Property Number: 18200330026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1264
Holloman AFB
Otero Co: NM 88330–
Landholding Agency: Air Force
Property Number: 18200330027
Status: Unutilized
Reason: Secured Area

Bldg. 5001
Holloman AFB
Otero Co: NM 88330–
Landholding Agency: Air Force
Property Number: 18200330028
Status: Unutilized
Reason: Secured Area

Bldg. 5012
Holloman AFB
Otero Co: NM 88330–
Landholding Agency: Air Force
Property Number: 18200330029
Status: Unutilized
Reason: Secured Area

Bldg. N149
Naval Air Warfare
White Sands Co: NM 88002–
Landholding Agency: Navy
Property Number: 77200110104
Status: Excess
Reason: Extensive deterioration

New York

6 UG Missle Silos
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 100
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101

Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 107
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 109
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 116
Youngstown Test Annex
Porter Co: Niagara NY
Landholding Agency: Air Force
Property Number: 18200220009
Status: Unutilized
Reason: Extensive deterioration

Bldgs/Pier/Field
USCG/Ft. Totten
Borough of Queens Co: Flushing NY
Landholding Agency: GSA
Property Number: 54200320015
Status: Surplus
Reason: contamination
GSA Number : 1–U–NY–882

Oregon

Federal Building
256 Warner-Milne Road
Oregon City Co: OR 97045–
Landholding Agency: GSA
Property Number: 54200320004
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 9–G–OR–740

Coos Head Air National Guard S
Charleston Co: OR
Landholding Agency: GSA
Property Number: 54200320005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration
GSA Number: 9–D–OR–538E

Bldg. 30
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210070
Status: Unutilized
Reason: Secured Area

Bldg. 31
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210071
Status: Unutilized
Reason: Secured Area

Bldg. 32
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210072
Status: Unutilized
Reason: Secured Area

Bldg. 33
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210073
Status: Unutilized
Reason: Secured Area

Bldg. 35
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210074
Status: Unutilized
Reason: Secured Area

Bldg. 37
Naval Weapons Systems Training
Boardman Co: Morrow OR
Landholding Agency: Navy
Property Number: 77200210075
Status: Unutilized
Reason: Secured Area

Pennsylvania

Bldg. 02006
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330201
Status: Unutilized
Reason: Extensive deterioration

Bldg. 619
Naval Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77200320063
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Rhode Island

Facility 6
Quonset State Airport
N. Kingstown Co: RI 02852–7545
Landholding Agency: Air Force
Property Number: 18200240008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Facility 16
Quonset State Airport
N. Kingstown Co: RI 02852–7545
Landholding Agency: Air Force
Property Number: 18200240009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

South Carolina

Bldg. 7
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200040030
Status: Unutilized
Reason: Secured Area

Bldg. 314
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200040031
Status: Unutilized
Reason: Secured Area

17 Bldgs.
Naval Weapons Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200320017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Tennessee

22 Bldgs.
Volunteer Army Ammunition Plant
Warehouses (Southern Portion)
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930016
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 4–D–TN–594F

17 Bldgs.
Volunteer Army Ammunition Plant
Acid Production
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930017
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material contamination
GSA Number : 4–D–TN–594F

41 Facilities
Volunteer Army Ammunition Plant
TNT Production
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930018
Status: Surplus
Reason: contamination
GSA Number : 4–D–TN–594F

5 Facilities
Volunteer Army Ammunition Plant
Waste Water Treatment
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930019
Status: Surplus
Reason: Extensive deterioration
GSA Number : 4–D–TN–594F

6 Bldgs.
Volunteer Army Ammunition Plant
Offices (Southern Portion)
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930023
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number : 4–D–TN–594F

Texas

6 Bldgs.
Ellington Field
1277, 1381, 1385, 1386, 1388, 1249
Houston Co: Harris TX 77034–5586
Landholding Agency: Air Force
Property Number: 18200240010
Status: Excess
Reason: Extensive deterioration

Bldg. 1307
Hensley Field ANG Station
Dallas Co: TX 75211–9820

Landholding Agency: Air Force
Property Number: 18200330030
Status: Excess
Reason: Extensive deterioration

Former Army Aircraft Plant
Industrial Road
Saginaw Co: Tarrant TX 76131–
Landholding Agency: GSA
Property Number: 54200310009
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration
GSA Number : 7–D–TX–0879

House #1, Tract 105–70
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200330032
Status: Unutilized
Reason: Extensive deterioration

House #2, Tract 105–70
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200330033
Status: Unutilized
Reason: Extensive deterioration

House #3, Tract 105–70
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200330034
Status: Unutilized
Reason: Extensive deterioration

House #4, Tract 105–70
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200330035
Status: Unutilized
Reason: Extensive deterioration

House #7, Tract 105–70
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200330036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 113
Naval Air Station
Corpus Christi Co: Nueces TX 78419–
Landholding Agency: Navy
Property Number: 77200310054
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Facility 13
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200320051
Status: Excess
Reason: Extensive deterioration

Facility 94
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200320052
Status: Excess
Reason: Extensive deterioration

Facility 1777
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200320053
Status: Excess
Reason: Extensive deterioration

Virginia

Bldg. 417
Camp Pendleton
Virginia Beach Co: VA 23451–
Landholding Agency: Air Force
Property Number: 18200240011
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bayview Tower
Langley AFB
Langley AFB Co: VA 23665–
Landholding Agency: Air Force
Property Number: 18200240012
Status: Unutilized
Reason: Floodway

Big Bethel Military Resv
Hampton Co: VA 23666–1432
Landholding Agency: GSA
Property Number: 54200310014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–D–VA–0733

Bldg. 584
Langley Air Force Base
Hampton Co: VA 23665–
Landholding Agency: GSA
Property Number: 54200320007
Status: Excess
Reason: Secured Area
GSA Number: 4–Z–VA–740–B

Bldg. 720
Langley Air Force Base
Hampton Co: VA 23665–
Landholding Agency: GSA
Property Number: 54200320008
Status: Excess
Reason: Secured Area
GSA Number: 4–Z–VA–740–A

Bldg. O2
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration

Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration

Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration

Bldg. 717
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration

Bldg. 7
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 24
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 34
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 103B
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200120049
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B402
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120059
Status: Unutilized
Reason: Extensive deterioration

Bldg. B425
Naval Surface Warfare Center
Dalgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200120060
Status: Unutilized
Reason: Extensive deterioration

Bldg. B1379
Naval Surface Warfare Center
Dahlgren Co: King George VA 22448–
Landholding Agency: Navy
Property Number: 77200130066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 51
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220054
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 79
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220055
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 89
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220056
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Naval Weapons Station
#90, 91, 95, 96, 101
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220057
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119A
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220058
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 378
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 398
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220060
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 415
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220061
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 440, 441
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220062
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 508
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220063
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 510
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220064
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 605
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220065
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 624
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220066
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 688
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220067
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1271, 1272, 1273
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220068
Status: Excess
Reason: Secured Area

Bldgs. 1465, 1466
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220069
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1467, 1468, 1469
Naval Weapons Station

Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220070
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1799
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220071
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. CAD40
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220084
Status: Excess
Reason: Secured Area

Bldg. CAD41
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220085
Status: Excess
Reason: Secured Area

Bldg. CAD479
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200220086
Status: Excess
Reason: Secured Area

Pier R–1
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200240053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 709
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200240054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1443/adj. bldg.
Norfolk Naval Shipyard
Portsmouth Co: VA 23704–
Landholding Agency: Navy
Property Number: 77200320018
Status: Excess
Reason: Extensive deterioration

Bldg. 164
Naval Support Activity
Northwest Annex
Chesapeake Co: VA
Landholding Agency: Navy
Property Number: 77200330057
Status: Excess
Reason: Secured Area

Washington

Goat Island Quarry
Skagit Co: WA
Landholding Agency: GSA
Property Number: 54200230005
Status: Excess
Reason: not accessible
GSA Number: 9–D–WA–1201

Federal Building
104 W. Magnolia
Bellingham Co: WA 98224–
Landholding Agency: GSA
Property Number: 54200310021
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–WA–1203

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilized
Reason: Secured Area

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Coal Handling Facilities
Puget Sound Naval Shipyard #908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: contamination

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldgs. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 97
Naval Air Station
Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy

Property Number: 77199930041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 15
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration

Bldg. 166
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930101
Status: Excess
Reason: Secured Area

Bldg. 287
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930102
Status: Excess
Reason: Secured Area

Bldg. 418
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930103
Status: Excess
Reason: Secured Area

Bldg. 858
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930104
Status: Excess
Reason: Secured Area

Bldg. 17
Naval Radio Station
Jim Creek
Arlington Co: WA 98223–8599
Landholding Agency: Navy
Property Number: 77200010073
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 47
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200010074
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Whitney Point Complex
Brinnon Co: Jefferson WA 98320–9899
Landholding Agency: Navy
Property Number: 77200010102
Status: Excess
Reason: Extensive deterioration

Bldg. 398
Naval Station
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200020038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 976
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

8 Bldgs.
Naval Station
902, 903, 905, 907, 909–911, 915
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 109
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 157
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 161
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 170
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 262
Naval Weapons Station
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200030024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 482
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040019
Status: Excess
Reason: Secured Area

Bldg. 529
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200040020
Status: Excess
Reason: Secured Area

Bldg. 133
Naval Undersea Warfare Station
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200120133
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 2511
NAS Whidbey Island
Oak Harbor Co: Island WA 98278–3500
Landholding Agency: Navy
Property Number: 77200120157
Status: Excess
Reason: Secured Area

Bldg. 98
Naval Air Station
Oak Harbor Co: Whidbey Island WA 98278–
Landholding Agency: Navy
Property Number: 77200220022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway, Extensive deterioration

Bldg. 2667
Naval Air Station
Oak Harbor Co: Whidbey Island WA 98278–
Landholding Agency: Navy
Property Number: 77200220023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway, Extensive deterioration

Bldg. 899
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200230032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 935, 936, 956, 957
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy

Property Number: 77200230041
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1990
Naval Station
Everett Co: Snohomish WA 98207–5001
Landholding Agency: Navy
Property Number: 77200230044
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 530
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230058
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 878
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200230059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area

Bldg. 904
Naval Station
Fort Lawton
Everett Co: Snohomish WA 98207–5001
Landholding Agency: Navy
Property Number: 77200230060
Status: Excess
Reason: Extensive deterioration

Bldg. 66
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area, Extensive deterioration

Bldg. 67
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240033
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 180
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240034
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 182
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240035
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 214
Naval Magazine Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 273
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 937
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2801A
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 7634
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Wyoming

Bldg. 360
F. E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18200240013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Land (by State)

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Colorado

Landfill
48th & Holly Streets
Commerce Co: Adams CO 80022–
Landholding Agency: GSA
Property Number: 54200220006
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material, contamination
GSA Number: 7–Z–CO–0647

Florida

3 parcels
U.S. Customs Svc Natl Law
Enforcement Comm Ctr
Orlando Co: Orange FL 32803–
Landholding Agency: GSA
Property Number: 54200310015
Status: Excess
Reason: landlocked
GSA Number: 4–T–FL–1209–1A

Michigan

Port/EPA Large Lakes Rsch Lab
Grosse Ile Twp Co: Wayne MI
Landholding Agency: GSA
Property Number: 54199720022
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 1–Z–MI–554–A

5.43 acres
Drummond Island
Drummond Tnshp Co: Cheppawa MI
Landholding Agency: GSA
Property Number: 54200240009
Status: Excess
Reason: not accessible by road
GSA Number: 1–U–MI–449A

Land/USCG
1380 Beach Street
Muskegon Co: MI 49441–
Landholding Agency: GSA
Property Number: 54200320014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–U–MI–0610

Minnesota

Parcel A
Twin Cities Army Ammunition Plant
Arden Hills Co: MN 55112–3938
Landholding Agency: GSA
Property Number: 54200240014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–MN–0578A

New Jersey

2.1 acres
Naval Weapons Station
Earle Co: NJ
Landholding Agency: Navy
Property Number: 77200320016
Status: Excess
Reason: Secured Area

North Carolina

0.85 parcel of land
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area

5 (0.91) Parcels
Marine Corps Base
Camp Lejeune Co: NC
Landholding Agency: Navy
Property Number: 77200210080
Status: Underutilized
Reason: Secured Area

3 (0.91) Parcels

Marine Corps Base
Greater Sandy Run
Camp Lejeune Co: NC
Landholding Agency: Navy
Property Number: 77200210081
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area

Ohio

Lewis Research Center
Cedar Point Road
Cleveland Co: Cuyahoga OH 44135–
Landholding Agency: GSA
Property Number: 54199610007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone
GSA Number: 2–Z–OH–598–I

Puerto Rico

Parcel 2E
Naval Security Group
Sabana Seca Co: Toa Baja PR
Landholding Agency: GSA
Property Number: 54200210024
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–PR–496

Parcel 2R
Naval Security Group
Sabana Seca Co: Toa Baja PR
Landholding Agency: GSA
Property Number: 54200210025
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–PR–494

Parcel 2W
Naval Security Group
Sabana Seca Co: Toa Baja PR
Landholding Agency: GSA
Property Number: 54200210026
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–N–PR–495

Site 1
Naval Station Roosevelt Roads
Ceiba Co: PR 00735
Landholding Agency: Navy
Property Number: 77200320029
Status: Unutilized
Reason: Secured Area

Site 2
Naval Station Roosevelt Roads
Ceiba Co: PR 00735
Landholding Agency: Navy
Property Number: 77200320030
Status: Unutilized
Reason: Secured Area

Site 3
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200320031
Status: Unutilized
Reason: Secured Area

Site 4
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77200320032
Status: Unutilized
Reason: Secured Area

Washington

Hanford Training Site
Horn Rapids Rd.
Benton Co: WA
Landholding Agency: GSA
Property Number: 54200210012
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–B–WA1198

Land-Port Hadlock Detachment
Naval Ordnance Center Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

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Federal Register

Friday,
September 12, 2003

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 5

Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 5

[Docket No.: 2003–P–020]

RIN 0651–AB64

Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) has established a 21st Century Strategic Plan to transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. The Office is proposing to revise the rules of practice to support the implementation of the 21st Century Strategic Plan, which involves improving the patent application and examination process by promoting quality enhancement, reducing patent pendency, and using information technology to simplify the patent application process. The more notable changes being proposed in this document involve permitting electronic signatures on a number of submissions, streamlining the requirements for incorporation by reference of prior-filed applications, and clarifying the qualifications for claiming small entity status for purposes of paying reduced patent fees. These changes to the patent application and examination process are necessary for the Office to be able to process the long-term trend of increasing numbers of applications within a reasonable time frame.

COMMENT DEADLINE DATE: To be ensured of consideration, written comments must be received on or before November 12, 2003. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *ab64.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313–1450 or by facsimile to (703) 305–1013, marked to the attention of Hiram Bernstein. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of Patent Legal Administration, located at Room 3-C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Hiram H. Bernstein, Senior Legal Advisor, by telephone at (703) 305–8713 or Robert J. Spar, Director, Office of Patent Legal Administration (OPLA), at (703) 308–5107, or by facsimile to (703) 305–1013, marked to the attention of Mr. Bernstein, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Office has conducted a ''top to bottom'' review of the patent application and examination process (among other processes) as part of the 21st Century Strategic Plan. The 21st Century Strategic Plan is available on the Office's Internet Web site (*www.uspto.gov*). While many of the changes to the patent application and examination process necessary to support the 21st Century Strategic Plan require enabling legislation (and implementing rule changes), the Office has determined that a number of initiatives can be implemented under the Office's current rule making and patent examination authority set forth in 35 U.S.C. 2(b)(2), 131, and 132. This document proposes changes to the rules of practice in title 37 of the Code of Federal Regulations (CFR) to improve the patent application and examination process by promoting quality enhancement, reducing patent pendency, and using information technology to simplify the patent application process.

This document specifically proposes changes to the following sections of title 37 CFR: 1.4, 1.6, 1.8, 1.10, 1.14, 1.17, 1.19, 1.27, 1.47, 1.52, 1.53, 1.55, 1.58, 1.59, 1.69, 1.76, 1.78, 1.83, 1.84, 1.91, 1.94, 1.98, 1.102, 1.103, 1.105, 1.111, 1.115, 1.116, 1.131, 1.136, 1.137, 1.165, 1.173, 1.175, 1.178, 1.182, 1.183, 1.213, 1.215, 1.291, 1.295, 1.296, 1.311, 1.324, 1.377, 1.378, 1.502, 1.530, 1.550, 1.570, 1.644, 1.666, 1.704, 1.705, 1.741, 1.902, 1.953, 1.956, 1.957, 1.958, 1.979, 1.997, 5.12, 5.15, and 5.25. Additionally, this document proposes to amend title 37 CFR by adding new § 1.57 and removing § 1.179.

The following members of the Office of Patent Legal Administration may be contacted directly for the matters indicated:

Joni Chang ((703) 308–3858): §§ 1.8, 1.10, 1.98, 1.111, and 1.311
Jeanne Clark ((703) 306–5603): § 1.98
James Engel ((703) 308–5106): §§ 1.14, 1.17, 1.53, 1.59, 1.103, 1.131, 1.182, 1.183, 1.295, 1.296, 1.377, 1.378, 1.644, 1.666, 1.741, 5.12, 5.15, and 5.25
Karin Ferriter ((703) 306–3159): §§ 1.6, 1.47, 1.52 (other than (e)(1)(iii) and (e)(3)), 1.58, 1.83, 1.84, and 1.165
Anton Fetting ((703) 305–8449): §§ 1.17, 1.53, 1.59, 1.103, 1.105, 1.182, 1.183, 1.295, 1.296, 1.377, 1.378, 1.644, 1.666, 1.741, 5.12, 5.15, and 5.25
Kery Fries ((703) 308–0687): §§ 1.76, 1.704, and 1.705
Hiram Bernstein ((703) 305–8713): §§ 1.91 and 1.94
Eugenia Jones ((703) 306–5586): §§ 1.8, 1.10, 1.27, 1.55, 1.57(a), and 1.78
Michael Lewis ((703)306–5585): §§ 1.4, 1.19, 1.52(e)(1)(iii) and (e)(3), 1.57, and 1.58(b)
Joe Narcavage ((703) 305–1795): §§ 1.173, 1.175, 1.178, 1.179, 1.291, and 1.324
Mark Polutta ((703) 308–8122): §§ 1.213, and 1.215
Kenneth Schor ((703) 308–6710): §§ 1.98, 1.116, 1.136, 1.137, 1.291, 1.502, 1.550, 1.570, 1.902, 1.953, 1.956, 1.957, 1.958, 1.979, and 1.997
Fred Silverberg ((703) 305–8986): § 1.115

The Office will post a copy of this notice on its Internet Web site (*www.uspto.gov*). Additionally, individuals or organizations, that need a copy for the purpose of providing comments, may send a request by phone or e-mail to Elizabeth Polley at ((703) 308–6202, or *elizabeth.polley@uspto.gov*) or Terry Dey at ((703) 308–1201 or *terry.dey@uspto.gov*) to receive an e-mail copy of the notice. When making a request for an e-mail copy, it is requested that persons please specify whether they wish to receive the document in MS-Word, WordPerfect, or HTML format.

Discussion of Specific Rules

Section 1.4: Section 1.4(d) is proposed to be amended to provide for filing correspondence with electronic signatures on electronically created correspondence documents that are filed by facsimile transmission, or hand-carried or mailed to the Office, for entry in a patent application, patent file, or

reexamination proceeding. The electronic signature must be the signer's actual name or have the actual name additionally presented in printed or typed form. The electronic signature may be any combination of numbers and/or letters and may include a title. Appropriate punctuation and spaces may be used with the letters and numbers. The signer must present his or her family name entirely in capital letters in the signature if the actual name is used. Where the actual name is not used in the signature, the family name must be presented entirely in capital letters in the printed or typed form of the name. When the actual name of the signer is being provided as a printed or typed name, it must be clearly identified as the actual name of the signer. A practitioner signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2) must place the signer's registration number, either within or after the electronic signature. A number character (#) may only be used in a signature if it is prior to a practitioner's registration number that is part of the electronic signature. New paragraph (h) sets forth the procedure for resolving questions as to the veracity of the (electronic) signature, such as when there are variations in signatures, or where the signature and the printed or typed name does not clearly identify the person signing the document, or where more than one person has used the same signature.

The Office considered proposing a requirement that the order of the name in a signature be identified with the language such as follows: given name, middle name or initial, family name if the name is supplied in that order. Capitalizing only the family name without identifying the order is considered a simpler and less burdensome procedure for signing a document. Comments in favor of or opposed to this alternative are invited.

Section 1.4(d)(1)(iv)(A) sets forth the specific requirements of an electronic signature (e-signature), and when the Office will accept an electronic signature in patent-related documents. The phrase ''electronically signed'' documents includes documents that are created and signed in a word processor program and electronically fillable forms, such as declarations generated using the program Adobe Acrobat that have pre-printed standard language with an ability to add specific information such as a signature (*e.g.*, similar to those provided on the Office's Internet Web site that can be completed and signed electronically). The proposed rule change is intended to facilitate movement of documents between practitioners, applicants, and the Office. The proposed rule change does not permit the filing of Official correspondence by electronic mail (*e.g.*, e-mail) messages over the Internet to the Office, but does permit submissions transmitted by facsimile. Pilot programs, such as the program at the Board of Patent Appeals and Interferences (BPAI) are not affected by this rule change (*see* standing orders at the URL: *http://www.uspto.gov/web/offices/dcom/bpai/standing2003May.pdf*). Electronically created documents that contain an electronic signature e-mailed from applicants to a practitioner, however, may be transmitted to the Office from a practitioner by facsimile transfer, or as a paper document. While it is not now permitted, the Office is considering expanding the means by which electronically created documents can be transmitted to the Office, such as by an e-mail attachment using the proposed signature requirements.

Paragraph 1.4(d)(1)(iv)(A) recites that electronic signatures may be utilized when the electronically signed document is: (1) Facsimile transmitted from a computer in its electronic form; (2) printed and then facsimile transmitted; or (3) printed on paper and hand or mail delivered to the Office. This paragraph also permits electronic signatures for documents submitted via the Office's Electronic Filing System (EFS). The EFS is not an e-mail system. This paragraph does not authorize delivery of documents to the Office by e-mail over the Internet.

Practitioners must take care when submitting a document intended to be unsigned by ensuring that there are no markings in a signature space or this could be determined to be indicia of a signature (either as a permanent ink signature or electronic signature).

The documents submitted under this provision may become records submitted in interference and other legal proceedings where authentication is required. Applicants and practitioners must recognize the differences in electronically created documents and paper documents for authentication purposes and take appropriate steps to be able to authenticate documents, if required. An issue with electronically created documents is that they may have embedded comments and track changes in the electronic document that are not always visible when a document is rendered using a different computer system or a different software version, or when printed to paper. Variations in how much of the embedded comments and track changes are rendered on a given computer may cause the document signer to see different document content than the contents of the document that is submitted to the Office. Additionally, establishing a chain of custody may involve proving that a document viewed by the Office is, in fact, the same document executed by the signer.

The Office can only authenticate a document to the extent of what is contained in Office records. Office records will not contain any of the electronic communications between the applicant or practitioner filing a document and a third party. For example, the Office cannot authenticate from its records a document (*e.g.*, a § 1.132 affidavit) prepared by a third party and including a third party signature that was submitted to an applicant or practitioner electronically for resubmission to the Office. Under these circumstances, the applicant or practitioner would need to be concerned about both establishing a chain of custody to address alteration and any attempted repudiation by a third party of his or her electronic signature. In establishing the authenticity of a document, the applicant or practitioner would be attempting to show that the date of execution of the document is earlier than the date of submission to the Office, and the document was unaltered from that earlier date until its submission to the Office. A chain of custody would need to be shown and proven. Therefore, electronically created documents may require additional procedures over what may be required for a document signed with an ink signature to address chain of custody and alteration issues. In addition, there must be procedures in place to address the issue that the particular document preparation software may have undergone frequent changes. Different versions of the same software program may store and display the document, as well as comments and changes to the document, differently, which gives rise to issues concerning alteration of the document. Accordingly, applicants and practitioners must be cognizant of these issues of changed document appearance and content and take appropriate steps to ensure that their records, if in electronic form, can be rendered and authenticated at some later time as being the unaltered electronically signed original document.

Paragraph 1.4(d)(1)(iv)(A) defines who can insert an electronic signature into an electronically created document. The proposed rule change requires that the signer ''personally insert'' his or her electronic signature by use of numbers and/or letters, with punctuation and spaces. To make the identity of the signer self-evident, the same electronic

signature should be utilized each time, with variations of the signature being avoided. The signer should review any indicia of identity of the signer in the body of the document including any printed or typed name and registration number, to ensure that the indicia of identity is consistent with how the document is signed. Knowingly adopting an electronic signature of another is not permitted. The ''personally insert'' requirement is met by the signer directly typing his or her electronic signature on a keyboard. This requirement is not met when a first person types the electronic signature of a second person, upon receiving only a general instruction from the second person to insert the second person's signature. A person physically unable to use a keyboard, however, may, while simultaneously reviewing the document for signature, direct another person to press the appropriate keys to form the signature.

Paragraph 1.4(d)(1)(iv)(A) defines the content of an electronic signature. The Office proposes to adopt a standard of numbers and/or letters, with punctuation and spaces as the electronic signature, which must be placed between two forward slashes to be consistent with the international standard and to build upon the experience gained with this standard in the Trademarks section of the office. *See* PCT Annex F, section 3.3.2. The electronic signature between two forward slashes cannot contain any additional forward slashes. This standard can be met with any standard personal computer (PC) and keyboard. The Office also recognizes that many practitioners sign their name with the number character (#) as part of his or her registration number. The use of the number character (#) as part of the registration number would be permitted but not otherwise, such as utilization of a customer number as the signature. Other non-text characters would not be permitted, as a typed symbol in one font may vary when viewed in a different font (*e.g.*, the code for the euro currency symbol in one font produces a different currency symbol when viewed in another font).

The Office recognizes that periods, commas, and hyphens are often found in names and will therefore be found in many signatures. Appropriate punctuation and spaces may be used with numbers and letters, not in place of numbers and letters in a signature. Hence, the use of appropriate punctuation and spaces with letters and numbers would be permitted (*e.g.*, periods, commas and hyphens). A signature of only punctuation marks ordinarily does not identify any person, and would be improper. Also, punctuation marks, such as question marks (*e.g.*, /???/), are often utilized to represent the intent not to sign a document and would be improper.

To avoid processing delays, the Office needs to readily determine whether a document has been signed. The filing of a document does not imply that the document has been signed. The Office does not want to investigate as to whether a mark (*e.g.*, extraneous marks or a non-permanent ink presentation of a name) comprises a signature. Therefore, the Office will only interpret the data presented between forward slashes as an electronic signature. Hence, documents intended to be unsigned should be very clear that any data presented between forward slashes is not intended to be a signature.

Similarly, presentation of just numbers and letters in an electronically produced document without forward slashes will be treated under this part as an unsigned document. Script fonts are not permitted for any portion of a document, which would include a name typed in a signature area. *See* § 1.52(b)(2)(ii). Accordingly, presentation of a typed name without the required slashes even in a script font does not present the proper indicia manifesting an intent to sign and will not be accepted as an electronic signature.

Paragraph (d)(1)(iv)(A) requires the signer's actual name be used except as provided in paragraph (d)(1)(iv)(B), where an electronic signature is used that differs from the actual name of the signer. Where an electronic signature is not the signer's actual name, the actual name must be printed or typed and clearly indicated as the signer's actual name. The use of lower case and capital letters is permitted except that the family name must be entirely capitalized with no other names entirely capitalized. A middle initial if capitalized and presented with a period to identify it as an abbreviation is permitted. A person with an electronic signature that includes both a single character family name and at least one other single character name must provide an electronic signature with all single character names other than the family name in non-capital letters. Titles may be used with the signer's name and can be placed within or after the slash marks. When the last name is given first it will be presumed to be followed by a first name before any middle name. Similarly, when a last name is given last it will be presumed that the first name will precede a middle name. Where two or more multiple character names are capitalized, the Office will need to inquire as to which is the last name.

To accommodate as many varieties of names as possible a signer may select any combination of letters and/or numbers for his or her signature under § 1.4(d)(1)(iv)(A). A signature that is the actual name of the signer need not be accompanied by a typed or printed name. Accordingly, the absence of a printed or typed name clearly identified as the actual name of the signer is a representation that the signature is the signer's actual name.

The Office considered accepting an actual name as a signature without requiring that the order of names be identified. A signature of an actual name has been found by the Office insufficient to identify the signer. For example, some people routinely sign with his or her last (or family) name first. Similarly, for people with first and last names that are commonly interchanged as first and last names, it may not be self-evident which is the given name and which is the family name. A printed or typed copy of the signer's name immediately below the signature often will have the same problem of which is the family name and which is the given name.

The Office considered proposing a standard signature format such as family name first, followed by given name. A standard signature format was rejected because it would not aid the Office in identifying the signer of a document, particularly where the format is not adhered to by the signer. The Office is receiving applications and correspondence for other patent-related matters in which it cannot be determined who signed the document and/or what the actual name of the signer is because either the order of the family name and given name are unclear, or more than one signer has the same name. Adopting a standard signature format would not make it any easier for the Office to detect in many cases when the order of family name, given name, and middle name are in a non-standard order.

In the following discussion, family name is intended to be synonymous with the terms ''surname'' or ''last name'' in the customary format for European-American names. Similarly, given name is intended to be synonymous with the term ''first name'' in the customary format for European-American names. Format and content of a signature are both critical because people from different countries throughout the world have different customs for signing a name, *e.g.*, reversing the order of family (*i.e.*, last)

name and given (*i.e.*, first) name. Current rules and procedures for most communications do not require applicants and practitioners to utilize any format for the signature. A person may currently use a signature with his or her family name as the first name or the last name of the signature. Further, it is common for a person to abbreviate his or her given name (*e.g.*, William Jefferson Louis, as W. Jefferson Louis), which, if signed with the last name first, would appear as a middle initial (*i.e.*, Louis W. Jefferson). The Office is receiving communications from people all over the world with different signature formats and the Office cannot readily identify the family name and given name of the signer.

This lack of consistency in signing order is exacerbated in many patent applications because a person's name may appear in several places in the record of an application in a different format (*e.g.*, first name and last name reversed) in each occurrence. In addition, the Office has found at least two applicants and/or practitioners in the same firm with the given and family names in reverse order (*e.g.*, first practitioner is Mitchell Louis, and the second practitioner is Louis Mitchell). Signatures have been found with the printed or typed name under the signature appearing as the reverse of the signature (*e.g.*, /Louis Mitchell/ with Mitchell Louis typed immediately underneath). In view of the differing customs for the order of signing names, the Office is frequently unable to ascertain the identity of the signer (*e.g.*, in the example given, is Louis Mitchell or Mitchell Louis the signer). The identity of the signer is not self-evident in applications with applicants and/or practitioners that have reversed versions of the same names, and when the order of names in a signature is the reverse order in the adjacent printed/typed version of the signer's name. This often results in confusion in the Office, and later in the public when reviewing Office records, as to the actual name and identity of the signer of a document or a patentee when an application is issued.

To avoid confusion as to whether a registered practitioner is relying on his or her registration for signing a document, § 1.4(d)(1)(iv)(A) recites that a practitioner signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2) of this part must place his or her complete name, as registered, and his or her registration number, with or immediately adjacent his or her electronic signature. A number character (#) may only be used in a signature if it is prior to a practitioner's registration number that is part of the electronic signature. When a practitioner is signing as an assignee, or as an applicant (inventor) pursuant to §§ 1.33(b)(3) or 1.33(b)(4), a registration number is not required but may be supplied.

