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Presidential Documents

Title 3—

The President

Proclamation 7758 of March 1, 2004

To Modify Duty-Free Treatment Under the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502(a)(1) of the Trade Act of 1974, as amended (the ''Act'') (19 U.S.C. 2461, 2462(a)(1)), the President is authorized to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

2. Section 502(b)(1)(C) of the Act (19 U.S.C. 2462(b)(1)(C)) specifies that European Union member states may not be designated as beneficiary developing countries for purposes of the GSP.

3. Section 502(e) of the Act (19 U.S.C. 2462(e)) provides that the President shall terminate the designation of a country as a beneficiary developing country for purposes of the GSP if the President determines that such country has become a ''high income'' country as defined by the official statistics of the International Bank for Reconstruction and Development. Termination is effective on January 1 of the second year following the year in which such determination is made.

4. Pursuant to sections 501 and 502(a)(1) of the Act, and having due regard for the factors set forth in section 501 of the Act and taking into account the factors set forth in section 502(c) (19 U.S.C. 2462(c)), I have decided to designate Algeria as a beneficiary developing country for purposes of the GSP.

5. Consistent with section 502(b)(1)(C) of the Act, I have decided to terminate the designation of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia as beneficiary developing countries, with such termination to become effective for each of these countries when it becomes a European Union member state.

6. Pursuant to section 502(e) of the Act, I have determined that Antigua and Barbuda, Bahrain, and Barbados have become ''high income'' countries, and I am terminating the designation of those countries as beneficiary developing countries for purposes of the GSP, effective January 1, 2006.

7. Section 604 of the Act (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including title V and section 604 of the Act (19 U.S.C. 2461–67, 2483), do proclaim that:

(1) Algeria is designated as a beneficiary developing country for purposes of the GSP, effective 15 days after the date of this proclamation.

(2) In order to reflect this designation in the HTS, general note 4(a) to the HTS is modified by adding ''Algeria'' to the list entitled ''Independent Countries,'' effective with respect to articles entered, or withdrawn from

warehouse for consumption, on or after the fifteenth day after the date of this proclamation.

(3) The designation of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, and Slovakia as beneficiary developing countries for purposes of the GSP is terminated for each country on the date when it becomes a European Union member state. The United States Trade Representative shall announce each such date in a notice published in the **Federal Register**.

(4) In order to reflect these terminations in the HTS, general note 4(a) to the HTS is modified by deleting ''Czech Republic,'' ''Estonia,'' ''Hungary,'' ''Latvia,'' ''Lithuania,'' ''Poland,'' and ''Slovakia'' from the list of independent countries, effective for each of these countries with respect to articles entered, or withdrawn from warehouse for consumption, on or after the day on which that country becomes a European Union member state.

(5) The designation of Antigua and Barbuda, Bahrain, and Barbados as beneficiary developing countries for purposes of the GSP is terminated, effective on January 1, 2006.

(6) In order to reflect this termination in the HTS, and to make other changes to update the list of Caribbean Common Market (CARICOM) member countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2006, general note 4(a) to the HTS is modified by:

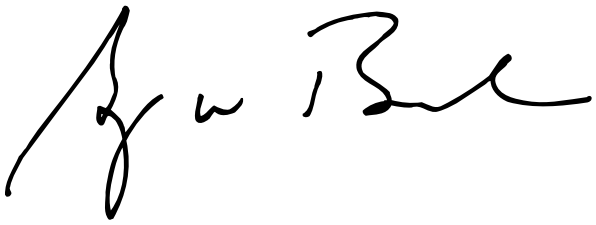
(a) deleting ''Antigua and Barbuda,'' ''Bahrain,'' and ''Barbados'' from the list of independent countries,

(b) deleting ''Antigua and Barbuda'' and ''Barbados'' from the list of the ''*Member Countries of the Caribbean Common Market (CARICOM), except The Bahamas*'' under the provision ''*Associations of Countries (treated as one country)*,'' and

(c) deleting ''*Member Countries of the Caribbean Common Market (CARICOM), except The Bahamas*'' and inserting ''*Member Countries of the Caribbean Common Market (CARICOM)*'' in lieu thereof, and deleting ''Consisting of:'' before the list of countries and inserting ''Currently qualifying:'' in lieu thereof.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–5006
Filed 3–3–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

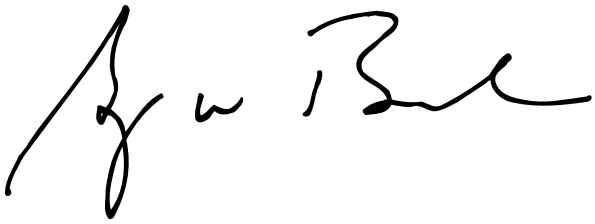
Memorandum of March 1, 2004

Delegation of Certain Reporting Authority

Memorandum for the United States Trade Representative

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213), to provide the specified report to the Congress.

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



THE WHITE HOUSE,
Washington, March 1, 2004.

[FR Doc. 04–5048
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Billing code 3190–01–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV04–906–1 FIR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which increased the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.11 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to increase the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.11 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit handled.

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

For the 2002–03 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 29, 2003, and unanimously recommended 2003–04 expenses of $1,222,506 for management, administration, compliance, a Mexican Fruit Fly program, and advertising and promotion. The Committee recommended that the assessment rate of $0.11 per 7/10-bushel carton continue for the 2003–04 fiscal period. The quantity of assessable citrus was estimated at 10 million 7/10-bushel cartons or equivalents.

The Committee met again on October 8, 2003, and unanimously recommended revised 2003–04 expenditures of $1,322,506 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit. In comparison, last year's budgeted expenditures were $1,226,022. The assessment rate of $0.14 is $0.03

higher than the rate previously in effect. The Committee recommended the $0.14 assessment rate to cover the increased costs associated with implementing a more comprehensive Mexican Fruit Fly program, and a significant decrease in the assessable production estimate for the 2003–04 marketing season. At this meeting, the estimate of assessable citrus was reduced to 9 million 7/10-bushel cartons or equivalents.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $800,000 for advertising, $279,000 for the Mexican Fruit Fly program, $119,929 for management and administration of the marketing order program, and $72,777 for compliance. Budgeted expenses for these items in 2002–03 were $810,500, $179,000, $107,845, and $74,777, respectively.

As mentioned earlier, the Committee's fiscal period begins August 1. There are no citrus shipments out of the production area during the months of August, September, and part of October. Some shippers begin shipping during the latter part of October, but shipments are light until late November when heavier shipments begin. On October 31, 2003, the Committee's reserve totaled $16,230. The Committee needed to make significant advertising and promotion expenditures (about $60,000) during November.

The Committee believed that assessment billings at the lower $0.11 per 7/10-bushel carton rate would not be sufficient to cover all of its expenses. Assessing at the higher $0.14 rate sooner would enable the Committee to maintain its reserves at a satisfactory level and ensure that all of its obligations are met.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the fiscal period are estimated at 9 million 7/10-bushel cartons or equivalents, which should provide $1,260,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $23,000) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 214 producers of oranges and grapefruit in the production area and approximately 16 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated Texas citrus industry profile shows that 6 of the 16 handlers (38 percent) shipped over 588,235 7/10-bushel carton equivalents of oranges and grapefruit. Using an average f.o.b. price of $8.50 per 7/10-bushel carton, these handlers could be considered large businesses under SBA s definition, and the remaining 10 handlers (62 percent) could be considered small businesses. Of the approximately 214 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, the majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This rule continues to increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.11 to $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit.

The Committee met on May 29, 2003, and unanimously recommended 2003–04 expenses of $1,222,506 for management, administrative, compliance, a Mexican Fruit Fly program, and advertising and promotion. The Committee recommended that the assessment rate of $0.11 per 7/10-bushel carton continue for the 2003–04 fiscal period. The quantity of assessable citrus was estimated at 10 million 7/10-bushel cartons or equivalents.

The Committee met again on October 8, 2003, and unanimously recommended revised 2003–04 expenditures of $1,322,506 and an assessment rate of $0.14 per 7/10-bushel carton or equivalent of oranges and grapefruit. In comparison, last year's budgeted expenditures were $1,226,022. The assessment rate of $0.14 is $0.03 higher than the rate previously in effect. The Committee recommended the $0.14 assessment rate to cover the increased costs associated with the Committee's desire to implement a more comprehensive Mexican Fruit Fly program, and a significant decrease in the assessable production estimate for the 2003–04 marketing season. At this meeting, the estimate of assessable citrus was reduced to 9 million 7/10-bushel cartons or equivalents.

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The Committee's fiscal period begins August 1. There are no citrus shipments out of the production area during the months of August, September, and part of October. Some shippers begin shipping during the latter part of October, but shipments are light until late November when heavier shipments begin. On October 31, 2003, the Committee's reserve totaled $16,230. The Committee needed to make significant advertising and promotion

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The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the fiscal period are estimated at 9 million 7/10-bushel cartons or equivalents, which should provide $1,260,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

In arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee. Alternative expenditure levels were discussed based upon the relative need of the Mexican Fruit Fly program to the Texas citrus industry.

The proposed assessment rate of $0.14 per 7/10-bushel carton of assessable oranges and grapefruit was then determined by dividing the total recommended budget by the 9 million 7/10-bushel cartons of oranges and grapefruit estimated for the 2003–04 fiscal period. The $0.14 rate will provide $1,260,00 in assessment income. The additional $62,506 to fund the Committee's estimated expenses will come from the Committee's reserve and interest income.

A review of historical information (October 1999 through May 2003) and preliminary information pertaining to the upcoming fiscal period indicates that the packinghouse door price for the 2003–04 fiscal period could range monthly, from $0.26 to $6.41 per 7/10-bushel carton of Texas oranges and from $1.30 to $7.30 for Texas grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 2.2 and 53.8 percent for oranges and 1.9 to 10.8 percent for grapefruit.

This action continues to increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 29 and October 8, 2003, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

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

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

An interim final rule concerning this action was published in the **Federal Register** on November 25, 2003 (68 FR 66001). Copies of that rule were also mailed or sent via facsimile to all orange and grapefruit handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on January 26, 2004, and one comment opposing the assessment increase was received.

The commenter, a Texas citrus producer, stated that he opposes the increased assessment rate because he has lost money growing grapefruit. The commenter does not want to pay an assessment for grapefruit to the Committee.

Under the marketing order, assessments are collected from handlers of Texas citrus to cover order expenses. As stated previously in the regulatory flexibility analysis, some of the assessment costs may be passed on to producers by their handlers. However, USDA concluded that such costs are offset by the benefits derived by the operation of the marketing order.

The commenter went on to ask what could be done to remove themselves from this situation. USDA established the Texas citrus order at the request of producers to help the producers work together to solve marketing problems that they could not solve individually. However, procedures are available to modify, suspend, or terminate an order. Further, the Committee manager is available to discuss the operation of the marketing order with industry members.

Based on the foregoing, no changes are being made to the assessment rate established by the interim final rule.

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

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

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 906 which was published at 68 FR 66001 on November 25, 2003, is adopted as a final rule without change.

Dated: February 27, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–4860 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 99–017–3]

RIN 0579–AB13

Blood and Tissue Collection at Slaughtering and Rendering Establishments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing interstate

transportation of animals to establish requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm-raised animals) and poultry at slaughtering and rendering establishments when it is necessary for disease surveillance. Any person who moves livestock or poultry interstate for slaughter or rendering may only move the animals to a slaughtering or rendering establishment listed by the Administrator. The Administrator may list an establishment after determining either that the establishment provides the type of space and facilities specified by the regulations to safely collect blood and tissue samples for disease testing; or that it is not currently necessary to conduct testing at the establishment because the data collected through such testing would not significantly assist the Agency's disease surveillance programs and the facility has agreed to allow testing and provide access to facilities upon future APHIS notification that testing is required. This change will affect persons moving livestock or poultry interstate for slaughter or rendering, slaughtering and rendering plants that receive animals in interstate commerce, and, in cases where test-positive animals are successfully traced back to their herd or flock of origin, the owners of such herds or flocks. The long-term effects of this change will be to improve surveillance programs for animal diseases, to contribute to the eventual control or eradication of such diseases, and to assist in certifying the status of the United States or its regions with regard to freedom from specific animal diseases.

EFFECTIVE DATE: March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), has many programs to protect the health of livestock and poultry in the United States. These include programs to prevent endemic diseases and pests from spreading within the United States and programs to prevent the introduction of foreign animal diseases, as well as programs to control or eradicate certain animal diseases from the United States.

Regulations governing the interstate movement of animals for the purpose of preventing the dissemination of animal diseases within the United States are contained in 9 CFR subchapter C, ''Interstate Transportation of Animals (Including Poultry) and Animal Products.''

The legal authority for USDA to conduct testing was recently restated in the Animal Health Protection Act (7 U.S.C. 8301 through 8317). Section 10409 of that Act (7 U.S.C. 8308) states that the Secretary of Agriculture ''may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals), including animals at a slaughterhouse, stockyard, or other point of concentration.''

On November 27, 2002, we published in the **Federal Register** a proposed rule (67 FR 70864–70875, Docket No. 99–017–1) to amend the regulations in subchapter C, part 71, ''General Provisions,'' to provide for the collection of blood and tissue samples from livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm-raised animals) and poultry at slaughter. We proposed to require that persons moving livestock and poultry interstate for slaughter only move the animals to slaughtering establishments, including rendering establishments, that have been listed by the Administrator of APHIS. We did not propose to collect samples from all livestock or poultry at slaughter, but to collect samples whenever we believe it is necessary for effective surveillance.

We solicited comments concerning the proposed rule for 60 days ending January 27, 2003. On January 27, 2003, we published in the **Federal Register** a notice (68 FR 3826, Docket No. 99–017–2) in which we extended the comment period for a period of 60 days ending March 28, 2003. We received a total of 19 comments by the close of the extended comment period. The comments were submitted by livestock industry and trade associations, individual producers, and other members of the public. Ten commenters were generally supportive of the proposed rule, although most suggested that APHIS make some changes or provide some more explanation in the final rule. The other commenters expressed concern about the effects of the proposed rule and about some of the specific provisions of the proposal, or suggested that the rule should not apply to particular levels of livestock industries. These comments are discussed by subject below.