The requirement that an electronic signature for practitioners be accompanied by an identification of the family name, and registration number, is consistent with Article 9(1) of the Patent Law Treaty (June 1, 2000) (PLT).

Paragraph 1.4(d)(1)(iv)(B) recites the requirements for when a signer uses an electronic signature that is not the person's actual name. The Office expects that where persons do not sign with their actual name it is because they are using an e-signature that is the normal e-signature for that person and not something that is employed to obfuscate or misidentify the signer. Where the e-signature is not the actual name because the signer is using the signer's normal e-signature, the actual name must be presented in printed or typed form with the last name in capitals. The printed or typed name must be clearly identified as the actual name. To accommodate as many signatures as possible, a signer may select any combination of letters and/or numbers for his or her signature. The flexibility in selecting combinations of letters and/or numbers for signatures means that the identity of the signer may not be clear from the signature if it is not an actual name. For example, a collection of letters/numbers when presented for the first time without a full printed or typed name that does not appear to be a person's name (*e.g.*, /123456XYZ/) does not identify any person as the signer. This is so even where the signer has submitted a previous document with such signature and an additional identification of the actual name of the signer. Similarly, where the signature, because it is not the signer's actual name, appears to represent an identifiable person with a name different in some respects from those persons authorized to sign and who are of record in an application, the name of the signer in the signature alone would not be sufficient to identify the signer.

Paragraph 1.4(d)(1)(iv)(B) requires that where the signer's usual electronic signature is not the signer's actual name, the signer must provide his or her actual name by printing or typing the actual name and clearly identifying it as such. The signer must further identify in the printed or typed actual name the signer's family name by entirely capitalizing only the family name. These requirements are consistent with PLT Rule 9. Registered practitioners signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2) of this part, or where the signer otherwise (*e.g.*, to distinguish two practitioners with the same name) includes a registration number when it is not required by rule, should provide the registration number after the signature, or the printed or typed name immediately below the signature.

A typed or printed name in the body of the text is not usually self-identifying as to whether it is the signer's actual name, or even the name of some other person. A clear indication that it is the signer's actual name is necessary to distinguish it from the other possibilities where the signature is not the actual name and a printed or typed name has not been supplied with the signature. Similarly, the order of the names, family name, given name, middle name or initial, unless supplied is not self-evident from the printed or typed name alone so the order must be indicated by entirely capitalizing only the family name.

The Office strongly suggests that each signer use a signature (electronic or otherwise) that has his or her full name including full middle name. The Office recommends that registered practitioners use their full name under which they are registered and always include their registration number with the signature or with the hand-written or typed name that accompanies a signature. Examples of proper and improper signatures will be posted on the Office's Internet Web site.

Paragraph 1.4(h) proposes requiring a ratification or confirmation of a signature, such as where the Office has reasonable doubt as to the authenticity (veracity) of the signature. The Office may additionally inquire in regard to a signature simply to identify the signer and clarify the record where the identity of the signer is unclear. The inquiries concerning the authenticity (veracity) of a signature are consistent with PLT Article 8(4)(c) and Rules 7(4), 15(4), 16(6), 17(6), and 18(4). An example of when ratification or confirmation of a signature may be required is when there are variations in a signature or whenever a name in an e-signature is not exactly the same as the name indicated as an inventor, or a practitioner of record. Hence, whatever signature is adopted by a signer, that signature should be consistently used on all documents. Also addressed is the treatment of variations in a signature when a printed or typed name accompanies the e-signature but the identity of the signer is unclear. In such cases, the Office may require ratification or confirmation of a signature. Ratification or confirmation alone does

not provide a means for changing the name of a signer. For example, when an inventor changes her/his name and the inventor desires to change her/his name in the application, such change must be accompanied by a petition under § 1.182. *See Manual of Patent Examining Procedure* § 605.04(c) (8th. ed. 2001) (Rev. 1, Feb. 2003) (MPEP).

The Office is proposing to treat failure to follow the format and content of a standard signature as an unsigned document. Treating the documents as being unsigned could have varying results dependent on the nature of the document. For example, in new applications, treating an oath or declaration as an unsigned oath or declaration could result in the imposition of a surcharge. *See* § 1.53(f)(1). Other correspondence could be treated under the procedures for unsigned amendment documents set forth in MPEP §§ 714.01 and 714.01(a).

As previously indicated, the Office is requesting comments on the alternative of requiring labeling the order of names in a signature in place of the proposed rule requiring capitalization of the entire family name.

Section 1.6: Section 1.6(d)(4) is proposed to be amended to provide that black and white drawings in patent applications may be transmitted to the Office by facsimile in order to provide more flexibility to applicants for filing individual papers in applications that contain drawings. Drawings are now permitted to be transmitted to the Office by facsimile when accompanied by payment of the issue fee, and drawings received by facsimile have been of an acceptable quality. *See Payment of the Issue Fee and Filing Related Correspondence by Facsimile*, 1254 *Off. Gaz. Pat. Office* 91 (Jan. 15, 2002). Although the rules of practice will now permit the submission of black and white drawings by facsimile, photographs or drawings with detail should not be transmitted by facsimile. Furthermore, color drawings must continue to be hand-carried or mailed to the Office instead of being transmitted by facsimile. In addition, the Office will publish drawings that are received as long as they can be scanned, and will not, in general require replacement drawings to replace drawings transmitted by facsimile, even if the facsimile transmission process results in the drawings being less sharp than the original drawings.

Section 1.6(e) is proposed to be removed and reserved because the provisions of § 1.6(e) are deemed more appropriately placed in § 1.10. This is because the ''Express Mail'' provisions of § 1.10 are the only means by which correspondence can be accorded a filing date other than the actual date of receipt in the Office. Thus, the provisions of § 1.6(e) are proposed to be transferred to § 1.10 along with some changes. Proposed § 1.10(g) and (h) specifically address situations in which ''Express Mail'' is returned or refused by the United States Postal Service (USPS). Proposed § 1.10(i) is similar to § 1.6(e) and addresses situations where there is a designated interruption or emergency in ''Express Mail'' service.

Section 1.8: Section 1.8(a) is proposed to be amended to clarify that the provisions of this section do not apply to time periods or situations set forth in sections that have been expressly excluded from § 1.8 as well as situations enumerated in § 1.8(a)(2).

Section 1.8(b) is also proposed to be amended to permit notifying the Office of a previous mailing, or transmitting, of correspondence, when ''a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence.''

Section 1.8(b) is also proposed to be amended to make it clear that it is not the reexamination proceeding which is concluded under §§ 1.550(d) or 1.957(b), but rather the prosecution of the reexamination. See the discussion as to the amendment of § 1.550 for the rationale for this change.

It is further proposed that § 1.8(b) be revised to more appropriately set forth the § 1.957(c) consequences of a failure to respond in an *inter partes* reexamination.

The proposed amendment to § 1.8(a) is to clarify that the list enumerated in § 1.8(a)(2) is not exhaustive. Provisions of § 1.8 also do not apply to the time periods or situations set forth in sections that have been explicitly excluded from § 1.8. For example, provisions of § 1.8(a) do not apply to time periods and situations set forth in §§ 1.217(e) and 1.703(f) because the exceptions are provided explicitly in § 1.217(e), ''[t]he provisions of § 1.8 do not apply to the time periods set forth in this section'' and § 1.703(f), ''[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in [a patent term adjustment] calculation.''

Recently, many applicants had experienced substantial delays in delivery of their correspondence by the USPS to the Office. These applicants did not wish to wait until the application is held to be abandoned before notifying the Office of the previous mailing, or transmitting, of the correspondence and supplying a duplicate copy of the correspondence and requisite statement in accordance with § 1.8(b)(3).

Under the proposed amendment to § 1.8(b), in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with § 1.8(a), but not received in the Office after a reasonable amount of time has elapsed (*e.g.*, more than one month from the time the correspondence was mailed), the applicants would not be required to wait until the end of the maximum extendable period for reply set in a prior Office action (for the Office to hold the application to be abandoned) before informing the Office of the previous submitted correspondence and supplying a duplicate copy and requisite statement. Thus, filing a petition to withdraw the holding of abandonment would not be necessary in such circumstance. The proposed amendment to § 1.8(b) would provide applicants an expedited procedure in resolving substantial delayed mail problems.

Before notifying the Office of a previously submitted correspondence that is not received by the Office, applicants are encouraged to check the Patent Application Information Retrieval (PAIR) System (which can be accessed over the Office's Internet Web site at *http://pair.uspto.gov*) to see if the correspondence has been entered into the application file. The PAIR system is a system which enables applicants to access the Office's electronic records for a patent application or patent. Private PAIR is available to applicants who have a customer number associated with the correspondence address for an application and who have acquired the access software (Entrust Direct Software and a PKI certificate). Applicants may contact the Electronic Business Center (EBC) at (703) 305–3028 for more information on PAIR.

The proposal that § 1.8(b) be revised to more appropriately set forth the § 1.957(c) consequences of a failure to respond in an *inter partes* reexamination is necessary to clarify that the *inter partes* reexamination prosecution is neither terminated nor concluded where the patent owner fails to timely respond to an Office action, and claims in the proceeding remain patentable. Rather, an Office action is issued to thereby permit the third party requester to challenge the claims found patentable. As set forth in § 1.957(c), ''[i]f claims are found patentable and the patent owner fails to file a timely and appropriate response to any Office action in an *inter partes* reexamination proceeding, further prosecution will be limited to the claims found patentable at

the time of the failure to respond, and to any claims added thereafter which do not expand the scope of the claims which were found patentable at that time'' (emphasis added). The proposed revision accordingly would apply the § 1.8(b) remedy to an *inter partes* reexamination prosecution which has been limited as to further prosecution under § 1.957(c). In addition, the amendment is intended to apply to the § 1.957(a) situation where the third party requester files an untimely comment, notice of appeal or brief in an *inter partes* reexamination, and the paper would thus be refused consideration (to thereby limit the requester's prosecution) if not for the operation of the § 1.8(b) remedy.

Section 1.10: Section 1.10 is proposed to be amended to add paragraphs (g), (h), and (i) to address the effects of interruptions or emergencies in USPS ''Express Mail'' service. For example, Friday, November 16, 2001, the USPS issued a memorandum temporarily and immediately suspending ''Express Mail'' service to Washington DC zip codes 202xx through 205xx. The suspension included service to the zip code for certain correspondence mailed to the Office (20231).

Applicants frequently rely on the benefits under § 1.10 to obtain a particular filing date for a new application. The filing date accorded to an application is often critical. For example, applicants who do not file their applications in the United States within one year from when their invention was first described in a printed publication or in public use or on sale in this country are not entitled to a patent. (*See* 35 U.S.C. 102(b)). Furthermore, to be able to claim the benefit of a provisional application or to claim priority to a foreign application, the nonprovisional application claiming benefit or priority must be filed within one year from the filing of the provisional application or foreign application, respectively. Therefore, the means by which applicants may remedy the effects of an interruption or emergency in USPS Express Mail service which has been so designated by the Director should be specifically addressed in the rules of practice.

The Office published a notice on October 9, 2001, that provides guidance in the situations in which a post office refuses to accept the deposit of mail for delivery by ''Express Mail'' Service and situations in which ''Express Mail'' is deposited into an ''Express Mail'' drop box and given an incorrect ''date-in.'' *See United States Postal Service Interruption and Emergency*, 1251 *Off. Gaz. Pat. Office* 55 (Oct. 9, 2001). The procedure for where the USPS refuses to accept the deposit of mail for delivery by ''Express Mail'' as contained in the notice, however, has not been incorporated into the rules of practice.

The Offices's existing framework to address postal emergencies is detailed in § 1.6(e), ''Interruptions in U.S. Postal Service.'' Section 1.6(e) provides that if interruptions or emergencies in the USPS which have been so designated by the Director occur, the Office will consider as filed on a particular date in the Office any correspondence which is: (1) Promptly filed after the ending of the interruption or emergency; and (2) accompanied by a statement indicating that the correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the USPS.

The provisions of § 1.6(e) are more appropriate in § 1.10 since ''Express Mail'' is the only means by which correspondence can be accorded a filing date other than the actual date of receipt in the Office. Thus, the provisions of § 1.6(e) are proposed to be transferred to § 1.10 along with some changes. Proposed § 1.10(g) and (h) specifically address situations in which ''Express Mail'' is returned or refused by the USPS. Proposed § 1.10(i) is similar to § 1.6(e) and addresses situations where there is a designated interruption or emergency in ''Express Mail'' service.

Section § 1.10(g) is proposed to be added to provide that any person who attempts to file correspondence by ''Express Mail'' that was returned by the USPS may petition the Director to consider the correspondence as filed on a particular date in the Office. The petition must be filed promptly after the person becomes aware of the return of the correspondence and the number of the ''Express Mail'' mailing label must have been placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by ''Express Mail.'' The petition must also include the original correspondence or a copy of the original correspondence showing the number of the ''Express Mail'' mailing label thereon and a copy of the ''Express Mail'' mailing label showing the ''date-in.'' Furthermore, the petition must include a statement, which establishes to the satisfaction of the Director, the original deposit of the correspondence and that the correspondence or the copy is the original correspondence or a true copy of the correspondence originally deposited with the USPS on the requested filing date.

Section 1.10(h) is proposed to be added to provide that any person who attempts to file correspondence by ''Express Mail'' that was not accepted by the USPS may petition the Director to consider the correspondence as filed on a particular date in the Office. The petition must be filed promptly after the person becomes aware of the refusal of the correspondence and the number of the ''Express Mail'' mailing label must have been placed on the paper(s) or fee(s) that constitute the correspondence prior to the attempted mailing by ''Express Mail.'' The petition must also include the original correspondence or a copy of the original correspondence showing the number of the ''Express Mail'' mailing label thereon. In addition, the petition must include a statement by the person who originally attempted to deposit the correspondence with the USPS which establishes, to the satisfaction of the Director, the original attempt to deposit the correspondence and that the correspondence or the copy is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.

Section 1.10(i) is proposed to be added to provide that any person attempting to file correspondence by ''Express Mail'' who was unable to deposit the correspondence with the USPS due to an interruption or emergency in ''Express Mail'' service which has been so designated by the Director, may petition the Director to consider such correspondence as filed on a particular date in the Office. This material is proposed to be transferred from § 1.6. The petition must be filed in a manner designated by the Director promptly after the person becomes aware of the designated interruption or emergency in ''Express Mail'' service. The petition must also include the original correspondence or a copy of the original correspondence, and a statement which establishes, to the satisfaction of the Director, that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in ''Express Mail'' service, and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.

Proposed § 1.10(i) requires the Director to designate an interruption or emergency in ''Express Mail'' service. It is envisioned that in the notice designating the interruption or emergency the Director would provide guidance on the manner in which petitions under proposed § 1.10(i) should be filed. This is similar to what occurred when ''Express Mail'' was

suspended in November of 2001, when applicants were advised that if the USPS refused to accept correspondence for delivery to the Office by ''Express Mail'' they should mail the correspondence by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by ''Express Mail.''

Section 1.14: Section 1.14(h)(1) is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17.

Section 1.17: Section 1.17 is proposed to be amended to adjust petition fees to more accurately reflect the Office's cost of treating petitions. The petitions whose fees are currently provided for in § 1.17(h) are outside the scope of the usual processing of patent applications provided for in 35 U.S.C. 41(a) and (b). The Office is directed by 35 U.S.C. 41(d) to set fees for services not set under 35 U.S.C. 41(a) or (b) so as to recover the average costs of performing the processing or service.

The Office has conducted an activity-based-accounting cost (ABC) analysis of the Office's cost of treating the various petitions enumerated under § 1.17(h) based on current practices and staffing costs. The Office has determined that the petition fee set forth in § 1.17(h) does not recover the Office's costs of treating petitions for a number of the types of petitions enumerated under § 1.17(h). The Office has also determined that there is a significant difference in the Office's costs for treating the various types of petitions enumerated under § 1.17(h). Therefore, the Office is proposing to separate the petitions enumerated under § 1.17(h) into three groups, and to charge separate petition fees for each of these three groups of petitions, which petition fees will more accurately reflect the cost of treating petitions in these three groups.

The first group of petitions will be covered by a new § 1.17(f), which will specify a petition fee of $400. The petitions in this group are: (1) Petitions under § 1.53(e) to accord a filing date; (2) petitions under § 1.57(a) to accord a filing date; (3) petitions under § 1.182 for decision on a question not specifically provided for; (4) petitions under § 1.183 to suspend the rules; (5) petitions under § 1.378(e) for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent; (6) petitions under § 1.644(e) in an interference; (7) petitions under § 1.644(f) for requesting reconsideration of a decision on petition in an interference; (8) petitions under § 1.666(b) for access to an interference settlement agreement; (9) petitions under § 1.666(c) for late filing of an interference settlement agreement; and (10) petitions under § 1.741(b) to accord a filing date to an application under § 1.740 for extension of a patent term. Petitions in this first group require analysis of complex and unique factual situations and evidentiary showings. Often a petition in this group will involve an issue of first impression requiring review and approval of a course of action by senior Office officials.

The second group of petitions will be covered by a new § 1.17(g), which will specify a petition fee of $200. The petitions in this group are: (1) Petitions under § 1.12 for access to an assignment record; (2) petitions under § 1.14 for access to an application; (3) petitions under § 1.47 for filing by other than all the inventors or a person not the inventor; (4) petitions under § 1.59 for expungement of information; (5) petitions under § 1.103(a) to suspend action in an application; (6) petitions under § 1.136(b) to review requests for extension of time when the provisions of section 1.136(a) are not available; (7) petitions under § 1.138(c) to expressly abandon an application to avoid publication; (8) petitions under § 1.295 for review of refusal to publish a statutory invention registration; (9) petitions under § 1.296 to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued; (10) petitions under § 1.377 for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent; (11) petitions under § 1.550(c) for patent owner requests for extension of time in *ex parte* reexamination proceedings; (12) petitions under § 1.956 for patent owner requests for extension of time in *inter partes* reexamination proceedings; (13) petitions under § 5.12 for expedited handling of a foreign filing license; (14) petitions under § 5.15 for changing the scope of a license; and (15) petitions under § 5.25 for a retroactive license. Petitions in this second group also require analysis of factual situations and evidentiary showings; however, the factual situations and evidentiary showings for this second group of petitions often fall into recognizable patterns. On occasion, however, a petition in this second group will involve an issue of first impression requiring review and approval of a course of action by senior Office officials.

The third group of petitions will be covered by § 1.17(h), which will continue to specify a petition fee of $130. The petitions in this group are: (1) Petitions under § 1.19(h) to request documents in a form other than that provided in this part; (2) petitions under § 1.84 for accepting color drawings or photographs; (3) petitions under § 1.91 for entry of a model or exhibit; (4) petitions under § 1.102(d) to make an application special; (5) § 1.313 to withdraw an application from issue; and (6) petitions under § 1.314 to defer issuance of a patent. Petitions in this third group require review for compliance with the applicable procedural requirements, but do not often require analysis of varied factual situations or evidentiary showings.

Section 1.17(i) is proposed to be amended to provide a processing fee so that replacement drawings submitted within the period set forth in § 1.215(a) can be included in any patent application publication. This will replace the current requirement for a petition fee under § 1.17(h) for the petition under § 1.182 which is required for such replacement drawings to be accepted for inclusion in any patent application publication. *See Drawings in Patent Application Publications and Patents,* 1242 *Off. Gaz. Pat. Office* 114 (Jan. 16, 2001). See also a conforming amendment to § 1.215(a).

Sections 1.17(l) and (m) are proposed to be revised to make it clear that the reexamination proceeding is not terminated under §§ 1.550(d) or 1.957(b), but rather the prosecution of the reexamination is concluded under §§ 1.550(d) or 1.957(b). See the discussion below as to the amendment of § 1.550 for the rationale for this change.

Section 1.19: Section 1.19 is proposed to be amended to clarify that copies of documents may be provided in whole, or in part, in electronic image form at the Office's option. Additionally, § 1.19(b) is proposed to be amended to provide how copies of Image File Wrapper (IFW) contents are to be charged. Further, it is proposed to eliminate the seven-day requirement of § 1.19(b)(1) for processing copy requests, and to eliminate the phrase ''that were submitted in electronic form on a physical media'' from § 1.19(b)(3). Paragraphs (g) and (h) would be added to provide for supplying copies of unscanned documents and to provide for a petition to obtain copies of documents in a form other than provided for in the rules of practice.

In view of the ever-increasing (paper) submissions, many of the Office official records need to be, and are going to be, stored and maintained in electronic form. As a result of the Office's

migration to electronic storage of documents, especially for voluminous documents, the Office proposes amending § 1.19 to reflect that the Office may, at its option, provide copies of documents where the copy is in electronic form on compact disc. Requests for voluminous documents can be economically provided in an expedited time frame without degrading service to other users if copies are furnished on compact disc. Requests for documents in other forms that would impair service to other users would be decided on a case-by-case basis as provided in new § 1.19(h).

Section 1.19(b) is proposed to be amended in view of the current migration of Office records from paper file wrappers to their electronic image equivalent with the image file wrapper (IFW) system as the repository of official Office records. *See USPTO Announces Prototype of Image Processing,* 1265 *Off. Gaz. Pat. Office* 87 (Dec. 17, 2002), and *See Changes To Implement Electronic Maintenance of Official Patent Application Records,* 68 FR 38611 (June 30, 2003). The instant proposed rule change clarifies how copies of IFW contents are to be charged, as the current rule would otherwise not provide a way for the public to obtain copies given the absence of a paper file wrapper for the Office to copy when IFW replaces the paper file wrapper as the source of copies.

Sections 1.19(b)(1) and (2) are proposed to be amended to reflect the change to IFW from paper file wrappers. Currently when documents are submitted to the Office in paper or on compact disc, copies of a file wrapper and documents contained therein may be made from the original paper or compact disc submission. If a scanned image is used to make copies of an application as originally filed, the scanned image corresponds to a paper file wrapper. In the future, there will be no paper file wrapper corresponding to scanned image files in the IFW System. As the Office uploads its records to the IFW system, the instant proposed change will permit the Office to supply to the public copies of Office documents directly from the IFW system regardless of format and media of the initial submission (*e.g.*, paper, electronic, or compact disc). After uploading into IFW, the original submission may not be retained or be in an easily retrievable form for copying.

The existing §§ 1.19(b)(1) and (2) do not provide for supplying copies of the non-paper portion of a file wrapper (*e.g.*, compact discs). Under the current practice, for example, copies of compact discs associated with a file wrapper must be ordered under existing § 1.19(b)(3) and are not provided with an order under existing §§ 1.19(b)(1) or 1.19(b)(2). Nothing in these proposed rule changes will change this practice. Similarly, any materials not in the IFW portion of a file wrapper (*e.g.*, blueprints, microfiche, and video cassettes) are not included in these current sections or as proposed to be amended. To the extent, however, that documents may be uploaded from compact discs to be part of an IFW, those documents will be included with the IFW copy. In the event the Office cannot fill an order solely from the IFW, and must complete an order in part by copying paper files or compact discs, the fees of § 1.19(b)(2)(i) for pages over 400 will apply to any copies made from paper files, except those provided for under § 1.19(g) (*e.g.*, blueprints), in which case the fee of § 1.19(g) will apply, and the fee for compact disc copies under § 1.19(b)(3) will apply to the copies of compact discs.

Patent applications and patents will normally reference any compact discs that are a part of the application specification. The public should therefore review the specification to determine if an order for compact discs should be included with an order to obtain the contents of an application or file wrapper. Other materials associated with a file wrapper (*e.g.*, blueprints, video cassettes, compact discs exhibits not part of the specification) are not referenced in the specification of an application or patent. The Office does not maintain an index of other materials associated with any specific file wrapper.

Accordingly, the public should carefully review the contents of a file wrapper to determine if other materials associated with a file wrapper need to be separately ordered.

Customers will not be able to select the source for documents under §§ 1.19(b)(1) and (2) for filling an order.

The Office's experience with providing copies from an image system is that it is faster than providing copies from paper and it allows the Office to provide copies for regular orders with the same speed as expedited service. The service is also cheaper for the public so that excess page fees can be eliminated in most cases. The Office is considering charging a single fee for copies made from the IFW to recover an average cost and limiting the additional fee of § 1.19(b)(2)(ii) to paper copy non-IFW documents rather than actual cost depending on size, if public comment is favorable. The Office believes public comment should be favorable because it will result in lower overall costs to the public and faster service. Lowered costs to the public and the Office occur because there will not need to be separate analysis and billing of the number of pages and excess pages copied. Faster service will occur because the Office will not have to delay orders while additional charges for excess pages are processed. Also, since the Office can provide the copies within a short period of time which would be faster than a seven-day service, at the same fee, it is proposed to remove the references to the slower non-expedited service, *i.e.*, ''seven-day.''

Section 1.19(b)(3) is proposed to be amended by revising ''on compact disc'' to ''in electronic form on a physical media'' so that documents submitted on electronic forms other than compact discs may be made available on compact disc for the same fee as documents submitted on compact disc.

Section 1.19(g) is proposed to be added to provide for copying material that is not image scanned. Materials such as large blueprints, microfiche, and video cassettes cannot be scanned as electronic image equivalents, and an average cost for pricing cannot be computed in advance, because the demand for such copies is so infrequent. The Office proposes to charge the actual cost of copying of these materials.

Section 1.19(h) is proposed to provide for a mechanism for requesting copies of documents in a form other than that normally provided by the Office. The copies would be provided at cost. For example, a copy of an application so voluminous that it required many boxes of compact discs might be requested under this part on some other media such as DVD media instead of compact discs. Petitions would be decided under this section based upon the ability of the Office to provide the requested service and the adverse impact to the Office and the public from diverting resources to fulfilling the order.

Section 1.27: Section 1.27 is proposed to be amended to make certain clarifying changes. The proposed changes would clarify that: (1) A security interest held by a large entity would not be a sufficient interest to bar entitlement to small entity status; (2) the requirements for small business concerns regarding transfer of rights and the size standards of the Small Business Administration are additive; and (3) business concerns are not precluded from claiming small entity status merely because they are located in or operate primarily in a foreign country.

Section 1.27 is proposed to be amended to revise paragraphs (a)(1), (a)(2)(i), and (a)(3)(i) to change ''obligation'' to ''currently enforceable

obligation.'' Questions have arisen as to whether a security interest in an application or patent held by a large entity is a sufficient interest to prohibit claiming small entity status. For example, an applicant or patentee may take out a loan from a banking institution and the loan may be secured with rights in a patent application or patent of the applicant or patentee, respectively. The granting of such a security interest to the banking institution is not a currently enforceable obligation to assign, grant, convey, or license any rights in the invention to the banking institution. Only if the loan is defaulted upon will the security interest cause a transfer of rights in the application or patent to the banking institution. Thus, where the banking institution is a large entity, the applicant or patentee would not be prohibited from claiming small entity status merely because the banking institution has been granted a security interest, but if the loan is defaulted upon, there would be a loss of entitlement to small entity status. Pursuant to § 1.27(g), notification of the loss of entitlement would need to be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which small entity status is no longer appropriate. The proposed change to paragraphs (a)(1), (a)(2)(i), and (a)(3)(i) is intended to clarify that the obligation to assign, grant, convey, or license any rights in the invention must be a currently enforceable obligation and thus a security interest in an application or patent held by a large entity would not be a sufficient interest to bar entitlement to small entity status. The proposed change would not result in any change to the standards for determining entitlement to small entity status.

A few additional examples will further clarify when small entity status is or is not appropriate.

Example 1: On January 2, 2002, an application is filed with a written assertion of small entity status and the small entity filing fee is paid. Applicant is entitled to claim small entity status when the application is filed. Thereafter, the application is allowed and the small entity issue fee is timely paid on October 1, 2002. On October 2, 2002, applicant signs a license agreement licensing rights in the invention to a large entity. On October 1, 2002, applicant had not transferred any rights in the invention, and was under no obligation to transfer any rights in the invention, to any other party who would not qualify for small entity status. The payment of the small entity issue fee would be proper as long as the applicant was under no obligation on October 1, 2002, to sign the license agreement with the large entity.

Example 2: An applicant, who would otherwise qualify for small entity status, executes an agreement with a large entity. The agreement requires the applicant to assign a patent application to the large entity sixty days after the application is filed. Thereafter, the application is filed. Since the applicant is under an existing obligation to assign the application to a large entity, applicant would not be entitled to claim small entity status. Applicant would need to pay the large entity filing fee even though the actual assignment of the application to the large entity may not occur until after the date of payment of the filing fee.

Furthermore, § 1.27 is proposed to be amended to change the period at the end of paragraph (a)(2)(i) to ''; and'' to clarify that paragraphs (a)(2)(i) and (a)(2)(ii) are additive requirements and a party seeking to qualify as a small business must meet both requirements as to transfer of rights and Small Business Administration requirements.

Section 1.27(a)(2)(ii) is proposed to be amended to change ''[m]eets the standards set forth in 13 CFR part 121'' to ''[m]eets the size standards set forth in 13 CFR 121.801 through 121.805 to be eligible for reduced patent fees.''

Questions have also arisen as to whether a small business concern must have a place of business located in the United States, and operate primarily within the United States or make a significant contribution to the United States economy through the payment of taxes or use of American products, materials or labor (13 CFR 121.105) to be eligible to pay reduced patent fees under 35 U.S.C. 41(h). When the provisions of 35 U.S.C. 41(h) (Public Law 97–247, 96 Stat. 317 (1982)) were implemented in 1982, a suggestion that foreign concerns not be eligible to pay reduced patent fees under 35 U.S.C. 41(h) was considered and rejected because excluding foreign concerns would violate United States treaties in the patent area. *See Definition of Small Business for Paying Reduced Patent Fees Under Title 35, United States Code,* 47 FR 43272 (Sept. 30, 1982), 1023 *Off. Gaz. Pat. Office* 27 (Oct. 19, 1982) (final rule). Specifically, a provision that foreign concerns are not eligible to pay reduced patent fees under 35 U.S.C. 41(h) would violate Article 2 of the Paris Convention for the Protection of Industrial Property, which provides that nationals of any Paris Convention country shall, as regards the protection of industrial property, enjoy in all the other Paris Convention countries the advantages that their respective laws grant to nationals of that country. Therefore, a business concern which meets the small business requirements set forth in 13 CFR 121.801 through 121.805 and complies with applicable Office procedures is and continues to be eligible to pay reduced patent fees under 35 U.S.C. 41(h), even if the business concern is located in or operates primarily in a foreign country.

Section 1.47: Section 1.47(a) and (b) are proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17.

Section 1.52: Section 1.52, paragraphs (b)(1)(ii), (b)(2)(ii), (d)(1) and (e), are proposed to be amended.

Section 1.52, paragraphs (b)(1)(ii) and (d)(1) are proposed to be amended to require that the statement that the translation is accurate be signed by the individual who made the translation. The Office has received a number of inquiries as to who may sign the statement, and has decided that it is appropriate to include the requirement that the signature required is that of the translator into the rules of practice. See also the proposed amendments to §§ 1.55(a)(4), 1.69(b) and 1.78(a)(5)(iv). The requirement that the person who made the translation sign the statement that the translation is accurate is consistent with current § 3.26. Currently, anyone, including practitioners, who would have sufficient knowledge concerning the accuracy of the translation to comply with the averments of §§ 1.4(d)(2) and 10.18 may sign the accuracy statement regarding the translation. As a result, translations are being received by the Office accompanied by statements signed by practitioners stating that the translations are believed to be accurate ''based on information and belief.'' Such type of qualification by a party unrelated and several parties removed from the one doing the translation does not lend itself to confidence by the Office that care has been taken with the translation. Accordingly, the Office believes it to be appropriate to require the party doing the actual translation to make the statement of accuracy, particularly to ensure that the translator is covered by §§ 1.4(d)(2) and 10.18.