Comments on Listing of Establishments and Selection of Establishments for Testing

One commenter stated that it is unclear how the list of establishments in proposed § 71.21(a) would be used. As proposed, the list would include both plants that have agreed to sampling and plants where APHIS has determined sampling is unneeded. What would happen when someday APHIS decides it needs to collect samples at one of the ''sampling is unneeded'' plants? The commenter suggested that the list should include only plants that have agreed to sampling, even if a subset of plants on the list have been told there are no immediate plans to sample there and they do not need to provide facilities at this time.

We agree with the commenter's concern. In preparing the proposed rule, APHIS sought to minimize effects on plants where we did not plan to conduct testing in the near future. We thought the best way to do this was to simply add such plants to the list, allowing them to continue operations without the need for any correspondence with APHIS regarding testing. If it later became necessary to conduct testing at one of these plants, we could contact the plant and inform them that they needed to provide access and facilities for testing at some future date, or they would be delisted and unable to receive livestock moved interstate.

Further study of this issue has convinced us that the list would be more useful, and better understood by industry, if all the plants listed have agreed to provide access and facilities for testing, when needed. APHIS is now prepared to contact all plants engaged in the receipt of livestock moved interstate. We will inform some plants that we wish to conduct testing in the near future, and will add these plants to the list if they agree to provide the access and facilities required for our testing schedule. We will inform the remainder of the plants that we have no immediate plans to conduct testing at them, but that it may become necessary to do so in the future, and we will add these plants to the list if they agree to provide the required access and facilities if and when they are needed.

To accomplish this change, we would change one sentence in § 71.21(a). In the proposed rule, the sentence read ''The Administrator may list a slaughtering establishment after determining that collecting samples for testing from the establishment is not necessary for the purposes of APHIS disease surveillance programs.'' In this final rule, we are changing that sentence to read ''The

Administrator may list a slaughtering establishment or a rendering establishment after determining that collecting samples for testing from the establishment is not currently necessary for the purposes of APHIS disease surveillance programs and the establishment has agreed to allow testing and to provide the access and facilities required by this section upon future APHIS notification that testing is required at the establishment.''

Several commenters were concerned that APHIS would be unaware of some small establishments and fail to list them, possibly causing severe economic harm to plants that are thereby prohibited from accepting animals in interstate commerce. These commenters were concerned that the APHIS list may deal with large establishments, but may miss some plants because they are very small or because APHIS has no interest in sampling there. How will APHIS ensure completeness of the list?

This is a valid concern, but we do not believe any change to the rule is needed to resolve it. Since the proposed rule was published, APHIS has been collecting and verifying the contact information for all plants that would be affected by the regulations, to ensure that we are able to contact them all. If we still fail to contact a plant eligible for listing and leave it off the first list, we are prepared to add the plant to the list after being informed of the omission. [1] A plant in this situation will still be able to accept animals moved interstate while APHIS is in the process of adding it to the list, because APHIS is the agency that would be responsible for denying such movement, and we do not intend to do so when the plant's eligibility to receive such animals is in doubt because of a mistake APHIS made in not contacting the plant about its listing status.

One commenter stated that when APHIS selects plants for sampling, the decision should be based on sound epidemiology, and should consider that surveillance at slaughter at any point in time is not a true random sample of the population. Producers generally only send healthy animals to slaughter. Plant selection would be different depending on whether APHIS was trying to prove freedom from a disease, or delimit a known or suspected disease.

We agree, and intend to follow these principles in determining when and where to collect samples.

[1] Plants may request to be added to the list by writing to National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

Comments on Applicability of Rule to Rendering Plants

Two commenters suggested that to achieve its purpose, the rule should apply not only to slaughtering establishments producing meat for human food, but also to businesses such as rendering plants that accept livestock to produce other products.

The proposed rule applied to all establishments that slaughter livestock, regardless of the intended use of the products produced at the establishment. The proposal covered meat and poultry slaughter establishments operating under federal inspection, state inspection, and slaughter establishments operating under voluntary inspection pursuant to the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 *et seq*. The provisions of the Federal Meat Inspection Act (FMIA, 21 U.S.C. 601 *et seq*.) and Poultry Products Inspection Act (PPIA, 21 U.S.C. 451 *et seq*.) cover both establishments that slaughter specified animals for human consumption as well as establishments which slaughter specified animals for other than human consumption. The FMIA and PPIA merely exempt certain establishments, such as those which slaughter specified animals which are not intended for human consumption, from the inspection requirements of the Acts. Therefore, we believe that the proposed rule clearly applied to establishments slaughtering livestock or poultry for human consumption, rendering establishments that slaughter livestock or poultry for processing into products intended for human food, and rendering establishments that slaughter livestock or poultry for processing into products other than human food. However, to make this clear, we have added the phrases ''slaughtering establishments, including rendering establishments'' and ''slaughtering or rendering establishments'' in the regulation.

There are about 130 packer/renderer operations in the United States, where a rendering establishment operates on the same premises as a slaughtering establishment and processes primarily waste from that slaughtering establishment. The proposed rule as written would allow APHIS to conduct necessary sampling at such establishments by granting access to the slaughtering establishment. However, there are about 150 ''independent renderer'' establishments in the United States that do not operate on the premises of a slaughtering establishment or process mainly waste from a single establishment. Some of these independent renderers directly accept livestock for rendering, and these are the types of establishments where APHIS may need to conduct sampling.

In fact, in some circumstances animals received by rendering plants may have a high incidence of disease and provide particularly useful opportunities for sampling, due to the debilitated nature of many animals sent to such plants. Such plants also provide an opportunity to collect a large volume of brain and tissue samples needed for surveillance of bovine spongiform encephalopathy (BSE) and other transmissible spongiform encephalopathy (TSE) diseases, with less disruption to plant operations than would occur in slaughtering establishments.

Recent events have made APHIS testing of cattle at rendering plants even more important. Following the December, 2003, diagnosis of BSE in a single cow in Washington State, the Food Safety Inspection Service (FSIS) implemented a new policy regarding Federally approved slaughtering plants. In an interim rule published in the **Federal Register** on January 12, 2004 (69 FR 1861–1874, Docket No. 03–025IF), FSIS added language to their regulations excluding all non-ambulatory disabled cattle from the human food supply, and requiring that any such cattle that arrive at a slaughter establishment must be condemned and disposed of through approved means. One approved means for disposing of non-ambulatory disabled cattle is through rendering the cattle for use in products that are inedible for human food. Therefore, APHIS expects a substantial increase in the number of non-ambulatory disabled cattle that are sent to rendering plants.

APHIS has also taken action in response to the diagnosis of BSE in a cow in Washington State. Among other actions, APHIS plans to increase its level of BSE testing in domestic cattle. In each of the past several years, APHIS has tested about 20,000 cattle for BSE. Because non-ambulatory cattle have been identified as a high risk group for BSE, three-fourths, or 15,000, of the cattle tested each year have been non-ambulatory cattle. APHIS selected most of these cattle from the non-ambulatory cattle processed at slaughter plants.

In 2004, APHIS plans to increase substantially the number of cattle it tests for BSE. We expect to select many of these cattle from those sent to rendering plants.

Therefore, to emphasize the rule's coverage of rendering plants that accept livestock moved interstate, we are slightly amending the text of § 71.21(a). We are also removing the definition of

recognized slaughtering establishment from § 71.1 because the term no longer appears in the revised text.

In the proposed rule, the introductory text of proposed § 71.21(a) read ''Any person moving livestock or poultry interstate for slaughter may only move the animals to a slaughtering establishment that has been listed by the Administrator for the purposes of this part. A slaughtering establishment may receive livestock or poultry in interstate commerce only if the slaughtering establishment has been listed by the Administrator. The Administrator may list a slaughtering establishment after determining that collecting samples for testing from the establishment is not necessary for the purposes of APHIS disease surveillance programs. Otherwise, the Administrator will list a slaughtering establishment after determining that it is a recognized slaughtering establishment or a slaughtering establishment that undergoes voluntary inspection under the provisions of the Agricultural Marketing Act (12 U.S.C. 1141 *et seq.*), and that it: * * *.'' The section then went on to describe facility space, equipment, and access requirements.

In this final rule, we have amended that text to read as follows: ''Any person moving livestock or poultry interstate for slaughter or rendering may only move the animals to a slaughtering establishment or a rendering establishment that has been listed by the Administrator for the purposes of this part.

Note: A list of these slaughtering establishments, including rendering establishments, may be obtained by writing to National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

Livestock or poultry may not be removed from the premises of a slaughtering establishment or a rendering establishment listed by the Administrator except under a permit issued by APHIS, and in accordance with applicable FSIS regulations in this title. A slaughtering establishment or rendering establishment may receive livestock or poultry in interstate commerce only if the establishment has been listed by the Administrator. The Administrator may list a slaughtering establishment or a rendering establishment after determining that collecting samples for testing from the establishment is not currently necessary for the purposes of APHIS disease surveillance programs and the establishment has agreed to allow testing and to provide the access and facilities required by this section upon future APHIS notification that testing is required at the establishment. The Administrator will list a slaughtering or rendering establishment after determining that it meets the following facility and access requirements: * * *.''

Comments on Poultry Industry Issues

Four commenters stated that poultry slaughter plants should be exempted from the rule because poultry disease issues are significantly different from disease issues faced by red meat industries, testing for TSE diseases is an important goal of the rule and there are no TSE diseases known to affect poultry, and existing disease monitoring programs (*e.g.*, the National Poultry Improvement Plan and existing Food Safety and Inspection Service [FSIS] sampling programs) are sufficient to monitor for poultry diseases.

We believe that basic disease management issues are similar enough in poultry and red meat industries to support a role for slaughter testing in both. We do not maintain that slaughter testing will ever be the primary means of dealing with poultry disease issues. However, data collected from poultry slaughter testing can be very valuable in dealing with certain disease issues, particularly identifying and characterizing emerging poultry diseases. Slaughter testing at poultry plants has not been needed on as large a scale as it is needed in red meat plants, due to several reasons, including the large amount of poultry testing data already generated under the National Poultry Improvement Plan at the producer level. However, APHIS must have access to collect samples at poultry plants when disease outbreak situations occur that require more surveillance.

One commenter stated that the major differences between poultry and red meat slaughter industries (animal size, layout and construction of plants, diseases and diagnostic methods) mean that a single set of regulatory requirements cannot realistically cover both.

We agree that no single sampling protocol or diagnostic approach would apply to both red meat and poultry industries, due to the different types of diseases involved. However, the rule does not specify this type of detail. It only deals with gaining access to plants to collect samples; it does not include detailed requirements for how to collect samples, how many samples to collect, or how to process them. APHIS will determine the number and type of samples that must be collected from different plants at different times based on current needs for sound epidemiological surveillance of diseases of current concern. Details regarding how samples will be collected—*e.g.*, on which days, at what time of day, at what point in the production line—will be worked out between APHIS and individual plants, taking into account the nature of the facility in each case. We believe the basic requirements for access and workspace to collect samples apply equally well to poultry and red meat facilities.

Two commenters stated that slaughter testing of poultry will not prevent productivity losses, because flock monitoring by company veterinarians and diagnostic labs provide earlier, more useful awareness of manifestations of disease. One commenter stated that in commercial poultry, velogenic viscerotropic Newcastle disease (VVND) and similar diseases are detected by an extreme surge in mortality, not by slaughter surveillance.

Existing flock monitoring programs produce excellent results in identifying problems with well-known diseases in poultry industries. However, these programs are not designed to focus on new, emerging, or unknown diseases, some of which may not cause immediate large-scale losses to the flock. Slaughter sampling can help APHIS to characterize such diseases and develop useful data about emerging diseases on a national level.

One commenter suggested that alternate sample collection methods should be used for poultry plants that lack space and layout for dedicated inspector facilities. Birds could be bled in the unloading/hanging area before they actually enter the plant. Existing FSIS inspectors on the line could bag and label viscera from birds and place them in a cooler for later, offsite examination.

APHIS will consider using all of these methods if they work well at a particular plant. Procedures for sample collection will be devised in cooperation with the management of each plant to ensure that the needed samples are collected with minimum disruption to plant operations. Certainly, it will be possible to collect needed samples at some poultry plants without adding new inspectors to the production line.

One commenter asked how the rule would enhance VVND detection, and whether there was a blood test suitable for slaughter testing that is specific for VVND.

VVND is not a primary disease target for our plans for slaughter testing, since other effective means of surveillance for it are currently in place. There is no approved blood test for VVND. If it

becomes necessary to test for VVND at slaughter, tissue samples would be sent to a laboratory for diagnosis—as with other diseases for which there is no blood test.

Three commenters stated that the rule should apply to all State and federally inspected poultry slaughtering establishments.

Limits to APHIS authority require that our primary focus must be on establishments that receive livestock or poultry moved interstate. However, APHIS always has worked with States cooperatively when States exercise their authority to conduct sampling at plants conducting business intrastate. APHIS and States share testing data from tests conducted under their respective areas of authority.

One commenter stated that the rule would eliminate the need for the National Avian Influenza Program (NAIP) developed with the United States Animal Health Association (USAHA), but would be more intrusive and costly, and not nearly as effective.

This rule would only affect NAIP testing to the extent that we implement sample collection for avian influenza testing under the rule. We will discuss any perceived need for additional avian influenza testing with NAIP participants, and would only implement additional testing at slaughter if it would clearly contribute valuable additional data about the disease.

Three commenters stated that with regard to poultry, the rule should be limited to control of ''program'' diseases only, *i.e.*, diseases for which a Federal control or emergency program exists.