Section 1.52(b)(2)(ii) is proposed to be revised to recommend that the font size of text be at least a font size of 12, which is approximately 0.166 inches or 0.422 cm. high. Section 1.52(b)(2)(ii) currently requires that the text be in a lettering style that is at least 0.08 inches high, which is the font size set forth in Patent Cooperation Treaty (PCT) Rule 11.9. A font size of only 0.08 inches leads to difficulty in capturing text with optical character recognition technology and may not be reproducible as required by § 1.52(a)(1)(v) (and PCT Rule 11.2(a)). A

font size of 12 (0.422 cm. or 0.166 inch high) is significantly more reproducible. Accordingly, § 1.52(b)(2)(ii) is proposed to be amended to indicate a preference for a larger font size. See § 1.58(c) for a similar change.

Further, § 1.52 is proposed to be amended to allow greater flexibility in filing tables on compact disc, so that compact disc files may be used instead of paper where the total number of pages collectively occupied by all the tables in an application exceeds 100. Also, § 1.52 is proposed to be clarified to be consistent with tables submitted on paper as to what constitutes a page. Section 1.52 is proposed to be amended to recite that CD–R discs should be finalized so that they are closed to further writing.

Section 1.52(e)(1)(iii) is proposed to be amended to allow tables of any size on compact disc if the total number of pages of tables exceeds 100 pages. Since permitting the filing of tables on compact disc, the Office has received voluminous applications having large numbers of tables that were under 50 pages in length. Applicants have indicated that it would be less burdensome filing these small tables on compact disc. Accordingly, the rule is being liberalized while balancing the convenience of the Office and the public to view the document with the least burden imposed by dual media.

Section 1.52(e)(1)(iii) is also proposed to be amended to clarify what constitutes an electronic page so as to determine compliance with the 50- and 100-page requirement for submission of tables on compact disc.

Further clarification is proposed to be provided in § 1.52(e)(3)(i) as to what is a permanent compact disc. Recordable compact discs can be made for recording in a single recording session or in multiple recording sessions. To further assure the archival nature of the discs, the requirement that recordable discs be finalized so that they are closed to further recording is proposed to be added to § 1.52. Further, many older CD–ROM drives and audio CD players have compatibility problems with un-finalized CDs. This proposed change will ensure that the public and the Office will be able to use identical copies of any CDs filed with older CD–ROM drives.

The Office is actively investigating allowing the submission of other file formats, such as the Continuous Acquisition and Life Cycle Support (CALS) XML format, in addition to the current ASCII format. Before allowing the use of a file format, the Office must verify that applicants will have the tools to create files easily that are archivable and can be rendered to be viewable both by the Office users and later by the public when the application is published. Problems involving file size limitations, software display, and availability of adequate table creation software are delaying implementation at this time. The Office intends to broaden § 1.52 to allow at least CALS format tables when these problems are resolved. Technical specifications and a discussion of operability issues for the CALS table format may be found at the OASIS, *i.e.*, Organization for the Advancement of Structured Information Standards, Web site pages *http://www.oasis-open.org/cover/tr9502.html* and *http://www.oasis-open.org/specs/a501.htm.*

The Office is also reviewing the acceptability of DVD media. At present, there are several different types of recordable DVD media and it is unclear which if any will become a standard archivable format. Also, the Office is upgrading its capabilities to include the ability to read at least some types of DVD media. However, it does not appear that any DVD readers can be procured that will be able to read all of the different types of DVD media that are now in the marketplace. The Office is considering allowing submissions on at least some types of DVD media when it becomes clear which types of DVD media are recognized as of archivable quality and are compatible with Office hardware and software.

Section 1.53: Section 1.53(e)(2) is proposed to be amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. See discussion of § 1.17.

Section 1.55: Section 1.55(a)(1)(ii) is proposed to be amended to replace ''an application that entered the national stage from an international application after compliance with 35 U.S.C. 371'' with ''an international application designating the United States'' (any application that enters the national stage from an international application after compliance with 35 U.S.C. 371 is also an ''international application designating the United States''). While section 4508 of the American Inventors Protection Act of 1999 (AIPA) as originally enacted did not make the eighteen-month publication amendments to 35 U.S.C. 119 and 120 applicable to an international application unless and until it enters the national stage under 35 U.S.C. 371 (*see* Public Law 106–113, 113 Stat. 1501, 1501A–566 through 1501A–567 (1999)), section 13205 of Public Law 107–273 amended section 4508 of the AIPA to make the eighteen-month publication amendments to 35 U.S.C. 119 and 120 in the AIPA also applicable during the international stage of an international application. *See* 116 Stat. 1758, 1903 (2002).

Section 1.55(a)(1) is also proposed to be amended to add a paragraph (a)(1)(iii) to provide that if an application claiming the benefit of a prior foreign application meets the twelve-month filing period requirement in 35 U.S.C. 119(a) only through one or more prior-filed nonprovisional applications or international applications designating the United States for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c) and § 1.78(a), each such prior-filed application must also contain a claim for priority in compliance with § 1.55 to the prior foreign application. 35 U.S.C. 119(b)(1) provides that an application for patent is not entitled to priority under 35 U.S.C. 119(a)–(d) unless a claim is filed in the Office at such time during the pendency of the application as required by the Director. 35 U.S.C. 119(b)(2) also provides that the Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim, and that the Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under 35 U.S.C. 119(a)–(d). This time period requirement is to ensure that priority claims under 35 U.S.C. 119(a)–(d) are presented in sufficient time to permit publication of the application at eighteen months from the earliest claimed priority date under 35 U.S.C. 119(a)-(d). *See* 145 Cong. Rec. S14,708, S14,719 (1999) (daily ed. Nov. 17, 1999) (the Conference Report for H.R. 3194, 106th Cong., 1st. Sess. (1999), which resulted in Public Law 106–113, does not contain any discussion (other than the incorporated language) of S. 1948; however, a section-by-section analysis of S. 1948 was printed in the Congressional Record at the request of Senator Lott). In addition, priority claims must be presented in a timely manner in a PCT international application filed under 35 U.S.C. 363 to determine (among other things) the time limit for national stage entry. Therefore, the Office is proposing to amend § 1.55(a) to add a paragraph (a)(1)(iii) to make clear that the first-filed application in a chain of applications (as well as all intermediate applications) must contain a claim for priority in compliance with § 1.55 to a prior foreign application for a subsequent application to claim the benefit of the prior foreign application through the first-filed application (and all intermediate applications).

In *In re Tangsrud,* 184 USPQ 746 (Comm'r Pat. 1973), the Office held that a certified copy of a foreign priority document may be filed in a continuation application under § 1.60, rather than in its abandoned parent application, to meet the requirements in 35 U.S.C. 119 for the continuation application to claim the benefit of the foreign priority application (through its abandoned parent application). The language of *Tangsrud,* however, is broad enough to imply that neither the claim for priority nor the certified copy of the foreign priority document must be filed in the first-filed application for a subsequent application to claim the benefit of the foreign priority application through the first-filed application. This proposed change to § 1.55(a) would not affect the holding in *Tangsrud* that the certified copy of the foreign priority document may be filed in a continuing application, rather than in an abandoned first-filed application, provided that a claim for priority in compliance with § 1.55 to a prior foreign application is presented in the first-filed application.

Section 1.55(a)(4) is proposed to be amended to require that the statement that the translation is accurate be signed by the individual who made the translation. The Office has received a number of inquiries as to who may sign the statement, and has decided that it is appropriate to include the requirement that the signature required is that of the translator into the rules of practice. See also the proposed amendments to §§ 1.52(b)(1)(ii), 1.52(d)(1), 1.69(b) and 1.78(a)(5)(iv). The requirement that the person who made the translation sign the statement that the translation is accurate is consistent with current § 3.26.

Section 1.55(c) is proposed to be amended to change ''365(a)'' to ''365(a)–(b)'' such that the procedures for acceptance of delayed priority claims under § 1.55(c) also apply to delayed priority claims under 35 U.S.C. 365(b) in international applications.

Section 1.57: Section 1.57 is proposed to be added to provide for incorporation by reference. Section 1.57(a) as proposed provides that, if all or a portion of the specification or drawings is inadvertently omitted from an application, but the application contains a claim under § 1.55 for priority of a prior-filed foreign application, or § 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application, that was present on the date of receipt of the application, and the omitted portion of the specification or drawings is completely contained in the prior-filed application, the claim would be considered an incorporation by reference of the prior-filed application. Sections 1.57(b) through (f) as proposed treat incorporation by reference into an application of essential and nonessential material by: (1) Providing a definition of essential and nonessential material; (2) defining specific language that must be used to trigger an incorporation by reference; (3) codifying current practice as set forth in MPEP § 608.01(p) (Incorporation by Reference), updated to reflect the publication of applications; and (4) codifying treatment of improper incorporation by reference.

Currently, the mere reference to another application is not an incorporation of anything therein into the application containing such reference for the purpose of the disclosure under 35 U.S.C. 112, ¶ 1. *See* MPEP §§ 201.06(c) and 608.01(p), and *In re de Seversky,* 474 F.2d 671, 177 USPQ 144 (CCPA 1973). The proposed rule would allow all or a portion of the specification or drawings that is inadvertently omitted from an application containing a priority claim for a prior-filed foreign application, or a benefit claim for a prior-filed provisional, nonprovisional, or international application, to be added to the application by way of an amendment if the omitted portion of the specification or drawings is completely contained in the prior-filed application even though there is no explicit incorporation by reference of the prior-filed application. The phrase ''completely contained'' in § 1.57(a) requires that the material to be added to the application under § 1.57(a) must be expressly (as opposed to implicitly) disclosed in the prior application. *Cf.* PLT Rule 2(4)(iv). The claim for priority or benefit would have to be present on the date of receipt of the application in order for it to be considered an incorporation by reference of the prior-filed application. The nonprovisional application claiming benefit could be a continuation, divisional, or continuation-in-part of the prior application for which benefit is claimed. The purpose of the proposed rule is to provide a safeguard for applicants when a page(s) of the specification, or a portion thereof, or a sheet(s) of the drawings, or a portion thereof, is inadvertently omitted from an application.

If all or a portion of the specification or drawings is inadvertently omitted from an application and applicant wants to rely on the incorporation by reference provided by the proposed rule, the application would need to be amended to include the omitted portion of the specification or drawings within the time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114. In order for the omitted material to be included in the application, the application must be amended to include it. The incorporation by reference provided by the proposed rule requires an applicant to timely amend the application to include the omitted material in order for this material to be considered part of the disclosure. The proposed rule gives the examiner the authority to require the applicant to supply a copy of the prior-filed application, to supply an English-language translation of any prior-filed application that is in a language other than English, and to identify where the omitted portion of the specification or drawings can be found in the prior-filed application.

Any amendment to an international application pursuant to the proposed rule would be effective only as to the United States. *See* proposed § 1.57(a)(2). In addition, no request to add the missing part of the description or the missing drawing in an international application designating the United States will be acted upon by the Office prior to the expiration of the applicable time limit under PCT Article 22(1) or (2), or Article 39(a).

If an application is not entitled to a filing date under § 1.53(b) or under PCT Article 11, the amendment must be by way of a petition accompanied by the fee set forth in § 1.17(f). *See* proposed § 1.57(a)(3).

The proposed rule is similar to the current practice under MPEP § 201.06(c) where there is an explicit incorporation by reference of the prior U.S. application contained in the specification or in the application transmittal letter of a continuation or divisional application filed under § 1.53(b). *See* MPEP § 201.06(c) (Incorporation by Reference). The proposed rule is also consistent with the PLT Article 5(6)(b) and Rule 2(3) and (4).

Of course, whether the proposed rule is adopted or not, applicants may continue to explicitly incorporate by reference a prior application or applications by including, in the body of the specification as filed, a statement that the prior application or applications is ''hereby incorporated by reference.'' Such an explicit incorporation by reference would not be limited to inadvertent omissions as in the proposed rule. Accordingly, applicants are encouraged to explicitly incorporate by reference a prior application or applications by including

such a statement in the body of the specification, if appropriate.

Sometimes applicants intentionally omit material from a prior-filed application when filing an application claiming priority to, or benefit of, a prior-filed application. As discussed, the incorporation by reference would only permit material that was inadvertently omitted from the application to be added to the application if the omitted material is completely contained in the prior-filed application. Therefore, if the proposed rule were adopted, applicants would still be able to intentionally omit material contained in the prior-filed application from the application containing the priority or benefit claim without the material coming back in by virtue of the incorporation by reference. Applicants would be able to maintain their intent by simply not amending the application to include the intentionally omitted material. Thus, there should be no impact from the proposed rule in continuing applications where material from the prior application has been intentionally omitted. Therefore, the proposed rule has been drafted such that the application claiming benefit of a prior U.S. application could be a continuation-in-part application (as well as a continuation or divisional).

The proposed rule would not apply to any applications filed before the effective date of the rule. The proposed rule would be prospective only since to apply the rule retroactively would result in changing the expectations regarding incorporation by reference by applicants when the applications were filed.

The Office is interested in comments from the public regarding proposed § 1.57(a), whether there is support or opposition for the proposed rule, and whether there is any desire to limit the proposed rule to continuation or divisional applications and not have it apply to continuation-in-part applications.

Section 1.57(b) clarifies what is acceptable language that identifies an incorporation by reference for essential and non-essential matter as opposed to incorporation by reference of material in a prior application as is proposed in § 1.57(a). Applicants sometimes refer to other applications, patents, and publications, including patent application publications using language which does not clearly indicate whether what is being referred to is incorporated by reference or is just an informational reference. The Office is proposing to limit incorporation by reference (except as provided in § 1.57(a)) to instances only where the words ''incorporated by reference'' appear. The Office is attempting to bring greater clarity to the record and provide a bright line test as to where something being referred to is an incorporation by reference. The Office considered the alternative of making any mention of a document an automatic incorporation by reference of the document. Patent applications frequently contain a discussion of prior art documents when discussing the background of the invention, which prior art documents are not intended to be incorporated by reference. The necessity for § 1.57(b) is that applicants who fail to clearly link certain disclosures to means-plus-function language risk having their claims interpreted too narrowly or held unenforceable. Clarifying when material is incorporated by reference during examination by use of specific trigger language is considered an aid to applicants when they invoke 35 U.S.C. 112, ¶ 6. Applicants would be aided by avoiding narrowed claim construction as a result of a number of court decisions which would not look for equivalents outside of the application. *See Atmel Corp.* v. *Info. Storage Devices Inc.,* 198 F.3d 1374, 53 USPQ2d 1225 (Fed. Cir. 1999), and *B. Braun Medical Inc.* v. *Abbott Lab,* 124 F.2d 1419, 43 USPQ2d 1896 (Fed. Cir. 1997). Treating these documents as automatically incorporated might result in unintended consequences such as when a means-plus-function claim is presented under 35 U.S.C. 112, ¶ 6.

Similarly, applicants would be aided by not having their claims found unpatentable by a mere reference to outside material unintentionally incorporating material that contained equivalents that would broaden their claims to encompass the prior art. Automatic incorporation by reference would create a trap for applicants and practitioners by creating unintentional equivalents for 35 U.S.C. 112, ¶ 6, language broadening claims to be unpatentable. Additionally, as claims are generally read in light of the specification, what is actually incorporated into the specification can affect the scope of the claims independent of 35 U.S.C. 112, ¶ 6.

Accordingly, comments are desired identifying alternative language to that proposed in paragraph (b) or why requiring this specific language would be a problem.

A patent application incorporating by reference other material must, as described in paragraph (b), include an identification of the referenced patent, application, or publication pursuant to § 1.98(b)(1) through (b)(5). The Office recommends that particular attention be directed to specific portions of referenced documents where the subject matter incorporated may be found if large amounts of material are incorporated. Guidelines for situations where applicant is permitted to fill in a number for Application No. ____ left blank in the application as filed can be found in *In re Fouche,* 439 F.2d 1237, 169 USPQ 429 (CCPA 1971). Commonly assigned abandoned applications less than 20 years old can be incorporated by reference to the same extent as copending applications; both types are open to the public upon the referencing application issuing as a patent. *See* MPEP § 103.

Section 1.57(c) codifies current practice in MPEP § 608.01(p) (Incorporation by Reference), except that § 1.57(c) as proposed is limited to U.S. patent or U.S. patent application publications (*i.e.*, the Office proposes to eliminate the practice of incorporating by reference essential material in unpublished patents in which the issue fee for an application has been paid but the application has not yet issued as a patent). Delays in issuance or the withdrawal from issue of an allowed application put in doubt that an application incorporated by reference will be available to the public when a patent incorporating the other application issues. Similarly, this provision permitting only the incorporation of the publication document of an application is intended to preclude incorporation by reference of material found only in the redacted portion of a published patent application.

Section 1.57(c) updates current practice to reflect publication of applications in two areas. Current practice permits holding in abeyance correction of material incorporated by reference from unpublished U.S. applications that have not issued as patents until allowance of the application making the incorporation by reference. Publication of the applications which contain an incorporation by reference means that the public will need access to the material incorporated by reference prior to an application being issued as a patent. Where the incorporation is to an unpublished application that has not issued as a patent, such application is not readily available. Therefore, holding the correction of an incorporation by reference in abeyance in this situation will materially impair the public's access to the invention that is disclosed by the published application that incorporates an unpublished application.

The Office considered but rejected including unpublished abandoned

applications (which are otherwise open to the public under § 1.14(a)(iv)) as acceptable documents for incorporation by reference since the text of abandoned applications is not published after abandonment on the Internet at this time. The Office is considering how to make previously unpublished material to which the public is currently permitted access pursuant to § 1.14(a)(iv) (*e.g.*, unpublished incorporated by reference applications) available on the Internet. The Office may reconsider this position when its electronic file wrapper permits access to the text of unpublished abandoned applications on the Internet.

Section 1.57(c)(1) through (c)(3) defines essential material as those items required by 35 U.S.C. 112, ¶¶ 1, 2, and 6.

Section 1.57(d) defines the scope of incorporation by reference practice for nonessential subject matter. As discussed with respect to § 1.57(c), the Director has considerable discretion in determining what may or may not be incorporated by reference in a patent application. Through the Office's incorporation by reference policy, the Office ensures that reasonably complete disclosures are published as U.S. patents and U.S. application publications.

Section 1.57(e) is added so that it is clear that a copy of the incorporated by reference material may be required to be submitted to the Office even if the material is properly incorporated by reference. The examiner may require a copy of the incorporated material simply to review it and understand what is being incorporated or to put the description of the material in its proper context. Another instance where a copy of the reference may be required is where the material is being inserted by amendment into the body of the application to replace the incorporation by reference statement.

Section 1.57(f) addresses corrections of incorporation by reference. Section 1.57(f) provides that improper incorporation by reference statements may be corrected with a timely filed amendment. Nothing in § 1.57(f) authorizes the insertion of new matter into an application. The Office is concerned that improper incorporation by reference statements and late corrections thereof require the expenditure of unnecessary examination resources and slow the prosecution process. By treating improper incorporation by reference statements as not incorporating any material (until the incorporation by reference is corrected), the Office and applicants will avoid expending unnecessary resources and delays in prosecution occasioned by the many references to extraneous material that are often found in patent applications. Applicants know whether they want material incorporated by reference, and must timely correct any incorporation by reference errors.

Section 1.58: Section 1.58(a) is proposed to be amended to provide that a table not be included in both the drawings and in the body of the specification of an application. Section 1.58(b) is also proposed to be amended to clarify that correct visual alignment of rows and columns of chemical and mathematical formulae and tables is retained when the electronic file is rendered by opening and displaying the electronic file at the Office using a text viewer program. Section 1.58(c) is additionally proposed to be amended to recommend that the font size of text be at least 0.166 inches or 0.422 cm. and to eliminate a reference to elite type font.

Section 1.58(a) is proposed to be amended because applicants have been making voluminous applications even larger by including the same table as both a drawing figure and as text in the body of an application. Filing duplicate tables requires additional review by the Office to determine if the drawing table and the text table are duplicates and to identify differences if any differences exist. Moreover, the number of pages is effectively increased, causing increased scanning, storage and reproduction costs. In addition, the burden on the public to copy and review a published application or patent is also increased. *See* § 1.83 for a similar proposed change involving tables and sequence listings.

Section 1.58(b) is proposed to be amended adding ''visually'' so that it is clear that the data in the electronic file are appropriately formatted so that the alignment of rows and columns is maintained in the table when the file is opened to view at the Office. The Office has found that some filers have only been providing markers to identify rows and columns in table data. When the table is viewed at the Office the markers do not cause the rows and columns of data to be visually aligned. Unless each entry in a table is surrounded with an appropriate number of spaces the visual spatial alignment of the table is not maintained: *i.e.*, the rows and cells are mis-aligned. A way to provide the proper alignment is to insert space characters in each cell so that the overall number of characters in each cell is the same, and to maintain a constant font width for all characters.

Many programs that are used to generate tables allow the user to provide additional spaces manually when typing data. Many of these programs also provide an automated way to pad the cells with space characters, and create an ASCII file with spatially aligned data. This feature is generally invoked by a command that is often called printing to a ''formatted text'' format or ''prn'' file. The program formats the table as it would appear on paper padding the cells with spaces to provide proper alignment of the cell entries.

A review of different versions of the same software product and of different software products showed no consistency in the menu language used for the formatting command noted above. With the constant change in software versions, the Office is not able to provide a list of all the menu variations. However, a person knowledgeable with the software used to create tabular data should be able to find the commands to invoke this feature in the software.

Section 1.58(c) is proposed to be amended for the same reason that § 1.52(b)(2)(ii) is proposed to be amended. Section 1.58(c) currently requires that the text be in a lettering style that is at least 0.08 inches high, which is the minimum font size set forth in Patent Cooperation Treaty (PCT) Rule 11.9. Text having a font size only 0.08 inches high is difficult to capture with optical character recognition technology and may not be reproducible as required by § 1.52(a)(1)(v) (and PCT Rule 11.2(a)). A font size of 12 (12/72 inch or 0.166 inch (0.422 cm.) high) is significantly more reproducible than a font size of 6 (6/72 inch or 0.08 inch (0.211 cm.) high). Accordingly, § 1.58(c) is proposed to be amended to indicate a preference for a larger font size. In addition, the reference to elite type is proposed to be deleted as it was inconsistent with the size given. Elite type is a typewriter type that runs 12 characters to the inch. Instead of referencing elite type, the rule is proposed to reference a font size of 6 which should be more meaningful to most patent applicants (most word processing software programs have an option to choose a font and a font size).

Section 1.59: Section 1.59 is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.69: Section 1.69(b) is proposed to be amended by deleting the words ''or approved'' as unnecessary, and possibly leading to confusion and the mistaken assumption that the Office has a procedure for the approval of applicant generated forms, where no such procedure exists. *See Changes to Implement the Patent Business Goals,*

64 FR 53771, 53777 (Oct. 4, 1999), 1228 *Off. Gaz. Pat. Office* 15, 20 (Nov. 2, 1999) (proposed rule) (declining to adopt a review service for applicant-created forms). In addition, paragraph (b) of § 1.69 is proposed to be amended to require that the statement that the translation is accurate be signed by the individual who made the translation. The Office has received a number of inquiries as to who may sign the statement required by the current rule and how the statement must be signed. The Office has decided to clarify that the signature required is that of the translator. See also the proposed amendments to §§ 1.52(b)(1)(ii), 1.52(d)(1), 1.55(a)(4) and 1.78(a)(5)(iv). The requirement that the person who made the translation sign the statement that the translation is accurate is consistent with current § 3.26.

Section 1.76: Section 1.76(a) is proposed to be amended to require that any application data sheet (ADS) contain the seven headings listed in § 1.76(b) and all of the appropriate data for each section heading. The proposed amendment would also require that the ADS be titled ''Application Data Sheet.'' Any label (*e.g.*, the label ''Given Name'' in the ''Applicant Information'' heading) that does not contain any corresponding data will be interpreted by the Office to mean that there is no corresponding data for that label anywhere in the application. By requiring an ADS to contain all seven section headings, and any appropriate data for the sections, the accuracy of bibliographic data in patent applications will be enhanced and the need for corrected filing receipts related to Office errors will be reduced.

Section 1.76(c)(2) is proposed to be amended to require a supplemental application data sheet to be labeled ''Supplemental Application Data Sheet'' and to also contain all of the headings listed in § 1.76(b) with any appropriate data for each heading, rather than only identifying the information that is being changed (added, deleted, or modified) in the supplemental ADS. Requiring a supplemental ADS to contain all of the information from the ADS with the changes indicated is consistent with the ADS guide posted on the Office's Internet Web site at: *http://www.uspto.gov/web/offices/pac/dapp/sir/doc/patappde.html.* A supplemental ADS containing only new or changed information is likely to confuse the record, create unnecessary work for the Office, and would not comply with § 1.76 if amended as proposed. When submitting an ADS after the initial filing of the application to correct, modify, or augment the original application data included in an ADS, the following applies: (1) The supplemental application data sheet must be labeled ''Supplemental Application Data Sheet''; (2) the ''Supplemental Application Data Sheet'' is a full replacement copy of the original application data sheet, with each of the seven section headings, and with any appropriate data for the section headings; and (3) the ''Supplemental Application Data Sheet'' must be submitted with any changes or additions underlined (for deletions without replacement data, use strike-through or brackets).

When submitting an ADS to correct, modify, or augment application data (*see* § 1.76(d)), when an ADS has not been previously filed, the first-filed ADS is not considered a supplemental ADS even if such is filed subsequent to the initial filing of the oath or declaration. When submitting such an ADS: (1) The application data sheet must be labeled ''Application Data Sheet''; and (2) a complete application data sheet including all appropriate information for each heading must be submitted.

Section 1.78: Section 1.78(a)(1) is proposed to be amended to delete an unnecessary alternate condition to permit a claim for the benefit of a prior-filed application. Sections 1.78(a)(2) and (a)(5) are proposed to be amended to permit the required reference to the prior application(s) to be in multiple sentences at the beginning of the specification, rather than being limited to the first sentence of the specification.

Section 1.78(a)(1) sets forth the conditions under which a nonprovisional application may claim the benefit of one or more prior-filed copending U.S. nonprovisional applications or international applications designating the United States of America. Where the prior-filed application is a nonprovisional application (filed under 35 U.S.C. 111(a)), one of the conditions under § 1.78(a)(1) is met when the prior-filed application satisfied any one of paragraphs (ii), (iii) or (iv) of § 1.78(a)(1). To satisfy paragraph (ii), the prior-filed application must be ''[c]omplete as set forth in § 1.51(b).'' To satisfy paragraph (iii), the prior-filed application must be ''[e]ntitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16.'' Considering that paragraph (iii) is less restrictive than paragraph (ii), it is proposed to delete paragraph (ii) (and redesignate paragraphs (iii) and (iv) as paragraphs (ii) and (iii), respectively) as it is unnecessary because any prior-filed application that would satisfy paragraph (ii) would also satisfy paragraph (iii).

Sections 1.78(a)(2)(iii) and (a)(5)(iii) are proposed to be amended to change the word ''sentence'' to ''sentence(s)''. The proposed change would permit the required reference to the prior application(s) to be in more than one sentence at the beginning of the specification. In some situations, it would be easier and clearer to set forth the relationship between prior applications if more than one sentence were permitted. For example, where there is a provisional application and multiple intermediate nonprovisional applications, the required identification in the latest nonprovisional application as to which intermediate nonprovisional application(s) claims benefit to the provisional application (*i.e.*, is within one year of the provisional application's filing date), could be set forth in a clearer manner using multiple sentences.

Section 1.78(a)(5)(iv) is proposed to be amended to require that the statement that the translation is accurate be signed by the individual who made the translation. The Office has received a number of inquiries as to who may sign the statement, and has decided that it is appropriate to include the requirement that the signature required is that of the translator into the rules of practice. See also the proposed amendments to §§ 1.52(b)(1)(ii) and (d)(1), 1.55(a)(4) and 1.69(b). The requirement that the person who made the translation sign the statement that the translation is accurate is consistent with current § 3.26.

Section 1.78(c) is proposed to be amended to clarify that the prior art exception under 35 U.S.C. 103(c) does not apply to double patenting rejections by the addition of the last sentence, which states ''Even if the claimed inventions were commonly owned, or subject to an obligation of assignment to the same person, at the time the later invention was made, the conflicting claims may be rejected under the doctrine of double patenting in view of such commonly owned or assigned applications or patents under reexamination.'' Therefore, § 1.78(c) emphasizes that double patenting rejections should still be made, when appropriate, even if a reference is disqualified from being used in a rejection under 35 U.S.C. 103(a) via the prior art exclusion under 35 U.S.C. 103(c). This clarification codifies patent policy regarding double patenting rejections and the prior art exclusion under 35 U.S.C. 103(c) as set forth in the notice *Guidelines Concerning the Implementation of Changes to 35 U.S.C. 102(g) and 103(c) and the Interpretation of the Term ''Original Application'' in*

the American Inventors Protection Act of 1999, 1233 *Off. Gaz. Pat. Office* 54 (Apr. 11, 2000)) and MPEP § 706.02(l)(1). Additionally, the first sentence of § 1.78(c) is proposed to be amended by changing the word ''party'' to ''person'' in order to use terminology consistent with 35 U.S.C. 103(c).

Section 1.83: Section 1.83(a) is proposed to be amended to provide that tables and sequence listings that are in the specification are not permitted to also be included in the drawings. Applicants should not be obliged to include tables or the sequence listing in the drawings due to the current requirement of § 1.83(a) that all claimed features must be shown in the drawings. Under the proposed amendment, if the specification includes a sequence listing or a table, such a sequence listing or table would not be permitted to be repeated in the drawings.

See § 1.58(a) for a similar proposed change to require that tables be included in only one of the drawings and the specification.

Section 1.84: Section 1.84 is proposed to be amended by revising § 1.84(a)(2)(iii) to remove the requirement for submission of a black and white copy of any color drawings or photographs. Section 1.84(a)(2)(iv) is proposed to be amended to become (a)(2)(iii). Section 1.84(c) is proposed to be amended to clarify that identification (labeling) of the drawings is recommended, but not required, and to change the recommended location of any identification of the drawings.

Section 1.84(a)(2) is proposed to be amended to remove the requirement for a black and white copy of a color drawing or photograph. This requirement has already been waived. *See Interim Waiver of Parts of 37 CFR 1.84 and 1.165, and Delay in the Enforcement of the Change in 37 CFR 1.84(e) to No Longer Permit Mounting of Photographs,* 1246 Off. Gaz. Pat. Office 106 (May 22, 2001).

Section 1.84(c) is proposed to be amended to remove the requirement that the identification of drawings must be placed on the front of each sheet of drawing, if the information is provided. The Office prefers that the identification of drawings be placed on the front of each sheet of drawing so that photocopies and scanned images of the drawings will be properly identified with the application. The Office has new scanners that will endorse in the top margin starting 3.5 inch from the right edge and ending 1 inch from the right edge of the paper. Therefore, applicants are strongly encouraged to place the information on the front of each sheet, to the left of the center on the top margin so that the identification does not overlap the endorsement, and so that the identification will be included in any photocopies of the drawings. The Office, however, recognizes that some applications have long titles or identification that could not be placed completely on the front within the top margin. In such a situation, the identification of drawings may be placed on the back of each sheet (understanding that the backs of drawing sheets will not be scanned), but placing part of the identification (*e.g.*, the application number and the first inventor's name) on the front is recommended. If the identification of drawings is placed on the front of each sheet, the identification must be placed to the left of center within the top margin.