Such an approach would not be practical or proactive. One purpose of the sampling conducted under the rule will be to identify and characterize new and emerging disease problems for which Federal or State programs do not exist. Another purpose is to document freedom from exotic diseases that do not exist in the United States, and therefore may not have Federal or State control programs, but which might be introduced at any time. It is important to recognize that our surveillance programs are intended to both characterize known disease problems and to identify emerging disease problems.

Two commenters stated that the proposed rule erroneously stated that the National Poultry Improvement Plan ''includes slaughter testing to control certain poultry diseases, particularly those caused by various species of *Salmonella, Mycoplasma gallisepticum, M. synoviae, M. meleagridis,* and avian influenza viruses.''

The commenter is correct, and we apologize for the error in the preamble to the proposed rule that described slaughter testing as part of the National Poultry Improvement Plan procedures.

Three commenters suggested that the rule should include ways to use the data collected from testing to facilitate poultry exports by providing the basis for addressing the export requirements of trading partners.

We agree that data from slaughter testing authorized by this rule may be used to support statements regarding national or regional freedom from specified diseases on export certificates. However, no change to the rule is needed to make this possible. The currently established procedures for export certification described by APHIS regulations in 9 CFR part 91, by the Office International des Epizooties, and by the World Trade Organization allow national governments to use such data in support of certificate statements. APHIS intends to do so when slaughter testing produces data relevant to export certification.

Comments on Economic Impacts

Five commenters stated that the rule should provide for remuneration by APHIS to plants when inspections disrupt operations, slow movement of the processing line, or cause other financial losses. One additional commenter stated that the rule should provide for remuneration by APHIS when sampling destroys a whole carcass or renders it unusable.

We do not intend to establish a program to compensate plant owners for costs incidental to the process of collecting and testing samples. Many Federal agencies, including APHIS, FSIS, and the U.S. Food and Drug Administration, and others, are authorized to collect product samples for testing purposes and are not required by law to provide compensation for such samples. Such testing is in the public interest and addresses public health concerns. In cases where a plant owner believes the testing program has caused destruction of animals or other articles, the affected party could file a claim under 7 U.S.C. 8308(b)(1), which states that the Secretary ''may pay a claim arising out of the destruction of any animal, article, or means of conveyance consistent with the purposes of this subtitle.''

One commenter suggested that the rule should be amended to include only those species and classes of livestock that are currently routinely sampled at slaughter.

As discussed above, our surveillance programs are intended to both characterize known disease problems and to identify emerging disease problems. Strictly limiting testing to species that have been tested in the past would not accomplish that. Certainly, the vast majority of samples will be collected from classes of livestock that are currently routinely sampled at slaughter, but when APHIS sees a reason to test other species of livestock (defined by the Animal Health Protection Act as ''all farm raised animals'') we will do so.

Three commenters stated that the rule would impose substantial burdens on establishments that do not have the necessary size or facilities to accommodate the sampling.

As discussed below in the section ''Executive Order 12866 and Regulatory Flexibility Act,'' we do not believe this will be the case. Based on discussions with livestock industry groups and slaughter industry groups, and the fact that most slaughtering plants accepting animals in interstate commerce already cooperate with voluntary testing programs, we expect there will be minimal effects on most slaughtering plants in complying with the standards.

One commenter stated that excessive facility adaption costs required by the rule may be passed on to producers, particularly harming those (typically small) producers without long-term marketing contracts.

As discussed above, and in the section ''Executive Order 12866 and Regulatory Flexibility Act,'' we do not believe many facilities will face large adaption costs. The costs they do face may be passed on to producers, or to buyers of the establishment's products, or to both, depending on the business situation of the particular establishment.

The same commenters suggested that some slaughter plants may use the rule's requirements to break existing contracts to buy animals at a certain price and renegotiate the contracts on terms advantageous to the slaughter plants. The example cited was that some pork slaughter plants are buying pigs under long-term contracts at prices that may be higher than current market prices. These plants may choose to become temporarily ''unlisted,'' effectively breaking the contract, then become listed and resume buying at lower prices, harming producers.

This scenario seems unlikely, because the plant would be undertaking great risks in exchange for questionable gains. First, the plant might be hurt by adverse publicity and possibly lose desired business on a permanent basis during the time it is unlisted. Second, the plant could not make certain business plans based on an expectation that it would be

''delisted'' on a particular date and ''relisted'' on another particular date, because APHIS, not the plant, controls the dates of these actions.

One commenter stated that the proposed rule's estimate that affected plants would spend ''a few thousand dollars'' to comply is highly questionable. Even minor modifications to plants often cost tens of thousands of dollars, and the APHIS estimate would not even cover preliminary engineering and design fees.

Based on experience to date collecting samples at plants, the estimate did not assume that plants would have to build actual additions to plant buildings or engage in significant construction. APHIS is already collecting samples at most of the larger plants in the country where sampling is desired, so access and facilities for sampling are already in place at many large plants. APHIS will work with individual plants to minimize the need for expensive modifications. In view of this, we continue to believe that our estimated average cost to comply is accurate.

One commenter asked whether products from carcasses APHIS samples would be withheld from commerce pending test results. If so, plants face significant costs with respect to sanitary segregation, product and offal storage, and possible adverse publicity.

Typically, APHIS does not order carcasses held pending test results for animal diseases. If plants choose to hold carcasses voluntarily pending test results, that is their business decision, not a result of the rule. In accordance with longstanding practice, APHIS, in cooperation with FSIS, may order a carcass held if it is believed to be infected with an agent that poses a human health risk, *e.g.*, tuberculosis, or possibly some emerging diseases. Also, in a recent policy notice published in the **Federal Register** on January 12, 2004 (69 FR 1892, Docket No. 03–048N), FSIS announced that its inspectors will not mark ambulatory cattle that have been targeted for any BSE surveillance testing as ''inspected and passed,'' until negative test results are obtained. While the APHIS BSE testing program primarily tests non-ambulatory cattle that would not be at slaughter plants, we do intend to test some cattle from slaughter lines, so this policy may result in FSIS holds on several hundred to a few thousand cattle at slaughter plants each year.

Comments on Records, Reports, and Animal Traceback

Two commenters stated that the rule should require plants to collect information on the premises of origin of animals slaughtered there, and provide this information to APHIS upon request for traceback purposes. Establishment of a national premises identification program would allow more efficient slaughter surveillance.

The issues of animal identification and traceback procedures are outside the scope of this rulemaking. APHIS is continually examining options to improve animal identification and traceback, and will consider these comments in relation to those issues, but will not make any change to this rule based on the comments.

Five commenters stated that records generated under the rule should keep the identity of individual slaughter plants confidential and not subject to Freedom of Information Act (FOIA) requests.

In general, testing results for surveillance purposes are combined and summarized in reports that do not contain information identifying the particular establishments where tests were conducted. APHIS will handle confidential business information from establishments in accordance with statutory and regulatory requirements established to protect it. With regard to FOIA, APHIS cannot make an advance determination to withhold all identifying information; each FOIA request must be evaluated according to current judicial decisions interpreting applicability of the FOIA statute. Exemption 4 of FOIA does protect ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential,'' but court cases frequently affect how this exemption is applied. The Department of Justice maintains a ''FOIA Updates'' Web site that discusses how court cases and new interpretations have affected FOIA over time, at *http://www.usdoj.gov/oip/foi-upd.htm.*

Two commenters stated that APHIS should generate an annual report of testing activities and results.