Section 1.91: Section 1.91 is proposed to be amended to add a paragraph (c), which provides that a model or exhibit must be accompanied by photographs that show multiple views of the material features of the model or exhibit and that substantially conform to the requirements of § 1.84. Material features are considered to be those features which represent that portion(s) of the model or exhibit forming the basis for which the model or exhibit has been submitted. Since the Office generally returns or otherwise disposes of models or exhibits when they are no longer necessary for the conduct of business before the Office (§ 1.94), such photographs are necessary for the file of the application or proceeding to contain an adequate record of the model or exhibit submitted to the Office. Section 1.91(c) would also provide that this requirement does not apply if the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84, since a model or exhibit that substantially conforms to the requirements of § 1.52 or § 1.84 can itself be retained in the file wrapper of the application or proceeding.

In applications where the exhibit is not intended to display the medium of submission (*e.g.*, video tapes, DVDs, and compact discs) but the content of the submission, the requirement that the photographs be of the substantive content is included in this paragraph. Video tapes, DVDs, and compact discs are usually submitted with movies or multimedia images. The requirement that the photographs submitted should show the material features that were being exhibited is intended to require that the photograph be that of the content of the material, not a photograph of the medium of submission. Hence, if video or multimedia submission is contained on a tape or disc, the corresponding photograph should be a still image single frame of a movie, and not a submission of a photograph of a video cassette, DVD disc or compact disc.

A video or DVD is not the type of model or exhibit that would substantially conform to the requirements of §§ 1.52 or 1.84. The Office does not intend to store bulky items, such as videos, particularly as the Office is moving toward an Image File Wrapper. *See Changes To Implement Electronic Maintenance of Official Patent Application Records,* 68 FR 38611 (June 30, 2003). Accordingly, where a video or DVD or similar item is submitted as a model or exhibit, the requirement of § 1.91(c) for supplying photographs of what is depicted in the video or DVD, pursuant to § 1.84, would need to be met.

The Office is interested in comments as to whether the requirement for supplying photographs, particularly for a video or DVD, is overly broad and an adequate description could be presented by some other type of description, such as a written statement.

Section 1.94: Section 1.94 is proposed to be amended to be divided into paragraphs (a) through (c). Paragraph (a) provides that once notification is sent to applicant, arrangements must be made by applicant for the return of the model, exhibit, or specimen at applicant's expense, in response to such notification. Where the model, exhibit or specimen is a perishable, it will be presumed that the Office has permission to dispose of the item without notice to applicant, unless applicant notifies the Office upon submission of the item that a return is desired and arrangements are promptly made for its return upon notification by the Office.

Paragraph (b) provides that applicant is responsible for retaining the actual model, exhibit, or specimen for the enforceable life of any patent resulting from the application. Section 1.94 would also provide that its provisions do not apply: (1) If the model or exhibit substantially conforms to the requirements of §1.52 or § 1.84, since a model or exhibit that substantially conforms to the requirements of § 1.52 or § 1.84 can itself be retained in the file wrapper of the application or proceeding; (2) where a model, exhibit, or specimen has been described by photographs that conform to § 1.84, or (3) where the model, exhibit, or specimen is a perishable.

Paragraph (c) provides that the notification to applicant will set a period of time within which applicant must make arrangements for a return of a model, exhibit, or specimen, with

extensions of time available under § 1.136, except in the case of perishables. The Office intends to set a one-month period of time from the mailing date of the notification for applicant to make arrangements for a return, unless the item is a perishable, in which case the time period will be shorter. Failure by applicant to establish that arrangements for the return of a model, exhibit or specimen have been made within the time period set in the notice, will result in the item being discarded by the Office.

Section 1.98: Section 1.98(a) is proposed to be amended by revising paragraph (a)(1) to require a specified format/identification for each page of an IDS, and that U.S. patents and U.S. patent application publications be listed in a section separately from citations of other documents. Section 1.98(a)(1) is specifically proposed to be amended to require that U.S. patents and U.S. patent application publications must be listed separately from the citations of other documents. This will permit the Office to optical character recognition (OCR) scan the U.S. patent numbers and the U.S. patent application publication numbers such that the document could be made available electronically to the examiner to facilitate searching and retrieval of U.S. patents and U.S. patent application publications on the Office's search databases. Applicants will comply with this proposed requirement if they use forms PTO/SB/08A and 08B (or the more commonly used PTO–1449), which provide a separate section for listing U.S. patents and U.S. patent application publications. Applicants who do not use these forms for submitting an IDS must make sure that the U.S. patents and U.S. patent application publications are listed in a separate section from citations of other documents.

Current § 1.98(a)(1) does not require the use of a form such as the PTO/SB/08A and 08B because the Office wishes to provide applicants the flexibility to use other types of lists. The Office, however, experiences problems associated with lists that do not properly identify the application in which the IDS is being submitted: *e.g.*, when applicants submit a list that includes copies of PTO–1449 or PTO–892 forms from other applications. Even though the IDS transmittal letter has the proper application number, each page of the list does not include the proper application number, but instead has the application numbers of the other applications. Should the pages of the list become separated, the Office cannot associate the pages with the proper application. Therefore, the rule is proposed to be amended to require that each page of the list must clearly identify the application number of the application in which the IDS is being submitted.

Section 1.98(a)(1) is also proposed to be amended to require that a list must include a column that provides a space next to each document listed in order to permit the examiner to enter his or her initials next to the citations of the documents that have been considered by the examiner. This provides a notification to the applicant and a clear record in the application to indicate which documents have been considered by the examiner for the application. Applicants are strongly discouraged from submitting a list that includes copies of PTO/SB/08 (PTO–1449) or PTO–892 forms from other applications. A completed PTO/SB/08 or PTO–1449 form from another application may already have initials of another examiner and the application number of another application. The burden is then on the Office to correct the incorrect information. Furthermore, when the spaces provided on the form have initials of another examiner, there are no spaces available next to the documents listed for the examiner of the subsequent application to provide his or her initials.

Section 1.98(a)(1) is also proposed to be amended to require that each page of the list includes a heading that clearly indicates that the list is an information disclosure statement. Since the Office treats an IDS submitted by the applicant differently than information submitted by a third-party (*e.g.*, the Office may discard any non-compliant third-party submission under § 1.99), a heading on each page of the list to indicate that the list is an IDS would promote proper treatment of the IDS submitted by the applicant and reduce handling errors.

Section 1.98(e) is proposed to be amended to provide that the requirement in § 1.98(a)(2) for a copy of the U.S. patents or U.S. patent application publications listed in an information disclosure statement does not apply: (1) In any national patent application filed after June 30, 2003; (2) in any international application that has entered the national stage under 35 U.S.C. 371 and § 1.495 after June 30, 2003; or (3) in any information disclosure statement submitted in compliance with the Office's electronic filing system. *See Information Disclosure Statements May Be Filed Without Copies of U.S. Patents and Published Applications in Patent Applications filed after June 30, 2003*, 1273 *Off. Gaz. Pat. Office* 55 (Aug. 5, 2003).

Section 1.102: Section 1.102(c) would be amended to provide by rule for a petition to make an application special without a fee when the application relates to a counter-terrorism invention. The Office currently accords ''special'' status to patent applications relating to counter-terrorism technology so long as the fee under § 1.17(h) is included with the petition. Amending § 1.102(c) to cover applications relating to counter-terrorism inventions will eliminate the requirement for a fee.

Under current § 1.102(c), there are two types of inventions that qualify as a basis for making an application special without a fee (other than on the basis of an applicant's age or health), namely: (1) Inventions that will materially enhance the quality of the environment; and (2) inventions that will materially contribute to the development or conservation of energy resources. It is proposed that inventions that will materially contribute to countering terrorism be added as a third type of invention for making an application special without a fee under § 1.102(c). As set forth in MPEP § 708.02, XI (Inventions For Countering Terrorism), the types of technology for countering terrorism include, but are not limited to, systems for detecting/identifying explosives, aircraft sensors/security systems, and vehicular barricades/disabling systems. This is appropriate considering that such inventions may help maintain homeland security. In view of this proposed amendment, the basis for making applications relating to counter-terrorism technology special would be transferred from § 1.102(d) to § 1.102(c).

Pursuant to the proposed amendment, § 1.102(c) sets forth two bases for making an application special: (1) Applicant's age or health; or (2) that the invention is one of the three qualifying types of inventions (*i.e.*, the invention is one that will materially enhance the quality of the environment, materially contribute to the development or conservation of energy resources, or materially contribute to countering terrorism). In view of the divergent subject matter covered by § 1.102(c)(1) and (c)(2), a petition under § 1.102(c)(1) or (c)(2) must identify the particular basis under which applicant is petitioning for special status so that the Office can determine how to evaluate an application's entitlement to special status. In addition, MPEP § 708.02 indicates that a ''petition for special status should be accompanied by a statement explaining how the invention contributes to countering terrorism'' as defined in MPEP § 708.02, XI, Inventions For Countering Terrorism.

Applicants are reminded that any identification of a basis for requesting special status and a statement of compliance with the technology specific requirement for special status must be based upon a good faith belief that the invention in fact qualifies for special status. *See* §§ 1.56 and 10.18.

Section 1.103: Section 1.103(a) is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.105: Section 1.105(a) is proposed to be amended to redesignate paragraph (a)(3) as paragraph (a)(4) and add new paragraphs (a)(1)(viii) and (a)(3). Sections 1.105(a)(1)(viii) and (a)(3) contain additional examples of information requirements and set forth exemplary formats to portray the use of § 1.105 to seek stipulations, for example, as to the knowledge of those of ordinary skill in the art, and to require responses to interrogatories, for example, as to applicant's understanding of the knowledge of persons of ordinary skill in the relevant art.

This proposal sets forth a practice for soliciting applicant's knowledge, such as stipulations to clarify the record by removing uncontroverted assertions from further consideration, or for soliciting the applicant's response to specific questions based on the applicant's knowledge to resolve outstanding issues. The requirement for information provisions of § 1.105(a)(1) contain several examples, not by any means exhaustive, of the types of information that may be required from applicants under § 1.105. The Office is proposing to add the following examples to § 1.105(a)(1): Technical information known to applicant concerning the interpretation of the related art, the disclosure, the claimed subject matter, other information pertinent to patentability, or the accuracy of the examiner's stated interpretation of such items. The format of such a requirement would differ markedly from the format of the existing examples, which generally require specific documents. New paragraph (a)(3) provides examples of formats for requirements for information: (1) a requirement for documents; (2) interrogatories in the form of specific questions seeking applicant's knowledge; or (3) stipulations in the form of statements with which the applicant may agree or disagree. The existing provisions of paragraph (a)(3) would be included in paragraph (a)(4), which would also recognize that information in the form of opinion might not be held, and permit a reply to a requirement for opinion to be considered complete where it is stated that an opinion is not held.

35 U.S.C. 101, 102, 103 and 112 require that claimed subject matter be among those eligible for patentability, provide utility that is substantial, credible and specific, be supported by a written disclosure that teaches how to make and use the invention and be definite in characterization, and be novel and non-obvious to a person of ordinary skill in the art. Evidentiary issues surrounding these patentability conditions frequently arise that require applicant reply for resolution.

In particular, the knowledge and skill of a person of ordinary skill in the art is highly pertinent to the resultant utility, to the degree of disclosure required, and to the degree to which prior art reads on claimed subject matter in view of inherent aspects and standard practices and knowledge in the art. However, evidence of what the indicia would be for that knowledge and skill may be highly burdensome to collect, and may be particularly wasteful of examiner resources for certain elementary issues, such as in common matters of scientific and engineering practice.

The Office is considering the use of stipulations and interrogatories relating to elements of the prior art, recognitions of problems to be solved, and rationales for combinations.

Applicant and the examiner may agree on the knowledge exhibited by persons of ordinary skill in the art, and this may be documented by formal stipulation. Alternatively, the examiner may articulate specific questions for applicant response in the form of an interrogatory designed to elicit the aspects of the knowledge of persons of ordinary skill in the art pertinent to analyzing patentability arising from the art of record.

Additional instances where stipulations and interrogatories may be used to elicit information reasonably necessary to examination include eliciting: (1) Applicant's interpretation of the distinctions among claims; (2) applicant's interpretation of the common technical features shared among all claims, or admission that certain groups of claims do not share any common technical features; (3) applicant's intention for the scope of structural and procedural support found in the disclosure for means or step plus function claims; (4) applicant's interpretation for precisely which portions of the disclosure provide the written description and enablement support for each claim element; (5) applicant's interpretation for the intended breadth of claim terms, particularly where those terms are not used per se in the specification; (6) applicant's interpretation of which portions of each claim correspond to the admitted prior art in the specification; (7) applicant's interpretation of the specific utility provided by the claimed subject matter; and (8) applicant's identification of new subject matter in a continuation-in-part.

All requirements for information under § 1.105 must be reasonably necessary to treating a matter in an application. As such, requirements for information must be specific in the articulation of what is required and must exhibit a reasonable likelihood of being readily fulfilled by the applicant. The Office's policy of compact prosecution requires that both examiners and applicants provide the information necessary to raise and resolve the issues related to patentability expeditiously. Where information highly pertinent to patentability determination may be required in a form that is readily responded to, such as with solicitations of stipulations or interrogatories directly related to the issues on the record, such a requirement is consistent with the policies of compact prosecution and reasonable necessity for making requirements.

Section 1.111: Section 1.111(a)(2) is proposed to be amended to provide that a supplemental reply to a non-final Office action will not be entered as a matter of right, with the exception that a supplemental reply will be entered if it is filed within the period when action by the Office is suspended under § 1.103(a) through (c) (suspensions requested by the applicant). The proposed amendment to § 1.111(a)(2) would also provide that the Office may enter a supplemental reply that is filed before the expiration of the statutory period (*i.e.*, within six months from the mailing date of the non-final Office action) if the supplemental reply is clearly limited to: (1) Cancellation of a claim(s); (2) adoption of an examiner suggestion(s); or (3) placement of the application in condition for allowance. The proposed amendment to § 1.111(a)(2) would replace the current procedures for disapproving a second or subsequent supplemental reply set forth in § 1.111(a)(2).

The proposed amendment to § 1.111(a)(2) would encourage applicants to utilize the Office's resources more efficiently, by filing a complete first reply to a non-final Office action, thus assisting the Office in reducing pendency. Supplemental replies cause significant material delays in the examination and processing of

applications, and place a significant burden on the Office's resources. An examiner's workload is increased by a supplemental reply received after the examiner has already conducted an updated prior art search and drafted the next Office action in response to the first reply. Beyond the additional time to read and consider the supplemental reply, the examiner may need to redraft the next Office action and frequently may need to conduct a further search. Pendency of the application is also increased when a first complete reply is filed to toll the period for reply and then a supplemental reply is filed beyond the statutory period set forth in the non-final Office action. Applicants are therefore strongly encouraged to file a reply to an Office action that represents a thorough consideration of all pending claims, the art of record, and the preceding Office action, and as well represents the full communication between applicants, any assignees and any legal representative mailing the reply. This would greatly reduce the need to file a supplemental reply. A single reply, absent supplements, would save examiners' time on rework. Cross-mailings between a new Office action and any supplemental reply would be significantly reduced. Applicant's patent term adjustment reductions (under § 1.704(c)(8)) would also be minimized, and the Office would save processing time and resources on patent term adjustment calculations. The changes to § 1.111(a)(2) would affect a very small percentage of applicants because only about 5.6% of all applications have one or more supplemental amendments. These supplemental amendments do, however, represent a significant burden on the Office from a small group of applicants. The burden would be effectively reduced by the instant proposed change.

After filing a reply to a non-final Office action, applicants would not be able in a supplemental reply, as a matter of right, to: (1) Further amend any claims; (2) add new claims; (3) reinstate previously canceled claims; (4) present evidence; or (5) submit arguments. The Office may enter any supplemental reply that is filed before the expiration of the statutory period (*i.e.*, within six months from the mailing date of the non-final Office action) if the supplemental reply is limited to: (1) Cancellation of a claim(s); (2) adoption of an examiner suggestion(s); or (3) placement of the application in condition for allowance. Any supplemental reply filed after the expiration of the statutory period would not be entered even if the supplemental reply meets one of the conditions since such reply would not be evaluated for entry. IDSs, or supplemental IDSs are not considered replies except when they are submitted pursuant to a requirement under § 1.105. IDSs filed with a non-compliant supplemental reply would be considered separately according to the requirements of §§ 1.97 and 1.98.

The proposed amendment to § 1.111(a)(2) would replace the procedures currently set forth in § 1.111(a)(2). The current disapproval procedures were meant to provide the Office with latitude to refuse entry of supplemental replies that unduly interfere with the preparation of an Office action. *See Changes to Implement the Patent Business Goals*, 65 FR 54604 (Sept. 8, 2000), 1238 *Off. Gaz. Pat. Office* 77 (Sept. 19, 2000). The disapproval procedures, however, did not address the pendency problems associated with first supplemental replies. The Office receives a significantly larger number of first supplemental replies than second (or subsequent) supplemental replies. Furthermore, the procedures for disapproving a second (or subsequent) supplemental reply are too time consuming for examiners and Office technical support staff. The proposed amendment to § 1.111(a)(2) would provide a single simplified procedure for handling all supplemental replies, which would reduce processing delays and save Office resources.

If a supplemental reply is denied entry, such reply would be assigned a paper number and placed in the application file, with no further action taken. To have any of the arguments or amendments contained in an unentered supplemental reply considered by the examiner, applicants may request the entry of the supplemental reply, or resubmit the contents of supplemental reply, in a proper reply to the next Office action, if the next Office action is a non-final action. If the next Office action is a final rejection or a notice of allowance, applicants may file a request for continued examination (RCE) in compliance with § 1.114 (*i.e.*, a request accompanied by a submission and a fee) and request the entry of the supplemental reply, or resubmit the contents of such reply, in the RCE submission, to have such reply considered by the examiner. If an RCE is filed after a final Office action, to have a previously filed supplemental reply considered, the RCE must be accompanied by a reply to the outstanding Office action. *See* § 1.114(c).

If an applicant cannot file a first reply to a non-final Office action that is to his or her satisfaction (*e.g.*, an affidavit is being prepared under § 1.131), applicant may consider filing a continuing application, such as a continuation application under § 1.53(b) (as an RCE would not be permitted because the Office action is non-final, see § 1.114(b)).

A supplemental reply would be entered if it is filed within the period during which action by the Office is suspended under § 1.103(a) through (c). If a supplemental reply is filed during a suspension of action that was granted by the Office for a petition, with a showing of good and sufficient cause for suspension, the supplemental reply would be entered. For example, if test data is required to overcome a rejection under 35 U.S.C. 103(a) and the applicant needs more time to conduct an experiment and collect the test data, the applicant may file a first reply to the Office action (as the Office will not grant a suspension of action if there is an outstanding Office action awaiting a reply by the applicant) and a petition for suspension of action with a showing of good cause under § 1.103(a). If the suspension is granted by the Office, applicant may submit the test data in a supplemental reply during the suspension period. In addition, if an applicant is filing an RCE after a final rejection accompanied by a reply to the final Office action and needs more time to prepare a supplemental reply (*e.g.*, an affidavit), applicant may consider filing a request for suspension of action under § 1.103(c) with the RCE. The proposed § 1.111(a)(2)(ii) would permit the affidavit (which is supplemental to the reply to the final Office action) to be entered. A supplemental reply, however, would not be entered if it is filed during a suspension of action initiated by the Office under § 1.103(e).

The proposed amendment to § 1.111(a)(2) would not change the impact of the submission of a supplemental reply on patent term adjustment, in that the submission of any supplemental reply will cause a reduction of any accumulated patent term adjustment under § 1.704(c)(8).

Section 1.115: Section 1.115 is proposed to be amended by adding a new paragraph (b) to treat all preliminary amendments filed on or prior to (where a filing date being accorded application papers is later than the original receipt date of the application papers) the application filing date as being part of the original disclosure. Current paragraphs (b) and (c) of § 1.115 would be redesignated (c) and (d), respectively. If a preliminary amendment is determined to contain matter not otherwise included in the

contents of the originally filed specification, including claims, and drawings, and the preliminary amendment is not specifically referred to in the oath or declaration under § 1.63, a new oath or declaration in compliance with § 1.63 and referencing such preliminary amendment(s) will be required. Further, the Office proposes to amend current section 1.115(b)(1), as proposed new paragraph (c)(1)(i), to allow the Office to disapprove entry of any amendment, whether submitted prior to, on or after the filing date of an application, which seeks cancellation of all claims without presenting any new or substitute claims, except that the Office would treat a preliminary amendment canceling all of the claims and presenting no new or substitute claims procedurally as preserving a claim (the first independent claim) for filing and fee calculation purposes only.

Preliminary Amendment Submitted on or Prior to the Filing Date as Part of the Original Disclosure: It has long been the practice that a preliminary amendment filed on or prior to the filing date of an application may be considered a part of the original disclosure if it is referred to in a first filed oath or declaration in compliance with § 1.63. The first filed oath or declaration may have been filed prior to, on or after the application filing date. If the preliminary amendment is not referred to in the oath or declaration, any request to treat the preliminary amendment as a part of the original disclosure is by way of petition under § 1.182 requesting that the original oath or declaration be disregarded and that the application be treated as an application filed without an executed oath or declaration under § 1.53(f). Any such petition must be accompanied by the $130.00 petition fee, a newly executed oath or declaration (which identifies the application and refers to the preliminary amendment), and the requisite surcharge under § 1.16(e).

All application papers, including preliminary amendments, located in the application file on the application filing date are currently scanned by the Office of Initial Patent Examination (OIPE) into an electronic image format. Therefore, the treatment of a preliminary amendment as being part of the original disclosure by the newly proposed practice of automatically treating all preliminary amendments filed on or prior to the filing date of an application as being part of the original disclosure would add no additional scanning work to OIPE. The proposed practice, however, would provide a consistent way of treating preliminary amendments and eliminate the need for filing a petition. As a result, valuable processing time would be saved. No change in practice is contemplated regarding inclusion of preliminary amendments in a published application, as only preliminary amendments submitted by EFS (electronic system for submitting patent applications) will be included in a published application. *See* § 1.215(c).

A preliminary amendment seeking cancellation of all claims, but not presenting any new or substitute claims, would be part of the original disclosure, but would be entered only in part in conformance with the practice set forth below.

All preliminary amendments filed on or prior to the filing date of an application are proposed to be treated as part of the original disclosure. These preliminary amendments would be entered into the application. Thereafter, the application, including the preliminary amendments, would be forwarded to an examiner for examination in due course. During examination, the examiner would make a determination as to whether the preliminary amendments contain matter not in the originally filed specification, including claims and any drawings. If the examiner determines that the preliminary amendments filed on or prior to the filing date of an application contains only subject matter disclosed in the contents of the originally filed specification, including claims and any drawings, no reference to the preliminary amendments in the oath or declaration would be necessary and, thus, would not be required. If, however, it is determined by the examiner that the amendments filed on or prior to the filing date of an application do contain matter not in the originally filed specification, including claims and any drawings, and the preliminary amendments are not referred to in a first filed oath or declaration (or a later submitted one), then a new oath or declaration in compliance with § 1.63 and referencing such preliminary amendment(s) would be necessary and, thus, would be required by the examiner. The oath or declaration filed in such an application must identify the preliminary amendment adding matter not in the originally filed specification, including claims and any drawings as one of the papers which the inventor(s) has ''reviewed and understands'' in order to comply with § 1.63(b)(2) (the surcharge under § 1.16(e) would not be required).

Preliminary amendments filed after the filing date of an application are not considered as part of the original disclosure and are not subject to a determination of whether the preliminary amendments must be referred to in an oath or declaration (if they contain subject matter not disclosed in the contents of the originally filed specification, including claims and any drawings) but will be reviewed by the examiner for new matter. Preliminary amendments filed prior to or on the filing date of the application by definition cannot contain new matter whether or not they are referred to in a first filed oath or declaration because they would be considered part of the application as originally filed.

The appropriate provisions of the MPEP will be modified accordingly, if the proposed amendment to § 1.115 is adopted.

It is recognized that the requirement for a new oath or declaration when the originally filed application papers include preliminary amendments which have been determined by an examiner to contain matter not in the originally filed specification, including claims and any drawings and are not referred to in the originally filed oath or declaration (or a later submitted one) may present a hardship in acquiring the requisite signatures of all the inventors. The treatment, however, of such a preliminary amendment as being part of the original disclosure and the elimination of the current petition practice are believed to outweigh such hardship.

A good practice to follow, when at all possible, is to refer to all preliminary amendments filed on or prior to the filing date of an application, in an oath or declaration filed under § 1.63 whenever the oath or declaration is first filed. Following this practice will avoid the necessity for filing a new oath or declaration referencing the preliminary amendments.

It should be noted that no oath or declaration filed under § 1.63 would be determined to be defective under this section if it makes reference to a preliminary amendment filed on or prior to the filing date of an application, which is determined by the Office to contain only subject matter disclosed in the contents of the originally filed specification, including claims and any drawings.

Preliminary Amendment Filed Prior to the Filing Date of an Application

Example A: An example of a preliminary amendment filed prior to the filing date of an application is a preliminary amendment filed with the original application papers, wherein the original application papers did not include a specification in compliance

with 35 U.S.C. 112. Accordingly, the application papers, as filed, were not entitled to a filing date under 35 U.S.C. 111(a)(2)(A). Thereafter, a specification in compliance with 35 U.S.C. 112 was filed in the application, and the application was entitled to a filing date as of the date of submission of the specification in compliance with 35 U.S.C. 112.

Preliminary Amendment Not Desired To Be Part of the Original Disclosure

Example B1: If a preliminary amendment is not desired to be a part of the original disclosure, then such preliminary amendment must be filed in the application on a date later than the application filing date. Such a situation could occur if a practitioner drafts a preliminary amendment, which he believes contains only subject matter disclosed in the contents of the originally filed specification, including claims and any drawings, after a declaration was signed by all the inventors executing the application papers without the preliminary amendment being before them and it would be very difficult to obtain a new oath or declaration in compliance with § 1.63 executed by all the inventors referring to the preliminary amendment.

Example B2: Where it is determined by an examiner that a preliminary amendment filed on or prior to the filing date of an application (including an executed declaration) contains additional subject matter not disclosed in the contents of the originally filed specification, including claims and any drawings, a practitioner may determine that the preliminary amendment does not need to be a part of the original disclosure (*e.g.*, to support the particular invention being claimed) and therefore it would be easier to cancel the preliminary amendment rather than obtain a new oath or declaration in compliance with § 1.63 executed by all the inventors referring to the preliminary amendment.

Preliminary Amendment Adding a Benefit Claim to a Prior Application

Example C1: An application was filed under § 1.53(b) as a continuation application of a prior filed (parent) application including a specification (including claims) and drawings updated with all desired amendments (without adding any new matter (§ 1.63(d)(1)(iii))) from a prior filed (parent) application, a copy of a signed declaration used in the prior application (§ 1.63(d)(1)(iv)), and a preliminary amendment adding a benefit claim. The preliminary amendment adds only a specific reference to the prior filed (*e.g.*, parent) application to the first line of the specification. As the preliminary amendment was submitted on filing, it is part of the original disclosure. *Question:* Does the oath or declaration need to refer to this preliminary amendment? *Answer:* No. As the application submitted on filing is an updated version of the specification of the prior application (without adding new matter) including the benefit claim, the oath or declaration does not need to include a reference to the preliminary amendment. Thus, the preliminary amendment is not adding additional subject matter not disclosed in the contents of the originally filed specification of the continuation application, including claims and drawings.

Example C2: In addition to the facts set forth in Example C(1), the specification submitted on filing inadvertently omitted a copy of page 5 of the specification, however, the transmittal letter (PTO/SB/05) submitted on filing stated the following:

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

Thereafter, the omitted page 5 from the prior application, that was intended to be submitted with the new application on filing but was not, is then submitted. *Question:* Is a new oath or declaration required? *Answer:* No. While the continuation application did not include all the subject matter of the prior application which was intended to be submitted on filing, the application did include a limited incorporation by reference. *See* MPEP § 201.06(c). As the material of page 5 of the prior application was inadvertently omitted on filing, the incorporation by reference would permit the entry of the subject matter of page 5 of the prior application into the continuation application. *See also* proposed § 1.57(a).

Preliminary Amendment Adding New Matter to a Continuation Application

Example D: An application was filed under § 1.53(b) as a continuation application of a prior filed (parent) application including an updated specification (including claims) and drawings from a prior filed (parent) application, a copy of the signed declaration from the prior application, and a preliminary amendment. The preliminary amendment included a benefit claim and also a new matter amendment of the specification, which new matter was not disclosed in the contents of the originally filed specification, including claims and drawings. As the preliminary amendment was submitted on filing, it is part of the original disclosure. *Question:* Does the oath or declaration need to refer to this preliminary amendment? *Answer:* Yes. As the application includes new matter, the application cannot be a continuation application. The application is a continuation-in-part application. An examiner would equire that the application be redesignated as a continuation-in-part application, and require a new oath or declaration in compliance with § 1.63 and referencing the preliminary amendment(s).

The Office is particularly interested in comments from our customers regarding whether the benefits of the proposed change in Office policy (elimination of the current petition practice and treatment of preliminary amendments filed on or prior to the filing date of an application as part of the original disclosure) outweighs the attendant hardship (reexecution of the oath or declaration).

This change to § 1.115 would not be retroactive to any applications filed before the effective date of the rule change. The proposed change would be prospective only since to apply the change retroactively would result in changing the expectations regarding treatment of preliminary amendments filed on or prior to the filing date of an application by the Office.

Preliminary Amendment Cancelling All Claims: Current paragraph (b) of § 1.115 is proposed to be redesignated as paragraph (c) based on the above new proposed paragraph (b) and would be reformatted to accommodate the addition of new paragraph (c)(1)(i) as is being proposed to treat a preliminary amendment seeking to cancel all claims.

Before June of 1998, it was the practice of the Office to treat an application filed with an amendment (preliminary amendment) canceling all of the claims and presenting no new or substitute claims by denying entry of the amendment. See MPEP §§ 711.01 and 714.19. In *Baxter Int'l Inc.* v. *McGaw Inc.,* 149 F.3d 1321, 47 USPQ2d 1225 (Fed. Cir. 1998), the Federal Circuit held that a divisional application that included instructions to cancel all of the claims in the specification, without presenting any new claims, and did not contain at least one claim as required by 35 U.S.C. 112,

¶ 2, was not entitled to a filing date under 35 U.S.C. 111(a) until the date an amendment including at least one claim was filed in the application. Following *Baxter,* the Office changed its practice and no longer accorded a filing date to any application that was accompanied by a preliminary amendment which canceled all claims and failed to simultaneously submit any new claims. *See Any Application Filed With Instructions to Cancel All of the Claims in the Application is Not Entitled to a Filing Date,* 1216 *Off. Gaz. Pat. Office* 46 (Nov. 10, 1998).

Subsequently, in *Exxon Corp.* v. *Phillips Petroleum Co.,* 265 F.3d 1249, 60 USPQ2d 1368 (Fed. Cir. 2001), the Federal Circuit affirmed that the Office may refuse to enter an improper amendment that would cancel all of the claims in an application to avert harm (loss of a filing date) to an applicant. The Federal Circuit distinguished its decision in *Baxter* since in *Baxter* the Office did enter the amendment that canceled all of the claims in the application, thus resulting in the application not being entitled to a filing date. In contrast, in *Exxon* the Office refused to enter the amendment cancelling all the claims. The Office did, however, cancel all the dependent claims and preserve one claim for filing purposes only. Thus, all the claims were never canceled.

Consistent with *Exxon Corp.* v. *Phillips Petroleum Co.* and MPEP §§ 711.01 and 714.19, paragraph (H), (8th ed. 2001), the Office would disapprove entry of any amendment (whether submitted prior to, on or after the filing date of the application) that seeks cancellation of all claims but does not present any new or substitute claims. For filing purposes, that is, fee calculation purposes, the Office would treat such an application as containing a single claim, which would be the first independent claim, claim 1, wherein such claim would be the only claim that would be considered part of the original disclosure. *See Example A* above for an illustration of a preliminary amendment filed prior to the filing date of an application.

The proposed amendment to § 1.115(c)(1) would be a codification of the Office's current practice as set forth in MPEP §§ 711.01 and 714.19, paragraph (H). In addition, the provision in MPEP § 601.01(e) concerning the treatment of a nonprovisional application accompanied by a preliminary amendment which cancels all claims and fails to simultaneously submit any new claim(s) would be revised to be in conformance with current practice. *See Treatment of Amendments that if Entered Would Cancel All of the Claims in an Application,* 1255 Off. Gaz. Pat. Office 827 (Feb. 5, 2002).

This change to § 1.115 (if adopted) would apply to any applications filed before the effective date of the rule change, as it is a codification of current Office practice.

Section 1.116: Section 1.116(b) is proposed to be revised to make it clear that the reexamination proceeding is not terminated under §§ 1.550(d) or 1.957(b), but rather the prosecution of the reexamination is concluded under §§ 1.550(d) or 1.957(b). See the discussion below as to the amendment of § 1.550 for the rationale for this change. *See also* §§ 1.502, 1.570, 1.902, 1.953, 1.957, 1.958, 1.979, and 1.997.

It is further proposed that § 1.116(b) be revised to more appropriately set forth the § 1.957(c) consequences of a failure to respond in an *inter partes* reexamination. The *inter partes* reexamination prosecution is neither terminated nor concluded where the patent owner fails to timely respond to an Office action, and claims in the proceeding remain patentable. Rather, an Office action is issued to thereby permit the third party requester to challenge the claims found patentable.

Section 1.131: Section 1.131(b) is proposed to be amended for correction of a typographical error that was inadvertently introduced in the final rule *Miscellaneous Amendments of Patent Rules,* 53 FR 23728 (June 23, 1988) (final rule). The typographical error to be corrected is contained in the text at the end of the second (and last) sentence of § 1.131(b), which pertains to exhibits or records needed to substantiate an oath or declaration of prior invention swearing behind a reference applied in a rejection of a claim. Specifically, the text ''of their absence satisfactorily explained'' should read ''*or* their absence satisfactorily explained'' (emphasis added). Thus, § 1.131(b) would be amended to clarify that for any oath or declaration under § 1.131 lacking original exhibits of drawings or records in support thereof, the absence of such original exhibits of drawings or records must be satisfactorily explained.

Section 1.136: Section 1.136(b) is proposed to be amended to add a petition fee requirement. Paragraph 1.136(a)(2), for example, specifically refers to § 1.136(b) for extensions of time to file replies under §§ 1.193(b), 1.194, 1.196 or 1.197 after a notice of appeal is filed. For such replies on appeal § 1.136(a) is not available for extending the time period for reply, and applicants may be able to make the § 1.136(b) ''sufficient cause'' showing. To evaluate whether a showing of ''sufficient cause'' exists, decisions on § 1.136(b) requests require a thorough evaluation of facts and circumstances on a case-by-case basis. Furthermore, requests under § 1.136(b) are generally treated expeditiously by the deciding official. At MPEP § 710.02(e), it is recommended that requests under § 1.136(b) be filed in duplicate with a stamped return-address envelope to assist the Office in processing these requests with special dispatch. To reflect the Office's cost of deciding requests under § 1.136(b), it is proposed that a requirement for a petition fee be added to § 1.136(b). Evaluation of a request for an extension of time under § 1.136(b) for sufficient cause is analogous to evaluation of a request for the Office to suspend action for sufficient cause pursuant to § 1.103(a). See discussion of § 1.17.

Section 1.137: Sections 1.137(a), (b) and (e) are proposed to be amended to clarify that the reexamination proceedings under § 1.957(c) referred to in §§ 1.137(b) and (c) are ''limited as to further prosecution.'' Section 1.137(d) is also proposed to be amended to clarify that when reviving a reissue application pursuant to § 1.137 a terminal disclaimer is not required.

Sections 1.137(a), (b) and (e) are proposed to be amended to more appropriately set forth the consequences of a failure to respond when governed by § 1.957(c). An *inter partes* reexamination prosecution is neither terminated nor concluded where the patent owner fails to timely respond to an Office action and claims in the proceeding remain patentable. An Office action is issued instead to thereby permit the third party requester to challenge the claims found patentable. As set forth in § 1.957(c), ''[i]f claims are found patentable and the patent owner fails to file a timely and appropriate response to any Office action in an *inter partes* reexamination proceeding, further prosecution will be limited to the claims found patentable at the time of the failure to respond, and to any claims added thereafter which do not expand the scope of the claims which were found patentable at that time.'' The proposed revision refers accordingly to ''revival'' of an *inter partes* reexamination prosecution which has been ''limited'' under § 1.957(c).

Section 1.137(d)(3) is proposed to be amended to clarify that the terminal disclaimer requirements of paragraph (d)(1) do not apply to reissue applications.

Pursuant to 35 U.S.C. 251, a patent is reissued ''for the unexpired part of the term of the original patent.'' Hence, any

period of abandonment of a reissue application, should the reissue application become revived and serve to reissue the patent, will result in a loss of patent term for the period that the reissue application was abandoned. Accordingly, there is no need to impose an additional penalty on patentee to terminally disclaim the entire period of abandonment of a reissue application. This rationale accords with the exclusion of the terminal disclaimer requirement when petitioning for revival of nonprovisional applications filed on or after June 8, 1995, pursuant to § 1.137(d)(1).

Current Office practice does not require a terminal disclaimer as a condition precedent for revival of an abandoned reissue application, no matter when the application was filed, where revival is otherwise appropriate.

In order to codify current practice, § 1.137(d)(3) is proposed to be amended by inserting ''to reissue applications'' to provide a blanket exception for reissue applications. Regardless of when the reissue application was filed, applicant is not required to file an accompanying terminal disclaimer with a petition to revive under § 1.137.

Section 1.165: Section 1.165(b) is proposed to be amended to remove the requirement for a black and white copy of a color drawing or photograph. This requirement has already been waived. *See Interim Waiver of Parts of 37 CFR 1.84 and 1.165, and Delay in the Enforcement of the Change in 37 CFR 1.84(e) to No Longer Permit Mounting of Photographs,* 1246 *Off. Gaz. Pat. Office* 106 (May 22, 2001).

Section 1.173: Section 1.173(b) is amended to clarify that paragraphs (b)(1), (b)(2) and (b)(3) are directly related to, and should be read with, paragraph (b).

Section 1.175: Section 1.175 is proposed to be amended by adding a new paragraph (e) requiring a new oath or declaration for continuing reissue applications, which must identify an error not corrected in an earlier reissue application.

Section 1.175 is currently interpreted to require any continuing reissue application whose parent application has not been abandoned to include an oath or declaration identifying at least one error being corrected, which error is different from the error(s) being corrected in the parent reissue (or an earlier reissue). Ordinarily, a single reissue application is filed to replace a single original patent and corrects all of the errors recognized by the applicant at the time of filing of the (single) reissue. If, during the prosecution of the reissue application, applicant (patentee) recognizes additional errors needing correcting, such corrections could, and should, be made in the same application. If, however, after the close of prosecution and up until the time that the first reissue issues, applicant recognizes a further error which needs correction and files a continuing reissue application, § 1.175(e) would now explicitly require applicant to include an oath or declaration which identifies an error which was not corrected in the parent reissue application or in an earlier reissue application, *e.g.*, a grandparent reissue application.

Section 1.178: Section 1.178 is proposed to be amended to eliminate the requirement for physical surrender of the original letters patent (*i.e.*, the ''ribbon copy'' of the original patent) in a reissue application, and to make surrender of the original patent automatic upon the grant of the reissue patent. The reissue statute provides in part that:

> Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less then he had a right to claim in the patent, the Director shall, *on the surrender of such patent* and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent.

See 35 U.S.C. 251, ¶ 1 (emphasis added).

While the statutory language requires a ''surrender'' of the original patent, it does not require a physical surrender of the actual letters patent, nor even a statement that the patent owner surrenders the patent. Physical surrender by submission of the letters patent (*i.e.*, the copy of the original patent grant) is currently required by rule via § 1.178; however, such submission is only symbolic, since the patent right exists independently of physical possession of the letters patent.

It is the right to the original patent that must be surrendered upon grant of the reissue patent, rather than any physical document. Thus, where the letters patent is not submitted during the prosecution of the reissue application because it is stated in the reissue that the letters patent copy of the patent is lost or inaccessible, there is no evidence that any stigma is attached to the reissue patent by the public. Further, there is no case law treating such a reissue patent adversely due to the failure to submit the letters patent. In fact, there is no legal reason to retain the requirement for physical surrender of the letters patent. On the other hand, there is much benefit for eliminating the requirement for physical surrender of the letters patent.

It would be beneficial to both the Office and the public to recognize and provide that the surrender of the original patent is automatic upon the grant of the reissue patent to thereby eliminate the requirement for a physical submission of the letters patent, and to eliminate even the need for filing a paper offering to physically surrender the letters patent (§ 1.178(a)).

The current requirement for submission of the patent document requires the patent owner (seeking reissue) to try to obtain the letters patent copy of the patent. If the document was lost or misplaced, the patent owner must search for it. If it is in the hands of a former employee, the patentee must make an effort to secure it from that employee (who might not be on friendly terms with the patentee). If the letters patent can be obtained, it must then be physically submitted without losing or destroying it. If the letters patent cannot be obtained, the patent owner must make a statement of loss (Form PTO/SB/55) or explain that it cannot be obtained from the party having physical possession of it. The proposed revision of § 1.178 would eliminate these burdens, and the requirement for use of form PTO/SB/55 or its equivalent.

At present, the requirement for submission of the letters patent copy of the patent provides an unnecessary drain on Office processing and storage resources in dealing with the submitted letters patent document. Further, in the event the reissue is not granted, the Office must return the letters patent to the applicant where such is requested. The proposed revision would do away with the burden on the Office of processing, storing, and returning letters patent.

The current requirement for submission of the original patent (the letters patent), or a statement as to its loss, results in a ''built in'' delay in the prosecution while the Office awaits submission of the letters patent or the statement of loss, which is often submitted only after an indication of allowance of claims. The proposed revision would reduce reissue application pendency, since the Office would no longer need to delay prosecution while waiting for the letters patent or the statement of loss.

As a final point, the complete elimination of the requirement for an affirmative act (of surrender) by the patent owner would put reissue in step with other post patent proceedings for change of patent which have no

requirement for even a statement of surrender (*e.g.*, reexamination certificate, certificate of correction).

Section 1.179: Section 1.179 would be removed and reserved as no longer being necessary. The information provided by this rule, *i.e.*, notification to the public in the patent file that a reissue application has been filed for a particular patent, is now available through other means, such as public PAIR on the Office's Internet home page. This source of information can be entered through the Office's Internet Web site at *http://pair.uspto.gov/cgi-bin/final/home.pl* wherein the user can enter the original patent number, click on ''Search,'' and then click on ''Continuity Data.'' Any post-issuance filings (*e.g.*, reissues, reexamination proceedings) will be identified by scrolling to ''Child Continuity Data.'' To identify an application under ''Child Continuity Data'' as a reissue, the user simply clicks on the desired application number and searches through the file contents screen for ''Notice of Reissue Published in Official Gazette.'' The Patent Assistance Center (PAC) Helpdesk (telephone number: 800–786–9199) can also provide information to the public on reissue filings. Removal of the provision that the Office place a separate paper in the patent file stating that a reissue has been filed would therefore eliminate several processing steps within the Office and contribute to overall efficiency. Similarly, public PAIR will indicate termination of the reissue examination, and placing a second separate paper notice to that effect in the patent file would be unnecessary.

The Office, through recent rule changes, has removed other language directed solely to internal instructions or directions to itself, and which do not directly impact patent applicants or the public. *See, e.g., Changes to Implement the Patent Business Goals,* 65 FR 54603, 54644, 54676 (Sept. 8, 2000), 1238 *Off. Gaz. Pat. Office* 77 (Sept. 19, 2000) (revised § 1.176 to eliminate instructions providing for a two-month delay of examination following the notice of reissue filing in the *Official Gazette*). Additionally, Office personnel can internally through the PALM database access information regarding reissue filings and do not rely on the presence or absence of the notice in the patent file as determinative of reissue status.

Section 1.182: Section 1.182 is proposed to be amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.183: Section 1.183 is proposed to be amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.213: Section 1.213(a) is proposed to be amended to add a provision that the certification under § 1.213(a)(3) is not appropriate unless the person signing the request has made an actual inquiry consistent with the requirements of § 10.18(b) of this chapter with respect to the application to which the request and certification pertains to determine that: (1) The application has not been the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing; and (2) the applicant's intent at the time the nonpublication request is being filed is that the application will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing. The Office has received inquiries which make it apparent that a number of practitioners consider a certification under 35 U.S.C. 122(b)(2)(B)(i) and § 1.213(a) appropriate so long as the applicant has not filed, and has not yet made a decision whether to file, a counterpart application in a foreign country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing (''a counterpart application subject to eighteen-month publication''). Thus, § 1.213(a) is proposed to be amended to more clearly place persons signing nonpublication requests under § 1.213(a) on notice as to what a certification under 35 U.S.C. 122(b)(2)(B)(i) and § 1.213(a) entails.

A nonpublication request must contain a certification that ''the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing'' (emphasis added). See 35 U.S.C. 122(b)(2)(B)(i). A certification under 35 U.S.C. 122(b)(2)(B)(i) and § 1.213(a) is not appropriate unless the applicant's intent at the time the nonpublication request is being filed is not to file a counterpart application that would be subject to eighteen-month publication for the particular application with which the nonpublication request is filed. That is, the applicant must have an affirmative intent not to file a counterpart application that would be subject to eighteen-month publication, and not just the absence of any intent or plan concerning the filing of any counterpart application that would be subject to eighteen-month publication. In addition, a certification on the basis of a lack of knowledge of the applicant's plans concerning the filing of any counterpart application that would be subject to eighteen-month publication or the applicant's past practices or tendencies with respect to the filing of foreign counterpart applications would not meet the requirement that the person signing the request make an ''actual inquiry'' ''with respect to the application to which the request and certification pertains.'' Obviously, that a particular applicant has a tendency to file counterpart applications for fewer than fifty percent of its U.S. applications is not alone an adequate basis for filing all or any of the U.S. applications with a nonpublication request under § 1.213(a).

Section 1.213(b) (and § 1.213(c)) is proposed to be amended to incorporate into the rules of practice the Office's interpretation of the interplay between the provision in 35 U.S.C. 122(b)(2)(B)(ii) for rescission of a previously filed nonpublication request and the notice requirement of 35 U.S.C. 122(b)(2)(B)(iii). The Office published a notice advising practitioners that the requirement in 35 U.S.C. 122(b)(2)(B)(iii) (and § 1.213(c)) for a notice of the foreign filing is in addition to any rescission of the nonpublication request under 35 U.S.C. 122(b)(2)(B)(ii) (and § 1.213(b)). *See Reminder that Rescission of a Nonpublication Request is Not Itself a Notice of Foreign Filing,* 1270 *Off. Gaz. Pat. Office* 20 (May 6, 2003). The inquiries in response to that notice revealed that many practitioners were unaware of this information. These inquiries also revealed that many practitioners who filed a counterpart application subject to eighteen-month publication after filing a nonpublication request in a U.S. application rescinded the nonpublication request by filing a nonpublication request rescission form that did not also contain a foreign filing notice (in many situations because the foreign filing notice included on the Office pre-printed form was removed). In view of these inquiries, the Office published a notice further clarifying the Office's interpretation of the provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv). *See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv),* 1272 *Off. Gaz. Pat. Office* 22 (July 1, 2003). Section 1.213(b) is specifically proposed to be amended to indicate that the mere filing of a

request under § 1.213(b) to rescind a previously filed nonpublication request does not comply with the notice requirement of 35 U.S.C. 122(b)(2)(B)(iii) and § 1.213(c) (for applicants who submitted a nonpublication request under § 1.213(a), but before filing the request under § 1.213(b) to rescind the previously filed nonpublication request, also filed an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing). *See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv),* 1272 *Off. Gaz. Pat. Office* at 23. Section 1.213(b) is also proposed to be amended to indicate that the provisions of § 1.8 do not apply in determining whether such an application has been filed before filing a request under § 1.213(b) to rescind a previously filed nonpublication request. *See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv),* 1272 *Off. Gaz. Pat. Office* at 23–24.

Section 1.213(b) is also proposed to be amended to provide that a request under § 1.213(b) to rescind a nonpublication request is not appropriate unless the person signing the request has made an inquiry consistent with the requirements of § 10.18(b) of this chapter and determined that a nonpublication request under § 1.213(a) was previously filed in the application in which the request to rescind a nonpublication request is directed. A number of practitioners have developed the practice of filing a request under § 1.213(b) to rescind a nonpublication request in all applications for which a counterpart application subject to eighteen-month publication is filed, regardless of whether a nonpublication request was filed in the application. Processing a request under § 1.213(b) to rescind a nonpublication request in an application in which a nonpublication request was not previously filed in the application is burdensome on the Office. This is because the filing of a nonpublication request in an application for which a nonpublication request is not entered in the Office's computer system generally results in a search of the application file to determine whether the Office failed to record a nonpublication request in the Office's computer system. The filing of a request under § 1.213(b) to rescind a nonpublication request in an application in which a nonpublication request was not previously filed is unwarranted and results in an unnecessary delay and a needless increase in the cost of processing the application. Thus, the Office considers this course of conduct to be in violation of § 10.18(b). Therefore, the Office is proposing to amend § 1.213(b) to place persons signing a request under § 1.213(b) to rescind a nonpublication request on notice that such a request is not appropriate unless the person signing the request has made an inquiry consistent with the requirements of § 10.18(b) of this chapter and determined that a nonpublication request under § 1.213(a) was previously filed in the application in which the request to rescind a nonpublication request is directed. Practitioners who continue to engage in the practice of filing a request under § 1.213(b) to rescind a nonpublication request in applications for which a nonpublication request was never filed may be subject to sanctions, disciplinary action, or both (*see* §§ 10.18(c) and (d)).

Section 1.213(c) is (as discussed above with respect to § 1.213(b)) proposed to be amended to incorporate into the rules of practice the Office's interpretation of the interplay between the provision in 35 U.S.C. 122(b)(2)(B)(ii) for rescission of a previously filed nonpublication request and the notice requirement of 35 U.S.C. 122(b)(2)(B)(iii). Section 1.213(c) is specifically proposed to be amended to provide that an applicant who has submitted a nonpublication request under § 1.213(a), but before filing a request under § 1.213(b) to rescind the previously filed nonpublication request, files an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, must notify the Office of such filing within forty-five days after the date of the filing in another country, or under a multilateral international agreement. Section 1.213(c) is also proposed to be amended to provide that the provisions of § 1.8 do not apply in determining whether such an application has been filed before filing a request under § 1.213(b) to rescind a previously filed nonpublication request. Section 1.213(c) is also proposed to be amended to provide that the mere filing of a request under § 1.213(b) to rescind a previously filed nonpublication request does not comply with the notice requirement of 35 U.S.C. 122(b)(2)(B)(iii) and § 1.213(c). Section 1.213(c) is also proposed to be amended to recite ''of the filing in another country, or under a multilateral international agreement,'' rather than ''of the filing of such foreign or international application'' to more accurately track the language of 35 U.S.C. 122(b)(2)(B)(iii).

Section 1.213(d) is proposed to be added to provide that if an applicant who has submitted a nonpublication request under § 1.213(a), subsequently files a request under § 1.213(b) to rescind a nonpublication request or files a notice of a filing in another country, or under a multilateral international agreement, under § 1.213(c), the application shall be published as soon as is practical after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code. 35 U.S.C. 122(b)(2)(B)(iv) provides that if an applicant rescinds a request made under 35 U.S.C. 122(b)(2)(B)(i) or notifies the Director that an application was filed in a foreign country or under a multilateral international agreement specified in 35 U.S.C. 122(b)(2)(B)(i), the application shall be published in accordance with the provisions of 35 U.S.C. 122(b)(1) on or as soon as is practical after the date that is specified in 35 U.S.C. 122(b)(2)(B)(i). Notwithstanding this provision in 35 U.S.C. 122(b)(2)(B), the Office has also received inquiries as to whether an application will be published if a request under § 1.213(b) to rescind a nonpublication request or a notice of foreign or international filing under § 1.213(c) is filed.

Section 1.215: Section 1.215(a) is proposed to be amended to permit submission of paper replacement drawings with a processing fee pursuant to § 1.17(i) (to replace the requirement for a petition) within the same time frame as is being proposed in § 1.215(c). Additionally, § 1.215(c) is proposed to be amended to provide a time frame of one month from the mailing date of the first Office communication that includes a confirmation number for the application for the submission of an amended version of an application through EFS (as well as providing the same time frame for replacement drawings submitted pursuant to § 1.215(a)).

Section 1.215(a) is proposed to be amended to refer to the processing fee set forth in § 1.17(i), and to provide that paper replacement drawings received before the Office has begun to process the patent application publication will be included in any patent application

publication. Replacement paper drawings may currently be included in any patent application publication, so long as the drawings are accompanied by a petition under § 1.182 and a petition fee set forth in § 1.17(h) and are timely received. Deletion of the requirement for a petition and replacement of the petition fee set forth in § 1.17(h) with a processing fee set forth in § 1.17(i) will reduce burdens upon applicants, while retaining the ability of the Office to recover the costs associated with processing the replacement drawings that have not been required by the Office. *See Drawings in Patent Application Publications and Patents,* 1242 *Off. Gaz. Pat. Office* 114 (Jan. 16, 2001).

Section 1.215(c) is proposed to be amended to provide that applicant has until the later of: (1) A month after the mailing date of the first Office communication that includes a confirmation number for the application; or (2) fourteen months after the earliest filing date claimed under title 35, United States Code, to file an amended version of an application through EFS, for publication purposes. This new time frame is also being applied to submission of replacement paper drawings pursuant to § 1.215(a). This change has already been implemented. *See Assignment of Confirmation Number and Time Period for Filing a Copy of an Application by EFS for Eighteen-Month Publication Purposes,* 1241 *Off. Gaz. Pat. Office* 97 (Dec. 26, 2000).

Section 1.291: Section 1.291 is proposed to be amended to require that when a protest under § 1.291 is filed in an application, the real party in interest that files the protest must be named; *i.e.*, the naming of the real party in interest would be a requirement of the filing of a proper protest. An exception to this requirement would be provided in that a protester desiring anonymity could submit a statement (together with a processing fee under § 1.17(i)) that the protest being submitted is the first protest submitted in the application by the real party in interest on behalf of whom the protest is being submitted. Additionally, § 1.291, as it is proposed to be amended, is reformatted for clarity.

Currently, a protest may be submitted without identification of the real party in interest on behalf of whom the protest is being submitted. Further, there is no explicit bar in the rule against multiple piecemeal protest submissions (raising a slightly different issue in each of multiple protest submissions) other than that they should be submitted before prosecution closes in an application. Thus, § 1.291, as it currently exists, is subject to abuse by, for example, the filing of multiple protests in a single application by practitioners of the same firm, with a different practitioner signing each protest, and additionally, by any of the inventors and/or assignees, where essentially the same grounds of protest are presented in each of the protests. In order to eliminate such potential for harassment of the prosecution process via multiple filings of protests in an application by persons serving the same interest, it is proposed that § 1.291 be amended to require the naming of the real party in interest, or privy thereof, when a protest is filed.

The party on whose behalf the protest is being filed is required to be identified by either: (1) The name of the business or other organizational entity (*e.g.*, name of corporation) and its principal address, its place of formation (*e.g.*, incorporation) and any other name under which the business or other organizational entity is doing business (d/b/a) or conducting operations; or (2) the name and residence of the individual who is directing the submission of the protest.

The concept of identifying the ''real party in interest'' is not new to the Office; it is required by statute (35 U.S.C. 311) and by rule (§ 1.915) in *inter partes* reexamination practice with respect to identifying the *inter partes* third party reexamination requester. It is to be noted that the term ''privy'' is construed to include any party related to the real party in interest (filing the protest) as employer, employee, co-employee of the same employer, assignee, legal representative, licensee or hired contractor of the assignee or employer.

Where a genuine reason for not identifying the real party in interest exists (such as concern by an employee as to retaliation by his/her employer which is the assignee of the application), § 1.291(b)(3) would permit a statement in substitution for identifying the real party in interest. The § 1.291(b)(3) substitute statement must aver that the protest being submitted is, to the best of the knowledge of the submitting party, the first protest submitted by the real party in interest. A processing fee under § 1.17(i) must be included with the § 1.291(b)(3) substitute statement.

While an examiner is always free to look at or consider any documents submitted in an application, under § 1.291 as it is proposed to be amended, there would be no requirement that an examiner consider a second protest filed on behalf of the same real party in interest, unless: (1) The second protest submission (a) includes additional art directed to the patentability of the claims, or (b) otherwise raises new issues substantially different from issues earlier presented and affecting the patentability of the claims, which could not have been earlier presented; and (2) the second protest submission includes an explanation of what is added by the additional art or new issue(s) raised, and why such could not have been earlier presented.

Finally, once a protest has been matched with an application, the examiner is always free to look at, or consider, any document(s) or other information submitted in that protest whether or not the protest complies with § 1.291. This is true both for § 1.291 as it presently exists, and § 1.291 as it would be revised via the present proposal. Section 1.291 exists as a matter of administrative convenience for the Office, and a third party's failure to comply with any of the requirements of § 1.291 does not vest the applicant with any ''right'' to preclude consideration of information in a non-compliant protest by the examiner.

Section 1.291(a): In order for a protest submission to be matched with an application, it must include sufficient information to adequately identify the application for which the submission is being made.

Where possible, the protest should specifically identify the application to which the protest is directed by application number and filing date. If, however, the protestor is unable to specifically identify the application to which the protest is directed by application number and filing date, but, nevertheless, believes such an application to be pending, the protest should be directed to the attention of the Office of Petitions, along with as much identifying data for the application as is possible. If sufficient information is provided in the protest to match it to an application, it will be matched. If not, the protest submission will be returned to the party that submitted it.

Section 1.291(b): Section 1.291(b) is proposed to be amended to provide that a protest may be filed ''[a]t any time if it is accompanied by the written consent of the applicant to the filing of the protest being submitted.'' 35 U.S.C. 122(c) prohibits the filing of a protest in an application after the application has been published without the express written consent of the applicant. In order to provide for the filing of protests after publication of patent applications, § 1.291(b)(2) requires that a filing of a protest after publication (of an

application) be accompanied by a written statement of consent of the applicant to the filing of the protest. The written statement must indicate that applicant is consenting to the specific protest being submitted. A blanket consent upon publication of an application would not be sufficient to permit admission of the subsequently filed individual protests; applicant's consent must be specifically directed to the protest being filed. It should be noted, however, that applicant's consent need not be directed to a document that applicant has already looked at or reviewed, but rather may be directed to the ''protest that party Smith has informed me that he will be submitting during the week of November 26th.''

Where the protest can be ''matched'' with an application, it will be ''entered'' into the file (*i.e.*, it has an entry right), if the protest: (1) Is timely filed; (2) indicates that it has been served on the applicant, and (3) properly identifies the real party in interest, or contains the statement pursuant to paragraph (b)(3) of the section. If the protest is not entered, it will be so marked, and it may be returned to the protestor.

Section 1.291(c): Where the protest is ''entered'' into the application, the items of information submitted with the protest, and the argument directed to the items of information, will be ''considered'' by the examiner, if the protest includes: (1) A listing of patents, publications, or other information relied upon; (2) a concise explanation of the relevance of each listed patent, publication and other item of information; (3) a copy of each listed patent, publication, or other item of information in written form, or at least pertinent portions thereof; (4) an English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information relied upon; and (5) if a second or subsequent protest in the case, an explanation why the additional art or other item(s) of information presented are significantly different, and why they were not earlier presented. Any item of information for which § 1.291(c)(1) through (c)(5) is not complied with would not be entitled to ''consideration.''

Section 1.291(e): This paragraph is proposed to be added to reiterate and confirm the Office's long-standing practice to enter protests raising inequitable conduct issues without comment on such issues. *See* MPEP § 1901.02.

Section 1.295: Section 1.295(a) is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.296: Section 1.296 is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.311: Section 1.311(b) is proposed to be amended to provide that the submission after the mailing of a notice of allowance of either: (1) An incorrect issue fee or publication fee; or (2) a fee transmittal form (or letter) for payment of issue fee or publication fee, will operate as a valid request to charge the correct issue fee, or any publication fee due, to any deposit account identified in a previously filed authorization to charge such fees. Additionally, non-Office provided issue and publication fee forms would now be permitted. It is proposed to be clarified that for previous authorizations to be effective under the exceptions provided for, the previous authorizations must cover the issue and publication fees to be charged.

Current § 1.311(b) sets forth that an authorization to charge the issue fee or other post-allowance fees (such as any publication fee due) to a deposit account may be filed only after the mailing of a notice of allowance in part to encourage the use (return) of the PTOL–85B form as that form contains important information, such as the name of the assignee. The last sentence of § 1.311(b), however, provides an exception for charging the issue fee to a deposit account identified in a previously filed authorization if the applicant submits either an incorrect issue fee or an Office-provided fee transmittal form (*i.e.*, Part B—Fee(s) Transmittal of a Notice of Allowance and Fee(s) Due, form PTOL–85). The proposed amendment to § 1.311(b) would extend the exception to any publication fee due and expand the exception to apply where an applicant's own fee transmittal form or letter for submitting issue fee or publication fee is submitted. Further, the term ''such'' is proposed to be added before ''fees'' in the last line of section 1.311(b) to clarify that the previously filed authorization must be an authorization to charge the appropriate fee due to an identified deposit account. For example, if the previously filed fee authorization only authorizes the Office to charge the issue fee, the Office would *not* be able to charge any publication fee due to the identified deposit account in the previously filed authorization even when the applicant submitted an issue fee transmittal form. For such authorization, the Office could only charge the correct issue fee to the identified deposit account.

The phrase ''A completed Office-provided issue fee transmittal form (where no issue fee has been submitted)'' in the last sentence of § 1.311(b) is proposed to be changed to ''A fee transmittal form (or letter) for payment of issue fee or publication fee'' to provide that a submission of an Office-provided fee transmittal form (*i.e.*, Part B of the form PTOL–85), or applicant's own fee transmittal form or letter for submitting issue fee or publication fee, (incomplete as well as a complete, but for a fee authorization) would operate as a request to charge the correct issue fee due, or any publication fee due, to any deposit account identified in a previously filed authorization to charge such fees, even if the issue fee has been previously submitted.