APHIS intends to generate regular reports on the findings of surveillance testing done under this rule, as it does for its other surveillance programs. Among other reports, APHIS submits an annual report to the USAHA documenting the findings of APHIS disease surveillance activities.

One commenter stated that while the proposed rule said APHIS and State representatives would provide a copy of the list of approved establishments upon request, APHIS should also consider easier means (*e.g.,* a Web site) for producers to obtain the information.

We agree with the commenter, and intend to establish a Web site that will contain the list of approved establishments, provide a procedure for establishments to request their addition to the list, and include links to other information and reports about slaughter surveillance testing.

One commenter stated that plants should be promptly informed by APHIS as to what products are being tested and when results are expected, so plants can determine the manner in which they may wish to voluntarily hold and store products pending results.

Section 71.21(c) provides that APHIS will notify establishments, with ''as much advance notice as possible,'' as to when APHIS will begin and end sampling at the establishment. This notice would also include the type and approximate number of samples APHIS will collect. Test results will be provided to establishments as soon as they are available to APHIS.

Comments on APHIS–FSIS Coordination

Three commenters stated that the rule should provide that APHIS will fully use existing FSIS sampling activities and the plant facilities established for them before requesting additional facilities. A commenter also stated that the proposed rule is too vague regarding when APHIS would make plants provide space or facilities and when APHIS would make do with existing FSIS facilities. Terms like ''when convenient,'' ''adequate,'' and ''at the Administrator's discretion'' do not help readers understand who will be affected or the degree of impact.

APHIS intends to fully utilize existing FSIS sampling activities whenever possible, to avoid adding additional inspectors and increasing the burden on establishments. When APHIS can do so and when we must ask for additional access or facilities is a question that really must be worked out in discussions between APHIS and individual establishments after APHIS decides it must sample at an establishment. It is true that the rule does not let readers deduce which establishments will be sampled and which will not, because the establishments sampled will depend upon ongoing and continually evolving APHIS assessments of disease risk and epidemiology at a national level.

Three commenters stated that APHIS and FSIS should establish a single set of harmonized sampling requirements to facilitate activities and minimize burdens.

While APHIS and FSIS cooperate on sampling, the agencies' different areas of concern and the possibility of sudden external changes affecting disease risk make it unlikely that a single, enduring

set of sampling requirements is possible. FSIS continually adjusts its sampling levels to adapt to risk indicators or outbreak reports related to human food borne disease, and APHIS does the same with regard to animal diseases. The two agencies will coordinate their activities as much as possible to minimize burden on establishments.

Other Comments

One commenter asked whether APHIS inspectors have the expertise to make a certain diagnosis in the field, or will they rely exclusively on preliminary tests such as PCR reactions?

While the nature of individual tests and diagnostic procedures is outside the scope of this rule, it is safe to say that some samples will be subjected to rapid field tests, with positive results confirmed later by laboratory analysis. Other tests may only be performed at a laboratory.

One commenter stated that sample collection by truly independent inspectors is needed to stop the plants from selling dirty, disease-causing meat to American consumers.

Since this comment seems to address human disease risks, rather than animal disease risks, it is outside the scope of the rule.

One commenter suggested that massive levels of BSE and TSE testing (at least 1 million rapid tests a year for 5 years) are needed.

APHIS intends to continue its surveillance for BSE and other TSE diseases, and will seek to increase the number of tests to an optimal level. As noted above, we initially expect to double the number of domestic cattle tested from BSE each year, from 20,000 to 40,000. Since the commenter did not provide a basis for suggesting 1 million tests a year for 5 years, we cannot evaluate this specific suggestion.

One commenter stated that the goal of the proposal, which he summarized as providing a valid national profile of diseased animals going to slaughter, should be restated. In surveillance, negative results (healthy animals) can be as important as positive results (diseased animals) with regard to demonstrating freedom from disease to trading partners.

We agree that both obtaining an accurate profile of animal disease on a national level and demonstrating freedom from particular diseases are important goals of the rule.

One commenter noted that the proposal refers to cull sows and boars as the preferred population for pseudorabies testing. The commenter stated that in reality, two- and three-tier pork production systems with pigs moving between epidemiologically distinct sites mean that the health status of culls will not necessarily reflect the health status of market pigs. The Meat Juice Pilot Project was cited as an example of a better approach to test market swine at slaughter.

APHIS has worked closely with the swine industry to ensure that even though swine move between several sites in large-scale production systems, we are still able to do meaningful tracebacks of diseased animals and develop good epidemiological information about production system premises. See, for example, our regulations about interstate movement of swine in production systems in 9 CFR part 71. The Meat Juice Pseudorabies Virus Pilot is an important proof-of-concept project that has tested hundreds of thousands of samples from swine packing plants in Iowa over the past several years. One of the things the pilot demonstrated is that it is possible to collect slaughter samples without unduly disrupting plant operations. APHIS intends to continue working with the pilot project, and to apply its principles as we develop additional testing under this rule.

One commenter asked what the repercussions would be if an animal is unknowingly moved interstate to an unlisted plant. Is the person moving the animal (owner, trucker, manager) liable for not being properly informed?

We are not able to give a blanket answer to this question about enforcement of the rule, because so much depends on the facts of each particular case. In general, persons moving livestock interstate are responsible for knowing the requirements of applicable rules and regulations governing such movement. However, plants will know whether or not they are listed as approved to receive livestock moved interstate, and will also typically know if the livestock they are buying were moved interstate, and an unlisted plant would clearly be in violation if it knowingly received animals moved interstate. During the early implementation of this rule, APHIS enforcement will take into account the need for a learning period while plants, producers, and transporters become familiar with its requirements.

One commenter stated concerns about the risks posed by animals that are delivered to a slaughter plant but are then removed from the premises rather than slaughtered. Such animals might be infected with diseases that would not be discovered because the animals are not available for testing.

APHIS is aware of this problem. Occasionally animals are removed from a slaughter plant premises and moved to either a producer's premises or another slaughter plant. Such uncontrolled movements do present a risk of exposing other animals if the animal being moved is infected, and the movements are inconsistent with the definition of ''moved to slaughter'' in various APHIS regulations, which presumes that animals moved to slaughter will be slaughtered at the destination.

Therefore, we are adding language in this final rule to prohibit the removal of animals moved interstate to a slaughter or rendering establishment from the premises of that slaughter or rendering establishment unless the animals are moved in accordance with a permit issued by APHIS. While removal of animals would generally not be allowed, APHIS may issue a permit for such movement in exceptional cases, *e.g.,* if a plant accidentally receives a shipment of animals that it is unable to slaughter because the size of the animals does not match the slaughter plant's line capabilities, or the slaughter plant is experiencing mechanical difficulties that bring processing to a halt.

To accomplish this change, we are adding the following sentence to § 71.21(a): ''Livestock or poultry may not be removed from the premises of a slaughtering establishment or a rendering establishment except under a permit issued by APHIS, and in accordance with applicable FSIS regulations in this title.''

One commenter stated that with regard to bovine tuberculosis testing, the proposed rule did not present statistically valid data or identify specific benefits for increasing testing from 1,200 head per year to 4,000 or more, since the current number of cattle infected does not seem significant enough to warrant increased testing.

Eradication of bovine tuberculosis is a priority for USDA and the cattle industry. It should be remembered that bovine tuberculosis caused more losses among U.S. farm animals in the early part of the 20th century than all other infectious diseases combined. Substantial decreases in tuberculosis levels in recent years are partly a result of increased testing for the disease. As levels of tuberculosis decline in a large national cattle population, its low incidence requires more testing to locate remaining pockets of the disease.

One commenter stated that one purpose of the rule is stated as allowing APHIS to collect slaughter samples ''whenever we believe it is necessary.'' This commenter said APHIS should

develop standards for when it is ''necessary,'' to avoid being arbitrary and capricious.

Collecting slaughter samples is necessary at different times and under different circumstances to meet a wide variety of surveillance goals. It is not feasible to develop a rule of general applicability that will describe in advance when sampling will be necessary. Sampling may be used when it is suspected that a disease is in an area, to determine its presence or absence, and to estimate the incidence or prevalence if the disease is present. Sampling may be needed to provide data for new or updated risk analyses produced in support of disease control programs, or required to open international markets for products. Sampling may be increased in an area when a disease outbreak is suspected, then reduced in that area when sufficient tests have been done to prove the suspicion was unfounded. Constantly changing disease outbreak, trade, and livestock industry conditions make it necessary for APHIS surveillance experts to continually revise the mix and degree of sampling activities, based on application of their expert knowledge to current conditions.

Other commenters raised several issues that were outside the scope of this rulemaking that will not be discussed in this final rule.

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

Effective Date

This rule is needed to allow APHIS to conduct effective surveillance programs for dangerous animal diseases, including improved surveillance for BSE in response to the finding of that disease in a cow in Canada, and the December 2003 diagnosis of BSE in a cow in Washington State. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined, in accordance with the provisions of 5 U.S.C. 553(d)(3), that there is good cause to make this rule effective less than 30 days after publication in the **Federal Register.**

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The economic analysis prepared for this final rule is set out below. It includes both a cost-benefit analysis as required by Executive Order 12866 and an analysis of the economic effects on small entities as required by the Regulatory Flexibility Act.

APHIS will require persons moving livestock (horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm-raised animals) and poultry interstate to slaughter or rendering to move them only to slaughtering or rendering establishments that have been listed by the Administrator. The Administrator may list an establishment after determining that it is not currently necessary to conduct testing there and that the facility has agreed to grant access and provide facilities if and when needed, or that testing is necessary and that the establishment provides access and facilities for the collection of tissue and blood samples from the animals slaughtered. We are taking this action to increase the effectiveness of our surveillance for livestock diseases. Collection of samples currently occurs on a small, voluntary scale, but it needs to be expanded and to include both large and small slaughtering plants. Samples are currently collected by personnel employed by APHIS, FSIS, or the slaughtering plants themselves.

According to National Agricultural Statistics Service (NASS) and FSIS statistics for slaughtering establishments that may receive animals in interstate movement, there are approximately 795 plants slaughtering cattle, 757 plants slaughtering swine, 350 plants slaughtering poultry, and 2 plants slaughtering horses. (The horse plants will not be addressed further in this analysis because APHIS currently has no plans to collect samples at them.) Fourteen of the cattle plants and 11 of the swine plants are very large operations that account for 50 percent of the cattle and swine slaughtered each year. Several dozen of the plants are of moderate size; the rest are small businesses. Some of these plants slaughter both cattle and swine, and some slaughter other animals as well (sheep, horses, cervids, etc.). Some degree of sample collection already occurs at virtually all of the cattle plants, *e.g.*, to collect the 12 million blood samples required each year under APHIS's regulations in 9 CFR part 78 for States to maintain their brucellosis classifications. Some sample collection already occurs at about 20 to 25 of the largest swine plants to collect blood samples for pseudorabies testing.

This final rule will allow us to collect samples at plants where sampling does not now occur, but where sampling is needed to fill information gaps in our animal disease programs. We expect to initiate testing at several large plants, primarily swine plants, where testing has not occurred before, and at approximately 20 small businesses.

As noted above, many slaughtering plants already voluntarily cooperate with APHIS to allow us to collect samples for testing. Because of the relatively small number of additional animals that will be tested and the relatively small number of cases of disease expected to be identified, we do not expect that this rule will have a significant economic effect on any affected entities. Based on discussions with livestock industry groups and slaughter industry groups, and the fact that most slaughtering plants accepting animals in interstate commerce already cooperate with voluntary testing programs, we expect there will be minimal effects on most slaughtering plants in complying with the standards.

The primary economic effects of this rule will be direct costs to those slaughter and rendering plants that will have to provide us with access, workspace, and equipment to collect samples. We believe that some of the 20 to 30 plants that have not already been providing access under voluntary sampling programs may incur some facility adaption costs the first time that we collect samples at them, if they have to create or furnish new office space for inspectors to comply with § 71.21(b), and afterwards may incur some lesser costs if the speed at which the processing line moves is slowed or stopped for samples to be taken.

In the following sections we discuss potential economic effects on the various categories of slaughtering plants, based on the types of animals each processes. We do not specifically address rendering plants in these sections because, excluding the effects of increased BSE testing, the rule is expected to affect only three or four rendering plants, those plants are not small businesses, and we cannot accurately estimate economic effects on rendering plants because we have little economic information concerning these plants. APHIS is currently developing plans to increase BSE testing of cattle at rendering plants, but we are not sure yet how many separate plants must be sampled to provide a representative sample. Preliminary information from the rendering industry suggests that plants that currently render non-ambulatory animals would also process most of any increase in the number of such animals that is rendered. If this is the case, the number of rendering plants

affected by this rule would remain at three or four, or increase only slightly. In recent discussions, renderers have also suggested that allowing APHIS to collect sample would not impose significant costs. The renderers were concerned that later policy developments addressing food safety could significantly affect the costs involved in processing non-ambulatory animals. For example, renderers stated that if later decisions allow carcasses of non-ambulatory cattle to be rendered for edible products after the cattle have tested negative for BSE, the renderers would have to store the carcasses in refrigerated facilities while awaiting test results.

First, we present two tables summarizing the per-unit costs and the total industry costs estimated to result from the blood and tissue sampling requirements in this final rule for cattle, swine, and sheep. Bear in mind that the major costs of sample collection are borne by the Federal government, and that the costs to slaughter plants are limited to costs associated with providing access for sample collection.