Where an issue fee has been previously submitted, and the application is withdrawn from issue and is allowed again, since November 13, 2001, the Notice of Allowance has indicated the current amount due as the difference between the previously paid issue fee and the current amount for an issue fee. In such situation, a payment of only the difference, or a response to the notice where there is no issue fee due (or only the return of the Part B—Fee(s) Transmittal of form PTOL–85 as the current issue fee is the same amount as previously paid), will be treated as a ratification of the Office's decision to apply the previously paid issue fee. If the fee was paid in a different application (*e.g.*, the parent application of a continued prosecution application under § 1.53(d) (CPA)), the fee indicated in the notice as due is the current issue fee. The issue fee paid in the parent application cannot be refunded, or applied, to the notice of allowance mailed in the CPA.

Section 1.324: Section 1.324(a) and (b) would be amended to provide an informational reference to 35 U.S.C. 256 and to replace ''petition'' with ''request.'' Section 1.324(b) would be amended to alert patentees to the availability of reissue to correct inventorship in a patent where § 1.324 is not available.

Section 1.324(a) is proposed to be amended by adding an explicit reference to 35 U.S.C. 256 and its requirement in order to clarify that the inventorship of a patent may be changed only by way of request from *all* of the inventors together with assignees of the entire interest, or on order of a court, and the Office will then issue a certificate naming the correct inventors. 35 U.S.C. 256 requires that there be

agreement among all parties (inventors and existing assignees), or that a court has issued an order so directing the inventorship change. The current reference in § 1.324 to a petition is being eliminated in order to conform the rule language to earlier changes made to § 1.20(a).

Section 1.377: Section 1.377 is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17. Section 1.377 will retain the provision that the petition fee may be refunded if an Office error created the need for the petition.

Section 1.378: Section 1.378(e) is proposed to be amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.502: Section 1.502 is proposed to be amended to make it clear that it is the issuance and publication of the *ex parte* reexamination certificate that terminates the reexamination proceeding. The failure to timely respond, or the issuance of a Notice of Intent to Issue Reexamination Certificate (NIRC), does not terminate the reexamination proceeding. See the discussion below as to the amendment of § 1.550. *See also* §§ 1.116, 1.570, 1.902, 1.953, 1.957, 1.958, 1.979, and 1.997.

Section 1.530: Section 1.530 is proposed to be amended to state that proposed amendments in *ex parte* or *inter partes* reexamination are not effective until the reexamination certificate is both ''issued and published'' (emphasis added) to conform § 1.530 for consistency with the language of 35 U.S.C. 307 and 316.

Section 1.550: Section 1.550(c) is proposed to be amended to add a $200 fee requirement pursuant to § 1.17(g) in *ex parte* reexamination proceedings for requests for extensions of time, which requests are based upon sufficient cause. Extensions of time under § 1.136(a) are not permitted in *ex parte* reexamination proceedings because the provisions of 35 U.S.C. 41(a)(8) and § 1.136(a) apply only to an ''application'' and not to a reexamination proceeding (*ex parte* or *inter partes*). Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings ''will be conducted with special dispatch.'' Accordingly, extensions of time in *inter partes* reexamination proceedings are provided for in § 1.550(c) only ''for sufficient cause and for a reasonable time specified.'' To evaluate whether a showing of ''sufficient cause'' exists and whether a ''reasonable time'' is specified, decisions on § 1.550(c) requests require a thorough evaluation of facts and circumstances on a case-by-case basis. Furthermore, requests under § 1.550(c) are generally treated expeditiously by the deciding official, especially so in reexamination since the statute requires ''special dispatch.'' To reflect the Office's cost of deciding requests under § 1.550(c), *i.e.*, the cost of evaluating whether a showing of ''sufficient cause'' exists and whether a ''reasonable time'' is specified, it is proposed that a requirement for a fee be added to § 1.550(c).

The present proposal tracks the above discussed proposals to require a fee for the decision on § 1.136(b) and § 1.956 extension of time requests, and the criteria for granting of an extension of time under § 1.550(c) is analogous to that for § 1.136(b) and § 1.956.

Section 1.550(d) is proposed to be amended to state that patent owner's failure to file a timely response will result in the concluding of prosecution of the reexamination proceeding, but will not conclude or terminate the reexamination proceeding.

The patent owner's failure to file a timely response, and the issuance of the Notice of intent to Issue Reexamination Certificate (NIRC) concludes the prosecution in the reexamination proceeding. On the other hand, the issuance and publication of a certificate terminates the reexamination proceeding itself. This distinction is important because prosecution which is concluded may be reopened at the option of the Office where appropriate, and a rejection that was withdrawn during the proceeding may be reinstated where the propriety of that rejection has been reconsidered. In contrast, a reexamination proceeding which has been terminated is not subject to being reopened. After the reexamination proceeding has been terminated, it is not permitted to reinstate the same ground of rejection in a reexamination proceeding in accordance with *In re Recreative Technologies,* 83 F.3d 1394, 38 USPQ2d 1776 (Fed. Cir. 1996) (holding that a ''substantial new question of patentability'' is not raised by prior art presented in a reexamination request, if the Office has previously considered (in an earlier examination of the patent) the same question of patentability as to a patent claim favorable to the patent owner based on the same prior art patents or printed publications.). *But see* Pub. L. 107–273, § 13105, 116 Stat. 1758, 1900 (2002) (overruling *In re Portola Packaging, Inc.,* 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997), by amending 35 U.S.C. 303(a) and 312(a) to provide that ''[t]he existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office, or considered by the Office'').

This distinction between concluding the prosecution of the reexamination proceeding, and termination of the reexamination proceeding was highlighted by the Federal Circuit decision of *In re Bass,* 314 F.3d 575, 65 USPQ2d 1156 (Fed. Cir. 2003), wherein the Court opined that:

> Until a matter has been completed, however, the PTO may reconsider an earlier action. *See In re Borkowski,* 505 F.2d 713, 718, 184 USPQ 29, 32–33 (CCPA 1974). A reexamination is complete upon the statutorily mandated issuance of a reexamination certificate, 35 U.S.C. 307(a); the NIRC merely notifies the applicant of the PTO's intent to issue a certificate. A NIRC does not wrest jurisdiction from the PTO precluding further review of the matter.

It is to be noted that both NIRC cover sheet forms, *ex parte* Form PTOL 469 and *inter partes* Form PTOL 2068, specifically state (in their opening sentences) that ''[p]rosecution on the merits is (or remains) closed in this * * * reexamination proceeding. This proceeding is subject to reopening at the initiative of the Office, or upon petition.'' This statement addresses the point that the NIRC concludes the prosecution in the reexamination proceeding, but does not conclude or terminate the reexamination proceeding itself. In this notice of proposed rule making, it is proposed to amend the rules of practice to also address the point. *See also* §§ 1.116, 1.502, 1.570, 1.902, 1.953, 1.957, 1.958, 1.979, and 1.997.

Section 1.570: The heading of § 1.570, and § 1.570(a), are proposed to be amended to make it clear that the grant of the *ex parte* reexamination certificate terminates the reexamination proceeding. The failure to timely respond, or the issuance of the NIRC does not terminate the reexamination proceeding. See the discussion as to the amendment of § 1.550. *See also* §§ 1.116, 1.502, 1.902, 1.953, 1.957, 1.958, 1.979, and 1.997.

Section 1.570 is also proposed to be amended in its heading and paragraphs (b) and (d) to recite that the reexamination certificate is both issued and published for consistency with the language of 35 U.S.C. 307.

Section 1.644: Section 1.644, paragraphs (e) and (f), are proposed to be amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.666: Section 1.666(b) and (c) are proposed to be amended to refer to the petition fee set forth in § 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.704(d): Section 1.704(d) is proposed to be amended to change ''cited in a communication'' to ''first cited in any communication'' in order to clarify that the item must have been first cited in any communication from a foreign patent office in a counterpart application instead of merely being cited in such a communication.

An applicant who fails to cite an item, within thirty days of receipt by an individual designated in § 1.56(c) of a first communication from a foreign patent office in a counterpart application citing the item, and instead files an information disclosure statement, within thirty days of a subsequent communication citing the item, cannot be considered to have acted with reasonable efforts to conclude prosecution of the application. The provisions of § 1.704(d) do not apply if the applicant does not submit the IDS within the thirty-day window of a first communication including a citation of an item to a party designated in § 1.56(c). The proposed change to require the thirty-day time frame to run from a first communication parallels the requirement in § 1.97(e)(1).

Section 1.705: Section 1.705(d) is proposed to be amended to provide that a patentee may request reconsideration of the patent term adjustment within thirty days of the date the patent issued if the patent indicates a revised patent term adjustment. Currently, any request for reconsideration of the patent term adjustment indicated in the patent is limited to the situation where the patent issues on a date other than the projected date of issue. If the patent indicates a revised patent term adjustment due to the patent being issued on a date other than the projected date of issue, applicant must file a request for reconsideration within thirty days of the date the patent issued. Section 1.705(d) as proposed would allow a patentee to file the request for reconsideration for an event which occurs after the mailing of the notice of allowance so long as the patentee files the request for reconsideration within thirty days of the date the patent issues.

Events occurring after the mailing of the notice of allowance which may result in a reduction of any patent term adjustment include submissions of additional papers such as: (1) Request for refunds; (2) status letter, (3) amendments under § 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biological deposits; and (8) oaths or declarations. *See* § 1.704(c)(10). An additional event which may trigger the revision of the patent term adjustment is receipt of the payment of the issue fee more than 3 months after mailing of the notice of allowance. *See* § 1.704(b). Events occurring after the mailing of the notice of allowance which may trigger an increase in the amount of patent term adjustment include administrative delays caused by the Office's failure to issue the application within four months after the date the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied. *See* § 1.702(a)(4).

Section 1.705(d) is also proposed to be amended to provide that any request for reconsideration under § 1.705(d) that raises issues that were raised, or could have been raised, in an application for patent term adjustment under § 1.704(b) may be dismissed as untimely. The purpose of § 1.705(d) is to provide patentees with an avenue to obtain reconsideration of the patent term adjustment indicated in the patent when the patent term adjustment indicated in the patent differs from the patent term adjustment indicated in the notice of allowance due to events occurring after the mailing of the notice of allowance. Section 1.705(d) is not intended as an avenue for patentees to seek review of issues that were raised, or could have been raised, in an application for patent term adjustment under § 1.704(b). Any request for reconsideration of the patent term adjustment indicated in the patent on the basis of issues that were raised, or could have been raised, in an application for patent term adjustment under § 1.704(b) is considered untimely if not filed within the period specified in § 1.705(b).

Section 1.741: Section 1.741(b) is proposed to be amended to refer to the petition fee set forth in section 1.17(f) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 1.902: Section 1.902 is proposed to be amended to make it clear that it is the issuance and publication of the inter partes reexamination certificate that terminates the reexamination proceeding. The failure to timely respond, or the issuance of the NIRC does not terminate the reexamination proceeding. *See* the discussion as to the amendment of § 1.550. *See also* §§ 1.116, 1.502, 1.570, 1.953, 1.957, 1.958, 1.979, and 1.997.

Section 1.953: Section 1.953(c) is proposed to be amended to state that patent owner's failure to file a timely response will result in the concluding of the prosecution of the reexamination proceeding, but will not terminate the reexamination proceeding. See the discussion as to the amendment of § 1.550 for the rationale for this change. *See also* §§ 1.116, 1.502, 1.570, 1.902, 1.957, 1.958, 1.979, and 1.997.

The subheading preceding § 1.956 is proposed to be amended to refer to concluding of prosecution of the reexamination proceeding, rather than conclusion or termination of the reexamination proceeding, since that is what the sections which follow deal with. It is § 1.997, Issuance of *Inter Partes* Reexamination Certificate, that deals with termination of the reexamination proceeding. See the discussion above as to the amendment of § 1.550 for the rationale for this change.

Section 1.956: Section 1.956 is proposed to be amended to add a $200 fee requirement pursuant to § 1.17(g) in *inter partes* reexamination proceedings for requests for extensions of time, which requests are based upon sufficient cause. Extensions of time under § 1.136(a) are not permitted in *inter partes* reexamination proceedings because the provisions of 35 U.S.C. 41(a)(8) and § 1.136(a) apply only to an ''application'' and not to a reexamination proceeding (*ex parte* or *inter partes*). Additionally, 35 U.S.C. 314 requires that inter partes reexamination proceedings ''will be conducted with special dispatch.'' Accordingly, extensions of time in *inter partes* reexamination proceedings are provided for in § 1.956 only ''for sufficient cause and for a reasonable time specified.'' To evaluate whether a showing of ''sufficient cause'' exists and whether a ''reasonable time'' is specified, decisions on § 1.956 requests require a thorough evaluation of facts and circumstances on a case-by-case basis. Furthermore, requests under § 1.956 are generally treated expeditiously by the deciding official, especially so in reexamination since the statute requires ''special dispatch.'' To reflect the Office's cost of deciding requests under § 1.956, *i.e.*, the cost of evaluating whether a showing of ''sufficient cause'' exists and whether a ''reasonable time'' is specified, it is proposed that a requirement for a fee be added to § 1.956.

The present proposal tracks the above-discussed proposals to require a fee for the decision on § 1.136(b) and § 1.550(c) extension of time requests, and the criteria for granting of an extension of time under § 1.956 is analogous to that for § 1.136(b) and § 1.550(c).

Section 1.957: Section 1.957(b) is proposed to be amended to state that

patent owner's failure to file a timely response will result in the concluding of prosecution of the *inter* partes reexamination proceeding, but will not conclude or terminate the reexamination proceeding. See the discussion as to the amendment of § 1.550 for the rationale for this change. *See also* §§ 1.116, 1.502, 1.570, 1.902, 1.953, 1.958, 1.979, and 1.997.

Section 1.958: The heading of § 1.958 is proposed to be amended to state the concluding of prosecution of the reexamination proceeding, rather than conclusion or termination of the reexamination proceeding, since that is what the materials which follow deal with. See the discussion above as to the amendment of § 1.550 for the rationale for this change. Note that both § 1.957(b) and (c) result in the concluding of reexamination prosecution. Under § 1.957(b), prosecution is concluded *in toto;* under § 1.957(c), prosecution is concluded as to the non-patentable claims. *See also* §§ 1.116, 1.502, 1.570, 1.902, 1.953, 1.957, 1.979, and 1.997.

Section 1.979: Section 1.979(f) is proposed to be amended to state that patent owner's failure to file a timely response will result in a concluding of prosecution of the reexamination proceeding, but will not conclude or terminate the reexamination proceeding, and that it is the reexamination certificate under § 1.997 that terminates the reexamination proceeding. See the discussion as to the amendment of § 1.550 for the rationale for this change. *See also* §§ 1.116, 1.502, 1.570, 1.902, 1.953, 1.957, 1.958, and 1.997.

Section 1.997: The heading of § 1.997 is proposed to be amended to refer to the issuance and publication of *inter partes* reexamination certificates. The heading of § 1.997 and § 1.997(a) are proposed to be amended to make it clear that the issuance and publication of the *inter partes* reexamination certificate terminates the reexamination proceeding. The failure to timely respond, or the issuance of the NIRC does not terminate the reexamination proceeding. See the discussion as to the amendment of § 1.550. *See also* §§ 1.116, 1.502, 1.570, 1.902, 1.953, 1.957, 1.958, and 1.979. Section 1.997(a) is also proposed to be revised to make its language consistent with that of § 1.570(a).

Section 1.997, paragraphs (b) and (d), are proposed to be amended to recite that the reexamination certificate is both issued and published for consistency with the language of 35 U.S.C. 316.

Section 5.12: Section 5.12(b) is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. *See* discussion of § 1.17.

Section 5.15: Section 5.15(c) is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17.

Section 5.25: Section 5.25 is proposed to be amended to refer to the petition fee set forth in § 1.17(g) for consistency with the change to § 1.17. See discussion of § 1.17.

Rule Making Considerations

Regulatory Flexibility Act

The Deputy General Counsel for General Law, United States Patent and Trademark Office certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice (if adopted) would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The primary impact of the changes proposed in this notice are to: (1) Permit electronic signatures on a number of patent-related submissions; (2) streamline the requirements for incorporation by reference of prior-filed applications; and (3) clarify the qualifications for claiming small entity status for purposes of paying reduced patent fees. These changes to the rules of practice (if adopted) will simplify the patent application, and as such, will benefit all patent applicants (including small entities).

The Office is also proposing to adjust certain petition fees that are set under the Office's authority under 35 U.S.C. 41(d) to adjust these petition fees to be in alignment with the actual average costs of deciding such petitions. There are approximately 7,500 petitions filed each year of the type that would be affected by the proposed patent fee changes. Since the Office received over 400,000 applications (provisional and nonprovisional) in fiscal year 2002, this proposed change would impact relatively few (less than 2% of) patent applicants. In addition, the petition fee amounts proposed by the Office for petitions whose fees are set under the authority in 35 U.S.C. 41(d) are comparable or lower than the petition fee amounts for petitions whose fees are set by statute in 35 U.S.C. 41(a) ($110.00 to $1,970.00 for extension of time petitions (35 U.S.C. 41(a)(8)), or $1,300.00 to revive an unintentionally abandoned application (35 U.S.C. 41(a)(7)).

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0016, 0651–0020, 0651–0031, 0651–0032, 0651–0033, 0651–0034 and 0651–0036.

The title, description and respondent description of each of the information collections is shown below with an estimate of the annual reporting burdens. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impacts of the changes in this proposed rule are to (1) expressly provide for the electronic submission of an information disclosure statement; (2) provide for a slight change in the format of an application being filed in order to accommodate for the scanning and indexing of different sections of the application file; and (3) provide for a change in the manner of making amendments to an application consistent with the Office's efforts to establish a patent electronic image management system.

OMB Number: 0651–0016.

Title: Rules for Patent Maintenance Fees.

Form Numbers: PTO/SB/45/47/65/66.

Type of Review: Approved through May of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 348,110.

Estimated Time Per Response: Between 20 seconds and 8 hours.

Estimated Total Annual Burden Hours: 30,495 hours.

Needs and Uses: Maintenance fees are required to maintain a patent, except for design or plant patents, in force under 35 U.S.C. 41(b). Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and application number of the patent on

which maintenance fees are paid are required in order to ensure proper crediting of such payments.

OMB Number: 0651–0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through October of 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 26,858.

Estimated Time Per Response: Between 1 and 25 hours.

Estimated Total Annual Burden Hours: 30,903 hours.

Needs and Uses: The information supplied to the United States Patent and Trademark Office by an applicant requesting reconsideration of a patent term adjustment determination under 35 U.S.C. 154(b) (§ 1.702 *et seq.*) is used by the United States Patent and Trademark Office to determine whether its determination of patent term adjustment under 35 U.S.C. 154(b) is correct, and whether the applicant is entitled to reinstatement of reduced patent term adjustment. The information supplied to the United States Patent and Trademark Office by an applicant seeking a patent term extension under 35 U.S.C. 156 (§ 1.710 *et seq.*) is used by the United States Patent and Trademark Office, the Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the Office to review final eligibility decisions, withdraw patent term applications, and declare his or her eligibility to apply for a patent term extension.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A, PTO/SB/08B, PTO/SB/21–27, PTO/SB/30–32, PTO/SB/35–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055—A/B, PTOL–413A.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,208,339.

Estimated Time Per Response: 1 minute and 48 seconds to 8 hours.

Estimated Total Annual Burden Hours: 830,629 hours.

Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Submission of priority documents and Amendments.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07, PTO/SB/13PCT, PTO/SB/16–19, PTO/SB/29 and 29A, PTO/SB/101–110.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 454,287.

Estimated Time Per Response: 22 minutes to 10 hours and 45 minutes.

Estimated Total Annual Burden Hours: 4,171,568 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Cover Sheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/44, PTO/SB/50–51, PTO/SB/51S, PTO/SB/52–53, PTO/SB/55–58, PTOL–85B.

Type of Review: Approved through January of 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, State, Local and Tribal Governments, and Federal Government.

Estimated Number of Respondents: 205,480.

Estimated Time Per Response: 1.8 minutes to 2 hours.

Estimated Total Annual Burden Hours: 63,640 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

OMB Number: 0651–0034.

Title: Secrecy and License to Export.

Form Numbers: None.

Type of Review: Approved through March 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Number of Respondents: 2,194.

Estimated Time Per Response: Between 30 minutes and 4 hours.

Estimated Total Annual Burden Hours: 1,523 hours.

Needs and Uses: When disclosure of an invention may be detrimental to national security, the Director of the USPTO must issue a secrecy order and withhold the publication of the application or grant of a patent for such period as the national interest requires. The USPTO is also required to grant foreign filing licenses in certain circumstances to applicants filing patent applications in foreign countries. This collection is used by the public to petition the USPTO to allow disclosure, modification, or rescission of a secrecy order, or to obtain a general or group permit. Applicants may also petition the USPTO for a foreign filing license or a retroactive license.

OMB Number: 0651–0036.

Title: Statutory Invention Registration.

Form Numbers: PTO/SB/94.

Type of Review: Approved through April of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local or Tribal Governments.

Estimated Number of Respondents: 73.

Estimated Time Per Response: 24 minutes.

Estimated Total Annual Burden Hours: 29 hours.

Needs and Uses: This collection of information is necessary to ensure that the requirements of 35 U.S.C. 157 and 37 CFR 1.293 through 1.297 are met. The public uses form PTO/SB/94, Request for Statutory Invention Registration, to request and authorize publication of a regularly filed patent application as a statutory invention registration, to waive the right to receive a United States patent on the same invention claimed in the identified patent application, and to agree that the waiver will be effective upon publication of the statutory invention registration. The Office uses form PTO/SB/94, Request for a Statutory Invention Registration, to review, grant, or deny a request for a statutory invention registration. No forms are associated with the petition to review final refusal to publish a statutory invention registration or the petition to withdraw a publication request. The petition to review final refusal to publish a statutory invention registration is used by the public to petition the Office's rejection of a request for a statutory invention registration. The Office uses the petition to withdraw a publication request to review requests to stop publication of a statutory invention registration.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 5

Classified information, foreign relations, inventions and patents.

For the reasons set forth in the preamble, 37 CFR parts 1 and 5 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.4 is amended by adding paragraphs (d)(1)(iv) and (h) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d)(1) * * *

(iv)(A) Where correspondence for a patent application, patent file, or a reexamination proceeding is printed on paper for hand or mail delivery, or is submitted via the Office's Electronic Filing System, or facsimile transmission (pursuant to § 1.6(d) of this part), it may be electronically signed. The electronic signature must consist only of numbers and/or letters, with punctuation and spaces (*e.g.*, Jane DOE-JONES, James JONES, Jr., and Dr. James JONES). The person signing the correspondence must personally insert the electronic signature between two forward slash marks. The signature must be the signer's actual name, except as provided by paragraph (d)(1)(iv)(B) of this section, including the given name, middle name or initial, and family name and, optionally, a title. The actual name must be presented with only the family name being entirely in capital letters. A practitioner, signing pursuant to §§ 1.33(b)(1) or 1.33(b)(2) of this part, must use his/her complete name as registered as his or her electronic signature, and the signer's registration number must be supplied, either as part of the electronic signature, or adjacent the electronic signature. If part of the electronic signature, the number (#) character may be used when appearing before a practitioner's registration number; otherwise the number character may not be used in an electronic signature.

(B) Where a person's electronic signature as set forth in paragraph (d)(1)(iv)(A) of this section is not the person's actual name, the correspondence must include the person's actual name in printed or typed form immediately below the electronic signature, and clearly indicate that it is the signer's actual name, with only the family name being presented entirely in capital letters.

* * * * *

(h) The Office may require ratification or confirmation of a signature, or a resubmission of a document, such as when the Office has reasonable doubt as to the authenticity (veracity) of the signature, *e.g.*, where there are variations of a signature, or where the signature and the complete typed or printed name, if any, does not clearly identify the person signing, or where more than one person has used the same signature (with a different typed or printed name below the signature).

3. Section 1.6 is amended by removing and reserving paragraph (e) and revising paragraph (d)(4) to read as follows:

§ 1.6 Receipt of correspondence.

* * * * *

(d) * * *

(4) Drawings submitted under §§ 2.51, 2.52, or 2.72, and color drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.173, or 1.437;

* * * * *

(e) [Reserved]

* * * * *

4. Section 1.8 is amended by revising the introductory text of paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

* * * * *

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed or decided with prejudice, or

the prosecution of a reexamination proceeding is concluded (§§ 1.550(d), 1.957(b)) or limited (§§ 1.957(a), 1.957(c)), the correspondence will be considered timely if the party who forwarded such correspondence:

* * * * *

5. Section 1.10 is amended by adding new paragraphs (g), (h), and (i) to read as follows:

§ 1.10 Filing of papers and fees by ''Express Mail.''

* * * * *

(g) Any person attempting to file correspondence under this section that was returned by the USPS may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1) The petition is filed promptly after the person becomes aware of the return of the correspondence;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by ''Express Mail';

(3) The petition includes the original correspondence or a copy of the original correspondence showing the number of the ''Express Mail'' mailing label thereon and a copy of the ''Express Mail'' mailing label showing the ''date-in'' and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally deposited with the USPS on the requested filing date.

(h) Any person attempting to file correspondence under this section that was refused by the USPS may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1) The petition is filed promptly after the person becomes aware of the refusal of the correspondence;

(2) The number of the ''Express Mail'' mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the attempted mailing by ''Express Mail';

(3) The petition includes the original correspondence or a copy of the original correspondence showing the number of the ''Express Mail'' mailing label thereon; and

(4) The petition includes a statement by the person who originally attempted to deposit the correspondence with the USPS which establishes, to the satisfaction of the Director, the original attempt to deposit the correspondence and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.

(i) Any person attempting to file correspondence under this section that was unable to be deposited with the USPS due to an interruption or emergency in ''Express Mail'' service which has been so designated by the Director, may petition the Director to consider such correspondence as filed on a particular date in the Office, provided that:

(1) The petition is filed in a manner designated by the Director promptly after the person becomes aware of the designated interruption or emergency in ''Express Mail'' service;

(2) The petition includes the original correspondence or a copy of the original correspondence; and

(3) The petition includes a statement which establishes, to the satisfaction of the Director, that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in ''Express Mail'' service, and that the correspondence or copy of the correspondence is the original correspondence or a true copy of the correspondence originally attempted to be deposited with the USPS on the requested filing date.

6. Section 1.14 is amended by revising paragraph (h)(1) as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(h) * * *

(1) The fee set forth in § 1.17(g); and

* * * * *

7. Section 1.17 is amended by adding paragraphs (f) and (g) and revising (h), (i), (l), and (m) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph—$400.00

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.644(e)—for petition in an interference.

§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.

§ 1.666(b)—for access to an interference settlement agreement.

§ 1.666(c)—for late filing of interference settlement agreement.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

(g) For filing a petition under one of the following sections which refers to this paragraph—$200.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.59—for expungement of information.

§ 1.103(a)—to suspend action in an application.

§ 1.136(b)—for review of a request for extension of time when the provisions of section 1.136(a) are not available.

§ 1.138(c)—to expressly abandon an application to avoid publication.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.296—to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

(h) For filing a petition under one of the following sections which refers to this paragraph—$130.00

§ 1.19(h)—to request documents in a form other than that provided in this part.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.102(d)—to make an application special.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

§ 104.3—for a waiver of a rule in part 104 of this title.

(i) Processing fee for taking action under one of the following sections which refers to this paragraph—$130.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.99(e)—for processing a belated submission under § 1.99.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.215(a)—for processing of replacement drawings to include the drawings in any patent application publication.

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

§ 1.291(b)(3)—for processing a substitute statement under § 1.291(b)(3).

§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371 for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151 or for the revival of an unavoidably concluded or limited reexamination prosecution under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.27(a))—$55.00

By other than a small entity—$110.00

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally concluded or limited reexamination prosecution under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a))—$665.00

By other than a small entity—$1,330.00

* * * * *

8. Section 1.19 is amended by revising paragraphs (b), (g), and (h) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) Certified and uncertified copies of Office documents:

(1) Certified or uncertified copy of the paper portion or the electronic image equivalent to a paper portion of a patent application as filed—$20.00

(2) Certified or uncertified copy on paper of the paper portion or the electronic image equivalent of a patent-related file wrapper and contents:

(i) Paper file wrapper with paper file wrapper contents of 400 or fewer pages, or the entire electronic image contents portion, of a patent application—$200.00

(ii) Additional fee for each additional 100 pages or portion thereof of the paper contents of a paper file wrapper—$40.00

(iii) Additional fee for certification—$25.00

(3) Certified or uncertified copy on compact disc of patent-related file wrapper contents:

(i) First compact disc in a single order—$55.00

(ii) Each additional compact disc in the single order of paragraph (b)(3)(i) of this section—$15.00

(4) Certified or uncertified copy of Office records, per document except as otherwise provided in this section—$25.00

(5) For assignment records, abstract of title and certification, per patent —$25.00

* * * * *

(g) Copies of unscanned documents and documents on media not permitted by § 1.52(a) or (e) will be provided at cost.

(h) Requests for documents in a form other than that provided by this part must be in writing in the form of a petition with the fee set forth in § 1.17(h) and will be provided at cost.

9. Section 1.27 is amended by revising paragraph (a) to read as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

(a) *Definition of small entities.* A small entity as used in this chapter means any party (person, small business concern, or nonprofit organization) under paragraphs (a)(1) through (a)(3) of this section.

(1) *Person.* A person, as used in paragraph (c) of this section, means any inventor or other individual (*e.g.*, an individual to whom an inventor has transferred some rights in the invention), who has not assigned, granted, conveyed, or licensed, and is under no currently enforceable obligation under contract or law to assign, grant, convey, or license, any rights in the invention. An inventor or other individual who has transferred some rights, or is under a currently enforceable obligation to transfer some rights in the invention to one or more parties, can also qualify for small entity status if all the parties who have had rights in the invention transferred to them also qualify for small entity status either as a person, small business concern, or nonprofit organization under this section.

(2) *Small business concern.* A small business concern, as used in paragraph (c) of this section, means any business concern that:

(i) Has not assigned, granted, conveyed, or licensed, and is under no currently enforceable obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify for small entity status as a person, small business concern, or nonprofit organization; and

(ii) Meets the size standards set forth in 13 CFR 121.801 through 121.805 to be eligible for reduced patent fees. Questions related to standards for a small business concern may be directed to: Small Business Administration, Size Standards Staff, 409 Third Street, SW., Washington, DC 20416.

(3) *Nonprofit Organization.* A nonprofit organization, as used in paragraph (c) of this section, means any nonprofit organization that:

(i) Has not assigned, granted, conveyed, or licensed, and is under no currently enforceable obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person, concern, or organization which would not qualify as a person, small business concern, or a nonprofit organization; and

(ii) Is either:

(A) A university or other institution of higher education located in any country;

(B) An organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a));

(C) Any nonprofit scientific or educational organization qualified under a nonprofit organization statute of a state of this country (35 U.S.C. 201(i)); or

(D) Any nonprofit organization located in a foreign country which would qualify as a nonprofit organization under paragraphs (a)(3)(ii)(B) of this section or (a)(3)(ii)(C) of this section if it were located in this country.

* * * * *

10. Section 1.47 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(g), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in § 1.17(g), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with § 1.63.

* * * * *

11. Section 1.52 is amended by revising the heading and paragraphs (b)(1), (b)(2)(ii), (d)(1), (e)(1) and (e)(3)(i) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(b) * * *

(1) The application or proceeding and any amendments or corrections to the application (including any translation submitted pursuant to paragraph (d) of this section) or proceeding, except as provided for in § 1.69 and paragraph (d) of this section, must:

(i) Comply with the requirements of paragraph (a) of this section; and

(ii) Be in the English language or be accompanied by a translation of the application and a translation of any corrections or amendments into the English language together with a statement that the translation is accurate that is signed by the individual who made the translation.

(2) * * *

(ii) Text written in a nonscript type font (*e.g.*, Arial, Times Roman, or Courier, preferably a font size of 12) lettering style having capital letters which should be at least 0.422 cm. (0.166 inch) high, but may be no smaller than 0.21 cm. (0.08 inch) high; and

* * * * *

(d) * * *

(1) *Nonprovisional application.* If a nonprovisional application is filed in a language other than English, an English language translation of the non-English language application, a statement that the translation is accurate that is signed by the individual who made the translation, and the processing fee set forth in § 1.17(i) are required. If these items are not filed with the application, applicant will be notified and given a period of time within which they must be filed in order to avoid abandonment.

* * * * *

(e) * * *

(1) The following documents may be submitted to the Office on a compact disc in compliance with this paragraph:

(i) A computer program listing (*see* § 1.96);

(ii) A ''Sequence Listing'' (submitted under § 1.821(c)); or

(iii) Any individual table (*see* § 1.58) if the table is more than 50 pages in length, or if the total number of pages of all of the tables in an application exceeds 100 pages in length, where a table page is a page printed on paper in conformance with paragraph (b) of this section and § 1.58(c).

(2) * * *

(3)(i) Each compact disc must conform to the International Standards Organization (ISO) 9660 standard, and the contents of each compact disc must be in compliance with the American Standard Code for Information Interchange (ASCII). CD–R discs must be finalized so that they are closed to further writing to the CD–R.

* * * * *

12. Section 1.53 is amended by revising paragraph (e)(2) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(e) * * *

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

* * * * *

13. Section 1.55 is amended by revising paragraphs (a)(1)(ii), (a)(4), and (c) and adding paragraph (a)(1)(iii) to read as follows:

§ 1.55 Claim for foreign priority.

(a) * * *

(1) * * *

(ii) In an international application designating the United States, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and the Regulations under the PCT.

(iii) If an application claiming the benefit of a prior foreign application meets the twelve-month filing period requirement in 35 U.S.C. 119(a) only through one or more prior-filed nonprovisional applications or international applications designating the United States for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c) and 37 CFR 1.78(a), each such prior-filed application must also contain a claim for priority in compliance with this section or the Regulations under the PCT to the prior foreign application.

* * * * *

(4) An English language translation of a non-English language foreign application is not required except when the application is involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner. If an English language translation is required, it must be filed together with

a statement that the translation of the certified copy is accurate that is signed by the individual who made the translation.

* * * * *

(c) Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a)–(d), 365(a)–(b) not presented within the time period provided by paragraph (a) of this section is considered to have been waived. If a claim for priority under 35 U.S.C. 119(a)–(d), 365(a)–(b) is presented after the time period provided by paragraph (a) of this section, the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country (or intellectual property authority), and the day, month, and year of its filing was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d), 365(a)–(b) must be accompanied by:

(1) The claim under 35 U.S.C. 119(a)–(d), or 365(a)–(b) and this section to the prior foreign application, unless previously submitted;

(2) The surcharge set forth in § 1.17(t); and

(3) A statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

14. A new § 1.57 is added to read as follows:

§ 1.57 Incorporation by reference.

(a) Subject to the conditions and requirements of this paragraph, if all or a portion of the specification or drawings is inadvertently omitted from an application, but the application contains a claim under § 1.55 for priority of a prior-filed foreign application, or a claim under § 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application, that was present on the date of receipt of the application, and the omitted portion of the specification or drawings is completely contained in the prior-filed application, the claim under §§ 1.55 or 1.78 shall also be considered an incorporation by reference of the prior-filed application.

(1) The application must be amended to include the omitted portion of the specification or drawings within the time period set by the Office, but in no case later than the close of prosecution as defined by § 1.114. The examiner may require the applicant to supply a copy of the prior-filed application, to supply an English language translation of any prior-filed application that is in a language other than English, and to identify where the omitted portion of the specification or drawings can be found in the prior-filed application.

(2) Any amendment to an international application pursuant to this paragraph shall be effective only as to the United States. In addition, no request to add the missing part of the description or the missing drawing in an international application designating the United States will be acted upon by the Office prior to the expiration of the applicable time limit under PCT Article 22(1) or (2), or Article 39(a).

(3) If an application is not otherwise entitled to a filing date under § 1.53(b) or PCT Article 11, the amendment must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f).

(b) Except as provided in paragraph (a) of this section, an incorporation by reference must be identified by using the language ''incorporated by reference'' and must identify the referenced patent, application, or publication in the manner set forth in § 1.98(b)(1) through (b)(5).

(c) ''Essential material'' may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference. ''Essential material'' is material that is necessary to:

(1) Provide a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by the first paragraph of 35 U.S.C. 112;

(2) Describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by the second paragraph of 35 U.S.C. 112; or

(3) Describe the structure, material, or acts that correspond to a means or step for performing a specified function as required by the sixth paragraph of 35 U.S.C. 112.

(d) Other material (''Nonessential material'') may be incorporated by reference to domestic or foreign patents or published applications, prior-filed commonly owned U.S. applications, or non-patent publications. An incorporation by reference by hyperlink or other form of browser executable code is not permitted.

(e) The examiner may require the applicant to supply a copy of the material incorporated by reference. If the Office requires the applicant to supply a copy of material incorporated by reference, the material must be accompanied by a statement that the copy consists of the same material incorporated by reference in the referencing application.

(f) A purported incorporation of material by reference that does not comply with the requirements of paragraphs (b) though (e) of this section is not effective to incorporate such material by reference unless corrected by the applicant in a timely manner.

15. Section 1.58 is revised to read as follows:

§ 1.58 Chemical and mathematical formulae and tables.

(a) The specification, including the claims, may contain chemical and mathematical formulae, but shall not contain drawings or flow diagrams. The description portion of the specification may contain tables, if the tables are not also included in the drawings; claims may contain tables either if necessary to conform to 35 U.S.C. 112 or if otherwise found to be desirable.

(b) Tables that are submitted in electronic form (§§ 1.96(c) and 1.821(c)) must maintain the spatial relationships (*e.g.*, alignment of columns and rows) of the table elements when displayed so as to visually preserve the relational information they convey. Chemical and mathematical formulae must be encoded to maintain the proper positioning of their characters when displayed in order to preserve their intended meaning.

(c) Chemical and mathematical formulae and tables must be presented in compliance with § 1.52(a) and (b), except that chemical and mathematical formulae or tables may be placed in a landscape orientation if they cannot be presented satisfactorily in a portrait orientation. Typewritten characters used in such formulae and tables must be chosen from a block (nonscript) type font or lettering style having capital letters which should be at least 0.422 cm. (0.166 inch) (*e.g.*, preferably Arial, Times Roman, or Courier with a font size of 12) high, but may be no smaller than 0.21 cm. (0.08 inch) high (*e.g.*, a font size of 6). A space at least 0.64 cm. (1/4 inch) high should be provided between complex formulae and tables and the text. Tables should have the lines and columns of data closely spaced to conserve space, consistent with a high degree of legibility.

16. Section 1.59 is amended by revising paragraph (b) to read as follows:

§ 1.59 Expungement of information or copy of papers in application file.

* * * * *

(b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(g) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

* * * * *

17. Section 1.69 is amended by revising paragraph (b) to read as follows:

§ 1.69 Foreign language oaths and declarations.

* * * * *

(b) Unless the text of any oath or declaration in a language other than English is a form provided by the Patent and Trademark Office, it must be accompanied by an English translation together with a statement that the translation is accurate that is signed by the individual who made the translation, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

18. Section 1.76 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 1.76 Application data sheet.

(a) *Application data sheet.* An application data sheet is a sheet or sheets, that may be voluntarily submitted in either provisional or nonprovisional applications, which contains bibliographic data, arranged in a format specified by the Office. An application data sheet must be titled ''Application Data Sheet'' and must contain all of the section headings listed in paragraph (b) of this section, with any appropriate data for each section heading. If an application data sheet is provided, the application data sheet is part of the provisional or nonprovisional application for which it has been submitted.

* * * * *

(c) * * *

(2) Must be titled ''Supplemental Application Data Sheet,'' include all of the section headings listed in paragraph (b) of this section, include all appropriate data for each section heading, and identify the information that is being changed (added, deleted, or modified).

* * * * *

19. Section 1.78 is amended by revising paragraph (a)(1), (a)(2)(iii), (a)(5)(iii), (a)(5)(iv), and (c) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a)(1) A nonprovisional application or international application designating the United States of America may claim an invention disclosed in one or more prior-filed copending nonprovisional applications or international applications designating the United States of America. In order for an application to claim the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America, each prior-filed application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed application must be:

(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or

(ii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and include the basic filing fee set forth in § 1.16; or

(iii) Entitled to a filing date as set forth in § 1.53(b) and have paid therein the processing and retention fee set forth in § 1.21(l) within the time period set forth in § 1.53(f).

(2) * * *

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title.

* * * * *

(5) * * *

(iii) If the later-filed application is a non-provisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence(s) following the title.

(iv) If the prior-filed provisional application was filed in a language other than English and an English-language translation of the prior-filed provisional application and a statement that the translation is accurate that is signed by the individual who made the translation were not previously filed in the prior-filed provisional application or the later-filed nonprovisional application, applicant will be notified and given a period of time within which to file an English-language translation of the non-English-language prior-filed provisional application and a statement that the translation is accurate. In a pending nonprovisional application, failure to timely reply to such a notice will result in abandonment of the application.

* * * * *

(c) If an application or a patent under reexamination and at least one other application naming different inventors are owned by the same person and contain conflicting claims, and there is no statement of record indicating that the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, the Office may require the assignee to state whether the claimed inventions were commonly owned or subject to an obligation of assignment to the same person at the time the later invention was made, and if not, indicate which named inventor is the prior inventor. Even if the claimed inventions were commonly owned, or subject to an obligation of assignment to the same person, at the time the later invention was made, the conflicting claims may be rejected under the doctrine of double patenting in view of such commonly owned or assigned applications or patents under reexamination.

20. Section 1.83 is amended by revising paragraph (a) to read as follows.

§ 1.83 Content of drawing.

(a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (*e.g.*, a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are not permitted to be included in the drawings.

* * * * *

21. Section 1.84 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 1.84 Standards for drawings.

(a) * * *

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented

in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13), or in an application, or copy thereof, submitted under the Office electronic filing system. The Office will accept color drawings in utility or design patent applications and statutory invention registrations only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The fee set forth in § 1.17(h);

(ii) Three (3) sets of color drawings; and

(iii) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

* * * * *

(c) *Identification of drawings.* Identifying indicia should be provided, and if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided on the front of each sheet, it must be placed to the left of the center within the top margin.

* * * * *

22. Section 1.91 is amended by adding paragraph (c) to read as follows:

§ 1.91 Models or exhibits not generally admitted as part of application or patent.

* * * * *

(c) Unless the model or exhibit substantially conforms to the requirements of § 1.52 or § 1.84 under paragraph (a)(1) of this section, it must be accompanied by photographs that show multiple views of the material features of the model or exhibit and that substantially conform to the requirements of § 1.84.

23. Section 1.94 is revised to read as follows:

§ 1.94 Return of models, exhibits or specimens.

(a) Models, exhibits, or specimens may be returned to the applicant if no longer necessary for the conduct of business before the Office. When applicant is notified that a model, exhibit, or specimen is no longer necessary for the conduct of business before the Office and will be returned, applicant must arrange for the return of the model, exhibit, or specimen at the applicant's expense. The Office will dispose of perishables without notice to applicant unless applicant notifies the Office upon submission of a perishable model, exhibit or specimen that a return is desired and makes arrangements for its return promptly upon notification by the Office that the perishable model, exhibit or specimen is no longer necessary for the conduct of business before the Office.

(b) Applicant is responsible for retaining the actual model, exhibit, or specimen for the enforceable life of any patent resulting from the application. The provisions of this paragraph do not apply to a model or exhibit that substantially conforms to the requirements of § 1.52 or § 1.84, where the model, exhibit or specimen has been described by photographs that substantially conform to § 1.84, or where the model, exhibit or specimen is perishable.

(c) Where applicant is notified, pursuant to paragraph (a) of this section, of the need to arrange for return of a model, exhibit or specimen, applicant must arrange for the return within the period set in such notice, to avoid disposal of the model, exhibit or specimen by the Office. Extensions of time are available under § 1.136, except in the case of perishables. Failure to establish that the return of the item has been arranged for within the period set or failure to have the item removed from Office storage within a reasonable amount of time notwithstanding any arrangement for return, will permit the Office to dispose of the model, exhibit or specimen.

24. Section 1.98 is amended by revising paragraphs (a)(1), (a)(2), and (e) to read as follows:

§ 1.98 Content of information disclosure statement.

(a) * * *

(1) A list of all patents, publications, applications, or other information submitted for consideration by the Office. U.S. patents and U.S. patent application publications must be listed in a section separately from citations of other documents. Each page of the list must include:

(i) The application number of the application in which the information disclosure statement is being submitted;

(ii) A column that provides a space next to each document to be considered for the examiner's initials; and

(iii) A heading that clearly indicates that the list is an information disclosure statement.

(2) A legible copy of:

(i) Each patent;

(ii) Each publication or that portion which caused it to be listed;

(iii) For each cited pending unpublished U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and

(iv) All other information or that portion which caused it to be listed

* * * * *

(e) The requirement in paragraph (a)(2) of this section for a copy of the U.S. patents or U.S. patent application publications listed in an information disclosure statement does not apply:

(1) In any national patent application filed after June 30, 2003;

(2) In any international application that has entered the national stage under 35 U.S.C. 371 after June 30, 2003; or

(3) In any information disclosure statement submitted in compliance with the Office's electronic filing system.

25. Section 1.102 is amended by revising paragraph (c) to read as follows:

§ 1.102 Advancement of examination.

* * * * *

(c) A petition to make an application special may be filed without a fee if the basis for the petition is:

(1) The applicant's age or health; or

(2) That the invention will materially:

(i) Enhance the quality of the environment;

(ii) Contribute to the development or conservation of energy resources; or

(iii) Contribute to countering terrorism.

* * * * *

26. Section 1.103 is amended by revising paragraph (a)(2) to read as follows:

§ 1.103 Suspension of action by the Office.

(a) * * *

(2) The fee set forth in § 1.17(g), unless such cause is the fault of the Office.

* * * * *

27. Section 1.105 is amended by redesignating paragraph (a)(3) as (a)(4) and revising it, and adding new paragraphs (a)(1)(viii) and (a)(3) to read as follows:

§ 1.105 Requirements for information.

(a)(1) * * *

(viii) *Technical information known to applicant.* Technical information known to applicant concerning the interpretation of the related art, the disclosure, the claimed subject matter, other information pertinent to patentability, or the accuracy of the examiner's stated interpretation of such items.

* * * * *

(3) Requirements for information may be presented in any appropriate form, for example:

(i) A requirement for documents;

(ii) Interrogatories in the form of specific questions seeking applicant's knowledge; or

(iii) Stipulations in the form of statements with which the applicant may agree or disagree.

(4) Any reply to a requirement for information, apart from requirements for answers based on applicant's opinion, that states that the information required to be submitted is unknown and/or is not readily available to the party or parties from which it was requested will be accepted as a complete reply. Any reply to a requirement for answers based on applicant's opinion that states that an opinion is not held by the party or parties from which it was requested will be accepted as a complete reply.

* * * * *

28. Section 1.111 is amended by revising paragraph (a)(2) to read as follows:

§ 1.111 Reply by applicant or patent owner to a non-final Office action.

(a) * * *

(2) *Supplemental replies.* (i) A supplemental reply will not be entered as matter of right except as provided in paragraph (a)(2)(ii) of this section. The Office may enter a supplemental reply that is filed before the expiration of the statutory period (*i.e.*, within six months from the mailing date of the non-final Office action) if the supplemental reply is clearly limited to:

(A) Cancellation of a claim(s);

(B) Adoption of an examiner suggestion(s); or

(C) Placement of the application in condition for allowance.

(ii) A supplemental reply will be entered if the supplemental reply is filed within the period during which action by the Office is suspended under § 1.103(a) through (c).

* * * * *

29. Section 1.115 is revised to read as follows:

§ 1.115 Preliminary amendments.

(a) A preliminary amendment is an amendment that is received in the Office (*see* § 1.6) on or before the mail date of the first Office action under § 1.104.

(b) A preliminary amendment submitted on or prior to the filing date of an application is part of the original disclosure of the application. If a preliminary amendment is determined to contain matter not otherwise included in the contents of the originally filed specification, including claims, and drawings, and the preliminary amendment is not specifically referred to in the oath or declaration under § 1.63, a new oath or declaration in compliance with § 1.63 will be required.

(c)(1) A preliminary amendment will be entered unless disapproved by the Director.

(i) A preliminary amendment seeking cancellation of all the claims without presenting any new or substitute claims will be disapproved. However, for filing and fee calculation purposes, such an amendment will cause the application to be treated as containing a single claim, which would be the first independent claim.

(ii) A preliminary amendment may be disapproved if the preliminary amendment unduly interferes with the preparation of a first Office action in an application. Factors that will be considered in disapproving a preliminary amendment include:

(A) The state of preparation of a first Office action as of the date of receipt (*see* § 1.6) of the preliminary amendment by the Office; and

(B) The nature of any changes to the specification or claims that would result from entry of the preliminary amendment.

(2) A preliminary amendment will not be disapproved under (c)(1)(ii) of this section if it is filed no later than:

(i) Three months from the filing date of an application under § 1.53(b);

(ii) The filing date of a continued prosecution application under § 1.53(d); or

(iii) Three months from the date the national stage is entered as set forth in § 1.491 in an international application.

(d) The time periods specified in paragraph (c)(2) of this section are not extendable.

30. Section 1.116 is amended by revising paragraph (b) to read as follows:

§ 1.116 Amendments after final action or appeal.

* * * * *

(b) After a final rejection or other final action (*see* § 1.113) in an application or in an *ex parte* reexamination filed under § 1.510, or an action closing prosecution (*see* § 1.949) in an *inter partes* reexamination filed under § 1.913, amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or reexamination proceeding from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination prosecution from concluding under § 1.550(d) or § 1.957(b) or limitation of further prosecution under § 1.957(c). No amendment can be made in an *inter partes* reexamination proceeding after the right of appeal notice under § 1.953 except as provided for in paragraph (d) of this section.

* * * * *

31. Section 1.131 is amended by revising paragraph (b) to read as follows:

§ 1.131 Affidavit or declaration of prior invention.

* * * * *

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.

32. Section 1.136 is amended by revising paragraph (b) to read as follows:

§ 1.136 Extensions of time.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. *See* § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a

civil action; § 1.645 for extensions of time in interference proceedings; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; and § 1.956 for extensions of time in *inter partes* reexamination proceedings. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

* * * * *

33. Section 1.137 is amended by revising its heading, the introductory text of paragraph (a), the introductory text of paragraph (b), paragraphs (d)(3) and (e) to read as follows:

§ 1.137 Revival of abandoned application, concluded reexamination prosecution, or lapsed patent.

(a) *Unavoidable.* If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution concluded under § 1.550(d) or § 1.957(b) or limited as to further prosecution under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

* * * * *

(b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution concluded under § 1.550(d) or § 1.957(b) or limited as to further prosecution under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

* * * * *

(d) * * *

(3) The provisions of paragraph (d)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, to lapsed patents, to reissue applications, or to reexamination proceedings.

(e) *Request for reconsideration.* Any request for reconsideration or review of a decision refusing to revive an abandoned application, a concluded reexamination prosecution, or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under:

(1) The provisions of § 1.136 for an abandoned application or lapsed patent;

(2) The provisions of § 1.550(c) for a concluded *ex parte* reexamination prosecution filed under § 1.510; or

(3) The provisions of § 1.956 for a concluded *inter partes* reexamination prosecution or an *inter partes* reexamination limited as to further prosecution filed under § 1.913.

* * * * *

34. Section 1.165 is amended by revising paragraph (b) to read as follows:

§ 1.165 Plant drawings.

* * * * *

(b) The drawings may be in color. The drawing must be in color if color is a distinguishing characteristic of the new variety. Two copies of color drawings or photographs must be submitted.

35. Section 1.173 is amended by revising paragraph (b) introductory text to read as follows:

§ 1.173 Reissue specification, drawings, and amendments.

* * * * *

(b) *Making amendments in a reissue application.* An amendment in a reissue application is made either by physically incorporating the changes into the specification when the application is filed, or by a separate amendment paper. If amendment is made by incorporation, markings pursuant to paragraph (d) of this section must be used. If amendment is made by an amendment paper, the paper must direct that specified changes be made, as follows:

* * * * *

36. Section 1.175 is amended by adding a new paragraph (e) to read as follows:

§ 1.175 Reissue oath or declaration.

* * * * *

(e) The filing of any continuing reissue application which does not replace its parent reissue application must include an oath or declaration which, pursuant to paragraph (a)(1) of this section, identifies at least one error in the original patent which has not been corrected by the parent reissue application or an earlier reissue application. All other requirements relating to an oath or declaration must also be met.

37. Section 1.178 is amended by revising paragraph (a) to read as follows:

§ 1.178 Original patent; continuing duty of applicant.

(a) The application for reissue of a patent shall constitute an offer to surrender that patent, and the surrender shall take effect upon reissue of the patent. Until a reissue application is granted, the original patent shall remain in effect.

* * * * *

§ 1.179 [Removed and Reserved].

38. Section 1.179 is removed and reserved.

39. Section 1.182 is revised to read as follows:

§ 1.182 Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

40. Section 1.183 is revised to read as follows:

§ 1.183 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

41. Section 1.213 is revised to read as follows:

§ 1.213 Nonpublication request; rescission of a nonpublication request; notice of subsequent foreign filing.

(a) *Nonpublication request and certification.* If the invention disclosed in an application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the application will not be published under 35 U.S.C. 122(b) and § 1.211 provided that:

(1) A request (nonpublication request) is submitted with the application upon filing;

(2) The request states in a conspicuous manner that the application is not to be published under 35'U.S.C. 122(b);

(3) The request contains a certification that the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing; and

(4) The request is signed in compliance with § 1.33(b). The certification under 35 U.S.C. 122(b)(2)(B)(i) and paragraph (a)(3) of this section is not appropriate unless the person signing the request has made an

actual inquiry consistent with the requirements of § 10.18(b) of this chapter with respect to the application to which the request and certification pertains to determine that:

(i) The application has not been the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing; and

(ii) The applicant's intent at the time the nonpublication request is being filed is that the application will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications at eighteen months after filing.

(b) *Rescission of a nonpublication request.* The applicant may rescind a previously filed nonpublication request at any time. The mere filing of a request under 35 U.S.C. 122(b)(2)(B)(ii) and this paragraph to rescind a previously filed nonpublication request does not comply with the notice requirement of 35 U.S.C. 122(b)(2)(B)(iii) and paragraph (c) of this section. The provisions of § 1.8 do not apply in determining whether such an application has been filed before filing a request under this paragraph to rescind a previously filed nonpublication request. A request to rescind a nonpublication request under paragraph (a) of this section must:

(1) Identify the application to which it is directed;

(2) State in a conspicuous manner that the request that the application is not to be published under 35 U.S.C. 122(b) is rescinded; and

(3) Be signed in compliance with § 1.33(b). A request under paragraph (b) of this section to rescind a nonpublication request is not appropriate unless the person signing the request has made an inquiry consistent with the requirements of § 10.18(b) of this chapter and determined that a nonpublication request under paragraph (a) of this section was previously filed in the application in which the request to rescind a nonpublication request is directed.

(c) *Notification of subsequent foreign filing.* An applicant who has submitted a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and paragraph (a) of this section, but before filing a request under 35 U.S.C. 122(b)(2)(B)(ii) and paragraph (b) of this section to rescind the previously filed nonpublication request, files an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, must notify the Office of such filing within forty-five days after the date of the filing in another country, or under a multilateral international agreement. The provisions of § 1.8 do not apply in determining whether such an application has been filed before filing a request under paragraph (b) of this section to rescind a previously filed nonpublication request. The mere filing of a request under 35 U.S.C. 122(b)(2)(B)(ii) and paragraph (b) of this section to rescind a previously filed nonpublication request does not comply with the notice requirement of 35 U.S.C. 122(b)(2)(B)(iii) and this paragraph. The failure to timely notify the Office of the filing in another country, or under a multilateral international agreement, shall result in abandonment of the application in which the nonpublication request was submitted (35'U.S.C. 122(b)(2)(B)(iii)).

(d) *Publication after rescission or notice of foreign filing.* If an applicant who has submitted a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and paragraph (a) of this section, subsequently files a request under 35 U.S.C. 122(b)(2)(B)(ii) and paragraph (b) of this section to rescind the nonpublication request or files a notice of a filing in another country, or under a multilateral international agreement, under 35 U.S.C. 122(b)(2)(B)(iii) and paragraph (c) of this section, the application shall be published as soon as is practical after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code (35 U.S.C. 122(b)(2)(B)(iv)).

42. Section 1.215 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.215 Patent application publication.

(a) The publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The date of publication shall be indicated on the patent application publication. The patent application publication will be based upon the application papers deposited on the filing date of the application, as well as the executed oath or declaration submitted to complete the application, any application papers or drawings submitted in reply to a preexamination notice requiring a title and abstract in compliance with § 1.72, application papers in compliance with § 1.52, drawings in compliance with § 1.84, or a sequence listing in compliance with §§ 1.821 through 1.825, and any replacement drawings received with the processing fee set forth in § 1.17(i) within the period set forth in paragraph (c) of this section, except as otherwise provided in this section. The patent application publication will not include any amendments, including preliminary amendments, unless applicant supplies a copy of the application containing the amendment pursuant to paragraph (c) of this section.

* * * * *

(c) At applicant's option, the patent application publication will be based upon the copy of the application (specification, drawings, and oath or declaration) as amended during examination, provided that applicant supplies such a copy in compliance with the Office electronic filing system requirements within one month of the mailing date of the first Office communication that includes a confirmation number for the application, or within fourteen months of the earliest filing date for which a benefit is sought under title 35, United States Code, whichever is later.

* * * * *

43. Section 1.291 is revised to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) A protest may be filed by a member of the public against a pending application, and will be matched with the application file if it adequately identifies the patent application to the extent that the Office can timely match it. A protest which does not adequately identify a pending patent application will not be considered by the Office other than to return it to the protestor.

(b) Where the protest adequately identifies the patent application to the extent that the Office can timely match it with an application, the protest will be entered into the record of the application if it:

(1) Is submitted:

(i) Prior to the date the application was published under § 1.211, or the notice of allowance under § 1.311 was mailed, whichever occurs first; or

(ii) At any time if it is accompanied by the written consent of the applicant to the filing of the protest being submitted;

(2) Is served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible; and

(3) Includes a statement identifying the real party in interest on whose behalf the protest is being filed to the extent necessary for determination of whether a party who may file a subsequent protest is in privity with the

identified real party in interest. Where anonymity of the real party in interest is desired, the protestor may provide, in place of the statement identifying the real party in interest, a substitute statement that the protest is, to the best of the knowledge of the submitting party, the first protest being submitted by the real party in interest. The substitute statement must be accompanied by a processing fee under § 1.17(i).

(c) Where the protest is entered into the record of the application, the items of information submitted with the protest, and the argument directed toward such items, will be considered by the examiner, if the protest includes:

(1) A listing of the patents, publications, or other information relied upon;

(2) A concise explanation of the relevance of each item listed pursuant to paragraph (c)(1);

(3) A copy of each listed patent, publication, or other item of information in written form, or at least the pertinent portions thereof;

(4) An English language translation of all the necessary and pertinent parts of any non-English language patent, publication, or other item of information relied upon; and

(5) If a second or subsequent protest by the same party, an explanation why the additional art issues are significantly different and why they were not earlier presented.

(d) A member of the public filing a protest in an application under this section will not receive any communication from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The limited involvement of the member of the public filing a protest pursuant to this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered, unless the submission is accompanied by an explanation pursuant to paragraph (c)(5) of this section.

(e) Where a protest raising inequitable conduct issues satisfies the provisions of this section for entry, it will be entered into the application file, generally without comment on the inequitable conduct issues raised in it.

(f) In the absence of a request by the Office, an applicant has no duty to, and need not, reply to a protest.

(g) In order for a protest submitted after the application publication date to be accepted, the protest must be accompanied by the written consent of the applicant to the filing of the protest being submitted.

44. Section 1.295 is amended by revising paragraph (a) to read as follows:

§ 1.295 Review of decision finally refusing to publish a statutory invention registration.

(a) Any requester who is dissatisfied with the final refusal to publish a statutory invention registration for reasons other than compliance with 35 U.S.C. 112 may obtain review of the refusal to publish the statutory invention registration by filing a petition to the Director accompanied by the fee set forth in § 1.17(g) within one month or such other time as is set in the decision refusing publication. Any such petition should comply with the requirements of § 1.181(b). The petition may include a request that the petition fee be refunded if the final refusal to publish a statutory invention registration for reasons other than compliance with 35 U.S.C. 112 is determined to result from an error by the Patent and Trademark Office.

* * * * *

45. Section 1.296 is revised to read as follows:

§ 1.296 Withdrawal of request for publication of statutory invention registration.

A request for a statutory invention registration, which has been filed, may be withdrawn prior to the date on which the notice of the intent to publish a statutory invention registration issued pursuant to § 1.294(c) by filing a request to withdraw the request for publication of a statutory invention registration. The request to withdraw may also include a request for a refund of any amount paid in excess of the application filing fee and a handling fee of $130.00 which will be retained. Any request to withdraw the request for publication of a statutory invention registration filed on or after the date on which the notice of intent to publish issued pursuant to § 1.294(c) must be in the form of a petition accompanied by the fee set forth in § 1.17(g).

46. Section 1.311 is amended by revising paragraph (b) to read as follows:

§ 1.311 Notice of allowance.

* * * * *

(b) An authorization to charge the issue fee or other post-allowance fees set forth in § 1.18 to a deposit account may be filed in an individual application only after mailing of the notice of allowance. The submission of either of the following after the mailing of a notice of allowance will operate as a request to charge the correct issue fee or any publication fee due to any deposit account identified in a previously filed authorization to charge such fees:

(1) An incorrect issue fee or publication fee; or

(2) A fee transmittal form (or letter) for payment of issue fee or publication fee.

47. Section 1.324 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 1.324 Correction of inventorship in patent, pursuant to 35 U.S.C. 256.

(a) Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his or her part, the Director, pursuant to 35 U.S.C. 256, may, on application of all the parties and assignees, or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors. A request to correct inventorship of a patent involved in an interference must comply with the requirements of this section and must be accompanied by a motion under § 1.634.

(b) Any request to correct inventorship of a patent pursuant to paragraph (a) of this section must be accompanied by:

* * * * *

48. Section 1.377 is amended by revising paragraph (b) to read as follows:

§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

* * * * *

(b) Any petition under this section must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(g). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

* * * * *

49. Section 1.378 is amended by revising paragraph (e) to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

* * * * *

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be

obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(f). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

50. Section 1.502 is revised to read as follows:

§ 1.502 Processing of prior art citations during an *ex parte* reexamination proceeding.

Citations by the patent owner under § 1.555 and by an *ex parte* reexamination requester under either § 1.510 or § 1.535 will be entered in the reexamination file during a reexamination proceeding. The entry in the patent file of citations submitted after the date of an order to reexamine pursuant to § 1.525 by persons other than the patent owner, or an *ex parte* reexamination requester under either § 1.510 or § 1.535, will be delayed until the reexamination proceeding has been terminated by the issuance and publication of a reexamination certificate. *See* § 1.902 for processing of prior art citations in patent and reexamination files during an *inter partes* reexamination proceeding filed under § 1.913.

51. Section 1.530 is amended by revising paragraph (k) to read as follows:

§ 1.530 Statement by patent owner in *ex parte* reexamination; amendment by patent owner in *ex parte* or inter partes reexamination; inventorship change in *ex parte* or inter partes reexamination.

* * * * *

(k) *Amendments not effective until certificate.* Although the Office actions will treat proposed amendments as though they have been entered, the proposed amendments will not be effective until the reexamination certificate is issued and published.

* * * * *

52. Section 1.550 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.550 Conduct of *ex parte* reexamination proceedings.

* * * * *

(c) The time for taking any action by a patent owner in an *ex parte* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g). *See* § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

(d) If the patent owner fails to file a timely and appropriate response to any Office action or any written statement of an interview required under § 1.560(b), the prosecution in the *ex parte* reexamination proceeding will be concluded, and the Director will proceed to issue and publish a certificate terminating the reexamination proceeding under § 1.570 in accordance with the last action of the Office.

* * * * *

53. Section 1.570 is amended by revising its heading and paragraphs (a), (b) and (d) to read as follows:

§ 1.570 Issuance and publication of *ex parte* reexamination certificate terminates *ex parte* reexamination proceeding.

(a) To terminate an *ex parte* reexamination proceeding, the Director will issue and publish an *ex parte* reexamination certificate in accordance with 35 U.S.C. 307 setting forth the results of the *ex parte* reexamination proceeding and the content of the patent following the ex parte reexamination proceeding.

(b) An *ex parte* reexamination certificate will be issued and published in each patent in which an *ex parte* reexamination proceeding has been ordered under § 1.525 and has not been merged with any *inter partes* reexamination proceeding pursuant to § 1.989(a). Any statutory disclaimer filed by the patent owner will be made part of the *ex parte* reexamination certificate.

* * * * *

(d) If an *ex parte* reexamination certificate has been issued and published which cancels all of the claims of the patent, no further Office proceedings will be conducted with that patent or any reissue applications or any reexamination requests relating thereto.

* * * * *

54. Section 1.644 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.644 Petitions in interferences.

* * * * *

(e) Any petition under paragraph (a) of this section shall be accompanied by the petition fee set forth in § 1.17(f).

(f) Any request for reconsideration of a decision by the Director shall be filed within 14 days of the decision of the Director and must be accompanied by the fee set forth in § 1.17(f). No opposition to a request for reconsideration shall be filed unless requested by the Director. The decision will not ordinarily be modified unless such an opposition has been requested by the Director.

* * * * *

55. Section 1.666 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.666 Filing of interference settlement agreements.

* * * * *

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(f) and on a showing of good cause.

(c) Failure to file the copy of the agreement or understanding under paragraph (a) of this section will render permanently unenforceable such agreement or understanding and any patent of the parties involved in the interference or any patent subsequently issued on any application of the parties so involved. The Director may, however, upon petition accompanied by the fee set forth in § 1.17(f) and on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six-month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

56. Section 1.704 is amended by revising paragraph (d) to read as follows.

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(d) A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination)

of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

* * * * *

57. Section 1.705 is amended by revising paragraph (d) to read as follows:

§ 1.705 Patent term adjustment determination.

* * * * *

(d) If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within thirty days of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section may be dismissed as untimely.

* * * * *

58. Section 1.741 is amended by revising paragraph (b) to read as follows:

§ 1.741 Complete application given a filing date; petition procedure.

* * * * *

(b) If an application for extension of patent term is incomplete under this section, the Office will so notify the applicant. If applicant requests review of a notice that an application is incomplete, or review of the filing date accorded an application under this section, applicant must file a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f) within two months of the mail date of the notice that the application is incomplete, or the notice according the filing date complained of. Unless the notice indicates otherwise, this time period may be extended under the provisions of § 1.136.

59. Section 1.902 is revised to read as follows:

§ 1.902 Processing of prior art citations during an *inter partes* reexamination proceeding.

Citations by the patent owner in accordance with § 1.933 and by an *inter partes* reexamination third party requester under § 1.915 or § 1.948 will be entered in the *inter partes* reexamination file. The entry in the patent file of other citations submitted after the date of an order for reexamination pursuant to § 1.931 by persons other than the patent owner, or the third party requester under either § 1.915 or § 1.948, will be delayed until the *inter partes* reexamination proceeding has been terminated by the issuance and publication of a reexamination certificate. *See* § 1.502 for processing of prior art citations in patent and reexamination files during an *ex parte* reexamination proceeding filed under § 1.510.

60. Section 1.953 is amended by revising paragraph (c) to read as follows:

§ 1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

* * * * *

(c) The Right of Appeal Notice shall be a final action, which comprises a final rejection setting forth each ground of rejection and/or final decision favorable to patentability including each determination not to make a proposed rejection, an identification of the status of each claim, and the reasons for decisions favorable to patentability and/or the grounds of rejection for each claim. No amendment can be made in response to the Right of Appeal Notice. The Right of Appeal Notice shall set a one-month time period for either party to appeal. If no notice of appeal is filed, prosecution in the *inter partes* reexamination proceeding will be concluded, and the Director will proceed to issue and publish a certificate under § 1.997 in accordance with the Right of Appeal Notice.

61. The subheading immediately preceding § 1.956 is revised to read as follows:

EXTENSIONS OF TIME, CONCLUDING OF REEXAMINATION PROSECUTION, AND PETITIONS TO REVIVE IN *INTER PARTES* REEXAMINATION

62. Section 1.956 is revised to read as follows:

§ 1.956 Patent owner extensions of time in *inter partes* reexamination.

The time for taking any action by a patent owner in an *inter partes* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g). *See* § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

63. Section 1.957 is amended by revising paragraph (b) to read as follows:

§ 1.957 Failure to file a timely, appropriate or complete response or comment in *inter partes* reexamination.

* * * * *

(b) If no claims are found patentable, and the patent owner fails to file a timely and appropriate response in an *inter partes* reexamination proceeding, the prosecution in the reexamination proceeding will be concluded and the Director will proceed to issue and publish a certificate terminating the reexamination proceeding under § 1.997 in accordance with the last action of the Office.

* * * * *

64. Section 1.958 is amended by revising its heading to read as follows:

§ 1.958 Petition to revive *inter partes* reexamination prosecution concluded for lack of patent owner response.

* * * * *

65. Section 1.979 is amended by revising paragraph (f) to read as follows:

§ 1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.

* * * * *

(f) An appeal by a third party requester is considered terminated by the dismissal of the third party requester's appeal, the failure of the third party requester to timely request rehearing under § 1.979(a) or (c), or a final decision under § 1.979(e). The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the decision of the Board of Patent Appeals and Interferences is final. An appeal by the patent owner is considered terminated by the dismissal of the patent owner's appeal, the failure of the patent owner to timely request rehearing under § 1.979(a) or (c), or the failure of the patent owner to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983. The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the time for the patent owner's appeal to the U.S. Court of Appeals for the Federal Circuit

expires. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, the patent owner's appeal is considered terminated when the mandate is issued by the Court. Upon termination of an appeal, if no other appeal is present, the prosecution in the reexamination proceeding will be concluded and the Director will issue and publish a certificate under § 1.997 terminating the reexamination proceeding.

* * * * *

66. Section 1.997 is amended by revising its heading and paragraphs (a), (b), and (d) to read as follows:

§ 1.997 Issuance and publication of *inter partes* reexamination certificate terminates *inter partes* reexamination proceeding.

(a) To terminate an *inter partes* reexamination proceeding, the Director will issue and publish an *inter partes* reexamination certificate in accordance with 35 U.S.C. 316 setting forth the results of the *inter partes* reexamination proceeding and the content of the patent following the *inter partes* reexamination proceeding.

(b) A certificate will be issued and published in each patent in which an *inter partes* reexamination proceeding has been ordered under § 1.931. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

* * * * *

(d) If a certificate has been issued and published which cancels all of the claims of the patent, no further Office proceedings will be conducted with that patent or any reissue applications or any reexamination requests relating thereto.

* * * * *

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

67. The authority citation for 37 CFR part 5 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

68. Section 5.12 is amended by revising paragraph (b) to read as follows:

§ 5.12 Petition for license.

* * * * *

(b) A petition for license must include the fee set forth in § 1.17(g) of this chapter, the petitioner's address, and full instructions for delivery of the requested license when it is to be delivered to other than the petitioner. The petition should be presented in letter form.

69. Section 5.15 is amended by revising paragraph (c) to read as follows:

§ 5.15 Scope of license.

* * * * *

(c) A license granted under § 5.12(b) pursuant to § 5.13 or § 5.14 shall have the scope indicated in paragraph (a) of this section, if it is so specified in the license. A petition, accompanied by the required fee (§ 1.17(g)), may also be filed to change a license having the scope indicated in paragraph (b) of this section to a license having the scope indicated in paragraph (a) of this section. No such petition will be granted if the copy of the material filed pursuant to § 5.13 or any corresponding United States application was required to be made available for inspection under 35 U.S.C. 181. The change in the scope of a license will be effective as of the date of the grant of the petition.

* * * * *

70. Section 5.25 is amended by revising paragraph (a)(4) to read as follows:

§ 5.25 Petition for retroactive license.

(a) * * *

(4) The required fee (*see* § 1.17(g)). The explanation in paragraph (a)(3)(iii) must include a showing of facts rather than a mere allegation of action through error and without deceptive intent. The showing of facts as to the nature of the error should include statements by those persons having personal knowledge of the acts regarding filing in a foreign country and should be accompanied by copies of any necessary supporting documents such as letters of transmittal or instructions for filing. The acts which are alleged to constitute error without deceptive intent should cover the period leading up to and including each of the proscribed foreign filings.

* * * * *

Dated: September 4, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–23010 Filed 9–11–03; 8:45 am]

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Federal Register

Friday,
September 12, 2003

Part IV

Department of Labor

Research Misconduct; Statement of Policy; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Research Misconduct; Statement of Policy

AGENCY: Office of the Secretary, Labor.

ACTION: Statement of policy on Research Misconduct.

SUMMARY: USDOL hereby publishes its policies that are to be used to implement the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology on December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Roland B. Droitsch, Deputy Assistant Secretary for Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor at 202–693–5900.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy issued a final Federal research misconduct policy on December 6, 2000 in 65 FR 76260–76264 (the ''Federal Policy''). The Federal Policy consists of a definition of research misconduct and basic guidelines to help Federal agencies and Federally funded research institutions respond to allegations of research misconduct.

The U.S. Department of Labor (USDOL) is publishing its policies on research misconduct fully consistent with the Federal Policy. This is a policy statement intended as a guide to USDOL managers and supervisors. It is not intended to provide any binding requirements on Department of Labor agencies, officials, or the public. It is not intended to create or recognize any legally enforceable right in any person. We refer to the USDOL policy as the ''USDOL Policy.''

The Federal Policy provides a uniform Federal definition of research misconduct. It defines research misconduct as fabrication, falsification, and plagiarism in proposing, performing, or reviewing research or reporting research results. The Federal Policy also defines ''fabrication'', ''falsification'', and ''plagiarism''. The USDOL Policy adopts the definition of research misconduct set forth in the Federal Policy.

Consistent with the Federal Policy, USDOL officials should, as appropriate, seek to protect research misconduct investigative and adjudicative files from mandatory disclosure under the Freedom of Information Act, where permitted by law and regulation.

The Department of Labor Manual Series (DLMS) 8, Audits and Investigations, Chapter 700—Incident Reporting and Whistleblower Protection, establishes USDOL procedures and assigns responsibility for reporting and investigating allegations of wrongdoing that would include allegations of research misconduct. The USDOL Policy presented below does not supersede DLMS 8, Chapter 700, but is designed to provide supplementary policies for research misconduct issues.

Authority: 5 U.S.C. 301 and **Federal Register**/Vol. 65 No. 235, December 6, 2000, Notification of Final Policy, Executive Office of the President, Office of Science and Technology Policy.

Definitions

(1) The ''Federal Policy'' means the Federal research misconduct policy issued by the Office of Science and Technology Policy on December 6, 2000 in 65 FR 76260–76264.

(2) ''Research misconduct'' means conduct which a preponderance of the evidence demonstrates to be a significant departure from accepted practices or intentional, knowing, or reckless fabrication, falsification, or plagiarism in proposing, performing, or reviewing research or reporting research results. Research misconduct does not include honest error or differences of opinion.

(a) ''Fabrication'' means making up data or results and recording or reporting them.

(b) ''Falsification'' means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research record is not accurately represented in the research record.

(c) ''Plagiarism'' means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(3) ''USDOL'' means the United States Department of Labor as an entity, or to any agency of the United States Department of Labor acting under the authority of the United States Department of Labor, with the exception of the Office of Inspector General of the United States Department of Labor.

(4) ''Appropriate USDOL Agency'' means the USDOL agency that has supported or contracted for the research that involves an allegation of research misconduct.

(5) ''OIG'' means the Office of Inspector General of the United States Department of Labor.

(6) ''Agency Head'' (AH) means the director of a USDOL agency that has the authority to or has been delegated the authority to commit USDOL support for research or to purchase research services or products for the USDOL or one of its agencies.

(7) ''Awardee Institution'' means an institution or organization that has received research support from a USDOL agency or that has received a contract or grant to provide research services or products to a USDOL agency.

(8) ''The USDOL Policy'' means the policy and procedures issued by the USDOL to deal with allegations of research misconduct involving research supported by or contracted for by a USDOL agency.

General Policies

(1) USDOL agencies support research activities through grants or other agreements to provide research support. USDOL agencies also purchase research services and products through contracts and purchase orders.

(2) USDOL should take appropriate action against individuals or institutions upon a finding that research misconduct has occurred while conducting or performing research that has been supported by a USDOL agency or that has been contracted for by a USDOL agency.

(3) Allegations of research misconduct against employees of USDOL while in the performance of their official duties are covered by existing laws, rules, regulations and Departmental policy relating to misconduct of its employees, and not by ''The USDOL Policy,'' but in cases involving alleged research misconduct against DOL employees while in the performance of their official duties, DOL officials should apply these laws, rules, regulations and Departmental policy in a manner consistent with the ''Federal Policy.''

(4) USDOL officials should issue a finding of research misconduct only after a careful inquiry and investigation by (a) an awardee institution, (b) by another Federal agency, (c) by the OIG, or (d) by the Appropriate USDOL Agency. An inquiry consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation should ordinarily be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An investigation is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

Pending Proposals and Awards

(1) Upon learning of alleged research misconduct the appropriate USDOL Agency should take steps to identify potentially implicated awards or proposals and, when appropriate, should ensure that program, grant, and contract officers handling them are informed.

(2) Neither a suspicion nor allegation of research misconduct nor a pending inquiry or investigation will normally delay review of proposals. Not informing reviewers or panelists of allegations or of ongoing inquiries or investigations will avoid inappropriate influence on their reviews. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Agency Head, after consultations with the USDOL Office of Solicitor and the appropriate USDOL contract and grant officers, should consider appropriate steps to avoid inappropriate influence. They might, for example, defer review, inform reviewers to disregard the matter, or inform reviewers of the status of the matter.

Initial USDOL Handling of Research Misconduct Matters

(1) Officials should normally report allegations of research misconduct on the part of USDOL employees while in the performance of official duties to the immediate supervisor of the employee(s) against which the misconduct is alleged. These allegations should be handled under existing laws, rules, regulations and USDOL policy relating to misconduct of employees of USDOL. In applying these laws, DOL officials should consider utilizing the definitions of research misconduct adopted by the Federal Policy and should consider approaches to the application of existing laws that maximize consistency with the Federal Policy.

(2) Individuals or groups of individuals who wish to report allegations of research misconduct involving research supported by or contracted for a USDOL agency should report the allegation in writing either to the Awardee Institution involved or to the Agency Head of the Appropriate USDOL Agency.

(3) The Agency Head should forward reports of research misconduct promptly to the OIG.

(4) After forwarding a report of alleged research misconduct to the OIG, it would contribute to an orderly handling of these matters if the Agency Head would:

(a) defer further action until informed by the OIG that the OIG will be conducting an investigation of the allegation or until a reasonable time period passes without such a notification (The reasonableness of the time period will depend on the particular circumstances, but agency heads may wish to consider the appropriateness of a 30–90 day period);

(b) if informed that an OIG investigation of the allegation will be conducted, the agency head may wish to defer to the OIG investigation of the allegation by taking no further investigatory action at that time;

(5) If the Agency Head is informed by the OIG that there will be no OIG investigation of the allegation or if a reasonable time period passes since the Agency Head has referred the allegation of research misconduct to the OIG, the Agency Head should consider the following actions:

(a) If the alleged misconduct is with activities under research support to or contract with an institution or enterprise, inform the awardee institution or enterprise of the alleged research misconduct, decide if the institution or enterprise has the capacity to undertake an inquiry and investigation, and if in the judgment of the Agency Head that capacity exists, request in writing that the institution or enterprise undertake an inquiry and, if warranted, an investigation; should the institution fail to notify the Agency Head within a reasonable time after receiving the written request that it will be undertaking an inquiry, the Agency Head may wish to proceed with its own inquiry and, if warranted, its own investigation. Agency heads may wish to consider a brief waiting period to hear from the institution, for example 30 days. They should attempt to conclude their own inquiries promptly. It will often be possible to conclude an inquiry within 90 days after its initiation and any investigation within 180 days after its initiation. The Agency Head should call upon all necessary assistance and expertise that can be provided by the Office of the Solicitor of the USDOL.

(b) If the alleged misconduct is with activities under research support to an individual or group of individuals, the Agency Head should consider proceeding with its own inquiry and, if warranted, its own investigation after informing each of the individuals of the alleged research misconduct. it may often be possible to complete any inquiry within 90 days after its initiation and any investigation within 180 days after its initiation. The Agency Head should call upon all necessary assistance and expertise that can be provided by the Office of the Solicitor of the USDOL.

Roles of Awardee Institutions

USDOL supports research activities in various ways, including the award of grants, contracts, purchase orders, or other agreements to provide support. Grants that include support for research activities are made to institutions, usually to universities and research institutes, and not directly to individuals. Similarly, most contracts for research services and products, including purchase orders, are entered into with institutions, including universities, research institutes, and business enterprises, rather than directly with individuals. In some cases, the USDOL will enter into a contract with or will provide support for research directly to an individual or to a group of individuals.

When the grant or contract or support of research is awarded directly to an individual or group of individuals rather than to an institution or enterprise there will be no role for such an institution or enterprise.

When the grant or contract or support of research is awarded to an institution or business enterprise

(1) The awardee institution or enterprise may often be willing to bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. If in the judgment of the Appropriate USDOL Agency, the awardee institution or enterprise has the capacity to conduct an inquiry, investigation, and adjudication, the appropriate USDOL Agency may want to rely on the awardee institution or enterprise to promptly:

(a) Initiate an inquiry into any suspected or alleged research misconduct;

(b) Conduct a subsequent investigation, if warranted;

(c) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(d) Provide appropriate safeguards for subjects of allegations as well as informants.

(2) If an institution or enterprise wishes the Appropriate USDOL Agency to defer independent inquiry or investigation, it may eliminate the need for such inquiry or investigation by:

(a) Completing any inquiry and deciding whether an investigation is warranted promptly, so that the USDOL Agency can be satisfied that the public interest will be served. Completion within 90 days would be preferable. If completion of an inquiry is delayed, but

the institution wishes USDOL deferral to continue, the Appropriate USDOL Agency may want to ask the institution to provide periodic status reports.

(b) Informing the Appropriate USDOL Agency if an initial inquiry supports a formal investigation.

(c) Keeping the Appropriate USDOL Agency informed during such an investigation.

(d) Completing any investigation and reaching a disposition within a reasonable time, preferably within 180 days of the initiation of the investigation. If completion of an investigation is delayed, but the institution wishes USDOL deferral to continue, the Appropriate USDOL Agency may ask the institution to submit periodic status reports.

(e) Providing the appropriate USDOL Agency with the final report from any investigation.

(3) USDOL believes it is in the public interest that if during an investigation into research misconduct, any individuals or groups of individuals become aware of any of the following they should follow the guidelines in the Federal Policy:

(a) Public health or safety is at risk;

(b) USDOL's resources, reputation, or other interests need protecting;

(c) There is reasonable indication of possible violations of civil or criminal law;

(d) Research activities should be suspended;

(e) Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(f) The scientific community or the public should be informed.

(4) To facilitate awareness of the USDOL Policy among contract and grant research recipients, Agency Heads should consider working with their contract and grant officers to insert language into contract and grant documents that makes Awardee institutions aware of the USDOL Policy and of the Federal Policy. For example, the language could include informational references to the Federal Policy as stated in the **Federal Register** Vol. 65. No. 235, December 6, 2000 and to the Department of Labor Manual Series (DLMS) Chapter 800.

Investigations

(1) When an awardee institution or the OIG or a Federal agency other than the Appropriate USDOL Agency, has promptly initiated its own inquiry and investigation, the Appropriate USDOL Agency may wish to defer its own inquiry or investigation until it receives the results of that external inquiry and investigation. If the Appropriate USDOL Agency does not receive the results of the external inquiry within what it believes to be a reasonable time, the Appropriate USDOL Agency should proceed with its own inquiry and, if warranted, its own investigation. It will often be appropriate for the Agency to proceed with its own inquiry if it does not receive the results of the external inquiry within 90 days and to proceed with its own investigation if it does not receive the results of an external investigation within 180 days.

(2) If the Appropriate USDOL Agency decides to initiate an investigation, it should be conducted with fairness. Among the fair procedures that agencies should consider are giving prompt written notice to the individual or institutions to be investigated where such notice would not prejudice the investigation or relate to a criminal investigation that is underway or under active consideration. Where notice is delayed, agencies should consider the need to give the notice as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(3) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies, the Appropriate USDOL Agency should decide what information, if any, may be disclosed to the subject of the investigation or to other USDOL employees.

(4) An investigation by the Appropriate USDOL Agency may include:

(a) Review of award files, reports, and other documents already readily available at USDOL or in the public domain;

(b) Review of procedures or methods and inspection of data, laboratory materials, and records at awardee institutions;

(c) Interviews with subjects or witnesses;

(d) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(e) Cooperation with other Federal agencies; and

(f) Opportunity for the subject of the investigation to be heard.

(5) The Appropriate USDOL Agency may wish to contract with or invite outside consultants or experts to participate in a USDOL investigation.

(6) The Appropriate USDOL Agency should make every reasonable effort to complete a USDOL investigation and to report its recommendations, if any, to the Assistant Secretary of Labor for Administration and Management promptly. It will often be possible to complete such investigation within 180 days after initiating it, and, within 60 days after completing the investigation, to submit the investigative report along with a recommended disposition to the Assistant Secretary for Administration and Management.

(7) The subject of the investigation may wish to hire legal representation to assist in responding to allegations.

(8) In many cases, Agency Heads will be relying on outside inquiries and investigations, *e.g.*, those being conducted by awardee institutions or by the OIG, or by another federal agency. However, there may be cases when Agency Heads have no alternative but to conduct their own inquiry and, if necessary, their own investigation. One possible way to proceed is to contract out the inquiry and/or investigation to an institution with expertise in research misconduct issues, for example, a large research university or professional organization. Another way would be to proceed with the inquiry and/or investigation using a panel of experts, both internal and external to USDOL to review all documents and interview all participants to the dispute and the allegation and to produce a report. The agency head should call upon whatever assistance can be provided by USDOL contract and grant officers and by the USDOL Office of the Solicitor as it proceeds.

Interim Administrative Actions

(1) After an inquiry or during an external investigation or an investigation by the Appropriate USDOL Agency, the Assistant Secretary of Labor for Administration and Management or other appropriate USDOL official may recommend that interim actions be taken to protect Federal resources or to guard against continuation of any suspected or alleged research misconduct. The Assistant Secretary or other appropriate USDOL official should consider making such recommendation when requested by the Agency Head of the Appropriate USDOL Agency, and should consult with the appropriate USDOL Grant or Contract Officer and the Office of the Solicitor of the USDOL.

(2) When suspension of a grant or contract or other award is believed to be appropriate, the official responsible for making decisions should be legally authorized to take such actions and should ordinarily be the appropriate USDOL Grant or Contract Officer.

(3) Officials should consider taking such interim actions whenever

information developed during an investigation indicates a need to do so. The appropriate Grant or Contract Officer should periodically review such interim actions during an investigation and modify them as warranted. An interested party may wish to request a review or modification by the immediate supervisor of the suspending official.

(4) The suspending official should make, and the Appropriate USDOL Agency should retain, a record of interim actions taken and the reasons for taking them.

Dispositions

(1) Agency heads should carefully consider any report they may receive from (a) an external investigation by an awardee institution or (b) a report from an OIG investigation, or (c) a report from an investigation by another Federal agency, or (d) a report from an investigation conducted by the Appropriate USDOL Agency. It would be appropriate for the Agency Head of the Appropriate USDOL Agency to assess not only the accuracy and completeness of the report, but also whether the investigating entity followed reasonable procedures. The Agency head will ordinarily be able, within 30 days, either to recommend adoption of the findings in whole or in part or to initiate a new investigation. If a new investigation is initiated, it can normally be completed within 90 days of its initiation.

(2) When any satisfactory external investigation or an investigation by the Appropriate USDOL Agency fails to confirm alleged misconduct,

(a) the Appropriate USDOL Agency should notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(b) any interim administrative restrictions that were imposed should ordinarily be lifted.

(3) When a satisfactory external investigation or an investigation by the Appropriate USDOL Agency confirms misconduct, the agency head, in consultation with the Office of the Solicitor of USDOL, should recommend to the Assistant Secretary for Administration and Management an appropriate disposition and any final actions to be taken by USDOL.

(a) In cases in which debarment from further contracts or grants is considered by the Appropriate USDOL Agency to be the preferred disposition, the case should be referred to the relevant office of contracts and grants management within the USDOL but:

(i) The debarring official should normally be either the Assistant Secretary of Labor for Administration and Management, or an official designated by the Assistant Secretary.

(ii) Except in unusual circumstances, the investigation report and recommended disposition should be included among the materials that appropriate officials provided to the subject of the investigation as part of the notice of proposed debarment.

(iii) It would be helpful to the subject if the notice of a debarring official's decision would include instructions on how to pursue any appeal.

(b) In other cases,

(i) Except in unusual circumstances, the investigation report should be provided by the Appropriate USDOL Agency to the subject of the investigation, who should be invited to submit comments or rebuttal within a reasonable time period. Thirty days will ordinarily be a sufficient time period for subjects to submit these comments or rebuttals. Any response should receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 60 days after completion of an investigation by the Appropriate USDOL Agency or the receipt of a report from a satisfactory external investigation, it will be practicable for the Agency Head of the Appropriate USDOL Agency to submit to the Assistant Secretary of Labor for Administration and Management the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition may include proposals for any final actions to be taken by USDOL.

(iii) The Assistant Secretary of Labor for Administration and Management should review the investigation report and the recommended disposition. The Assistant Secretary may initiate further hearings or investigation.

Final Actions

(1) In the case of findings of research misconduct involving research supported by the USDOL or one of its agencies, possible final actions to be considered are listed below for guidance purposes and range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not mandated, nor exhaustive and do not include possible criminal sanctions.

(a) Group I Actions:

(i) Send a letter of reprimand to the individual or institution.

(ii) Require, as a condition of any future award of a grant or contract or purchase order or other support for research, that for a specified period an individual or institution obtain special prior approval of particular activities from the Assistant Secretary for Administration and Management or the designee of the Assistant Secretary.

(iii) Require, for a specified period, that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(b) Group II Actions:

(i) Totally or partially suspend an active award, or restrict for some specified period designated, activities or expenditures under an active award.

(ii) Require special reviews of all requests for funding or support of research from an affected individual or institution, for a specified period, to ensure that steps have been taken to prevent repetition of the misconduct.

(iii) Require a correction to the research record.

(c) Group III Actions:

(i) Terminate an active award or other agreement of support for research.

(ii) Require the return to USDOL of any funds that have been disbursed to the grantee or contractor.

(iii) Prohibit participation of an individual as a USDOL reviewer, advisor, or consultant for a specified period.

(iv) using prescribed procedures and through the authorized USDOL official, debar or suspend an individual or institution from participation in USDOL contracts or grants or purchase orders or research support for a specified period.

(v) In the event of such debarment or suspension, provide appropriate documentation to the authorized USDOL official setting forth the basis for recommending suspension and/or debarment from government-wide federal contracting and/or grant opportunities for a specified period, including placement on the ''Excluded Parties Listing Services'' maintained by the General Services Administration (GSA) at *http://www.epls.gov*.

(2) In deciding what final actions are appropriate when misconduct is found, USDOL officials should consider:

(a) How serious the misconduct was;

(b) The degree to which the misconduct was knowing, intentional, or reckless;

(c) Whether it was an isolated event or part of a pattern;

(d) Whether it had a significant impact on the research record, research subjects, other researchers, institutions or the public welfare; and

(e) Other relevant circumstances.

Appeals

(1) Any adverse action against a grantee or contractor arising from research misconduct or otherwise is subject to applicable DOL procedures, including any appeal/disputes procedures.

(2) The Secretary of Labor may wish to appoint an uninvolved USDOL officer or employee to review an appeal and make recommendations. The official deciding appeals should inform the appellant when a final decision has been reached. It will normally be practicable to make an appellate decision within 60 days after receiving the appeal.

Signed at Washington, DC, this 25th day of August 2003

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–23248 Filed 9–11–03; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Friday,
September 12, 2003

Part V

The President

Memorandum of July 22, 2003—Report to the Congress Consistent With the Afghanistan Freedom Support Act of 2002

Federal Register
Vol. 68, No. 177
Friday, September 12, 2003

Presidential Documents

Title 3—

The President

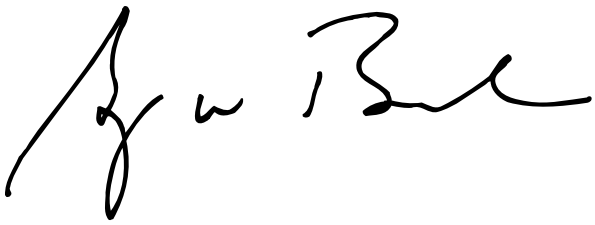
Memorandum of July 22, 2003

Report to the Congress Consistent With the Afghanistan Freedom Support Act of 2002

Memorandum for the Secretary of State

Consistent with section 206(c) of the Afghanistan Freedom Support Act of 2002 (Public Law 107–327 of December 4, 2002), you are hereby authorized and directed to transmit the attached report on implementation of the strategies for meeting the immediate and long-term security needs of Afghanistan to the appropriate committees of the Congress.

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



THE WHITE HOUSE,
Washington, July 22, 2003.

[FR Doc. 03–23569
Filed 9–11–03; 12:06 pm]
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