TABLE 1.—PER-UNIT COST OF BLOOD AND TISSUE SAMPLING—ANNUAL BASIS

Animal	Number slaughtered (millions)	Disease	Samples currently collected	Samples needed	Cost of collection (per unit)	Cost of testing (per unit)
Cattle	35.5	Brucellosis	12 million	12 million	$0.50–1 [1]	$0.10–0.50
Cattle	35.5	Tuberculosis	1,200	4,000	22 [2]	20
Swine	101.1	Pseudorabies	750,000	1.2 million	0.45–0.90	1–1.50
Swine	101.1	Brucellosis	750,000	1.2 million	— [3]	1–1.50
Sheep	4.0	Scrapie	12,000	75,000	5–10 [4]	30

[1] Contracts for collecting brucellosis samples are negotiated individually, prices vary widely.

[2] To collect a sample for tuberculosis testing takes a veterinarian about 30 minutes. A 2003 final rule by FSIS revised the hourly user fee FSIS charges for services under its inspection program to $43.64 per hour; this fee includes $25 to $32 per hour of salary (typically a GS–12 level) plus benefits, overhead, and certain travel, operating, and laboratory costs. Additionally, the plant incurs a cost because the speed at which the processing line moves is slowed or stopped for a sample to be taken. Also, FSIS requires that the suspect carcass be held by the plant while the testing is done, which typically takes 3 days. If the test is negative, the carcass is released. If the test is positive, the carcass cannot be sold unless it is done in accordance with FSIS regulations at 9 CFR 311.2, and steps are taken to trace the diseased animal back to its source.

[3] No cost because the same blood sample is used to test for pseudorabies and brucellosis.

[4] Animal health technicians normally collect scrapie test samples. An animal health technician can collect approximately 10 samples for scrapie testing per hour. Adjusting for time spent bagging samples for shipment, collecting identification devices, other administrative duties, and varying levels of efficiency at different facilities based on their layout and slaughter volume, the actual average collection rate will probably be 2 to 3 samples per hour. An approximate hourly wage rate for a technician employed in a slaughtering facility ranges from $16 per hour to $21 per hour, based on the GS–7 pay scale plus benefits. Additionally, the plant will incur a cost because the processing line may be slowed or stopped for a sample to be taken.

TABLE 2.—TOTAL COST OF BLOOD AND TISSUE SAMPLING—ANNUAL BASIS

Animal disease	Samples needed	Per-unit cost of collection	Per-unit cost of testing	Estimated total cost (millions) lower bound	Estimated total cost (millions) upper bound
Cattle brucellosis	12 million	$0.50–1	$0.10–0.50	$7.2	$18
Cattle tuberculosis	4,000	22	20	0.168	0.168
Swine pseudorabies	1.2 million	0.45–0.90	1–1.50	1.74	2.88
Swine brucellosis	1.2 million		1–1.50	1.2	1.8
Sheep scrapie	75,000	5–10	30	2.625	3
Totals				12.933	25.848

Note: Only approximately 25 percent of these costs come from increases in sampling resulting from the final rule; the remainder represents sampling already occurring under previous authorizations.

Profile of Cattle and Swine Slaughtering Plants

APHIS is trying to increase surveillance for brucellosis, pseudorabies, and tuberculosis at these plants. Collection of samples needs to be expanded to include both large and small slaughtering plants. Under this final rule, samples will be collected by APHIS or FSIS personnel, contractors, or the slaughtering plants themselves.

The meat packing industry is included in the North American Industry Classification System (NAICS) code of 311611. The Small Business Administration (SBA) definition of small business for NAICS 311611 is a firm with less than 500 employees.

In 2002, the vast majority of meat packing plants were small entities under SBA guidelines. There were 292 large meat packing plants under Federal inspection in 2002. The 50 largest meat companies in the industry had combined sales of $119.7 billion. Of this total amount, just the 10 largest companies produced $86.6 billion of the sales. The remaining 40 companies produced $33.1 billion in sales.

There are 706 federally inspected plants that slaughtered at least one head of cattle in 2002. Fifteen plants account for over 56 percent of the total cattle killed. (Agricultural Statistics Board, NASS, Livestock Slaughter 2002 Summary, March 2003.) There are 683 plants that slaughter hogs. Nine plants account for 43 percent of the total hogs killed.

Cost of Testing Additional Tissue Samples for Tuberculosis

Currently, FSIS collects about 1,200 tissue samples from slaughter cattle each year to be tested for tuberculosis. There are approximately 100 positive test results per year. It is estimated that 0.0002 percent of all U.S. cattle may be infected with tuberculosis. There were 98.5 million head of cattle in the United States as of January 1, 1999. Therefore, it is estimated that fewer than 200 head of cattle are infected with tuberculosis at any one time.

Under this final rule, the direct costs of collecting a tissue sample and testing it for tuberculosis will be borne by APHIS, in either salary or contractor costs. It takes a veterinarian about 30 minutes to collect a sample for tuberculosis testing. An approximate hourly wage rate for a Federal or contractor veterinarian to do these duties is $22 to $28 per hour. The cost of laboratory analysis to test for tuberculosis is about $20.

A slaughtering plant may incur a cost if its processing line must be slowed or stopped for a sample to be taken. Usually, samples can be collected without slowing the line. Currently about 0.003 percent (1,200) of cattle slaughtered are tested for tuberculosis, and we anticipate that after this rule we will initially increase testing to 4,000 head annually. Over time, the annual number of cattle tested for tuberculosis at slaughter may increase to about 5,300, to provide fully adequate surveillance. Because of the small number of additional tests for tuberculosis, this aspect of the final rule will not have a material effect on small business entities.

If a tuberculosis test is negative, the carcass is processed and sold. If the test is positive, the carcass cannot be sold unless it is done in accordance with FSIS regulations at 9 CFR 311.2, and steps are taken to trace the diseased animal back to its source. If this traceback is successful, the herd has to be quarantined while it is tested and may be depopulated if found positive. However, economic effects related to herd quarantine and depopulation are not reasonably linked to this rule, since herds are already quarantined and depopulated under other APHIS regulations.

Cost of Testing Additional Blood Samples for Cattle Brucellosis

This final rule will not change the number of brucellosis test samples collected from cattle or the way in which they are processed. This final rule will have no significant economic effect with regard to cattle tested for brucellosis.

Currently there are approximately 12 million blood samples collected each year to test for brucellosis. Under part 78, States must collect these samples in order to maintain their brucellosis status.

There are 795 federally inspected plants that slaughtered at least one head of cattle in 1998. Fourteen plants account for over 50 percent of the total cattle killed. (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999.) All slaughtering plants that ship products across State lines are subject to Federal inspection.

In 1998, there were 35.5 million head of cattle slaughtered; 98.1 percent were subject to Federal inspection. Only cattle that are 2 years old or older are tested for brucellosis.

Most of the blood sample collection is done by plant personnel or by FSIS. APHIS personnel collect only a small percentage of the total samples, approximately 50,000 samples per year, or 0.4 percent of the total.

Testing of the samples for brucellosis costs between $0.10 and $0.50 per sample. The high range of costs will cover followup tests from a positive result.

Cost of Testing Additional Blood Samples for Swine Pseudorabies

Currently there are about 750,000 samples collected per year. An estimated 1.2 million samples are needed for more complete testing. We estimate that less than 1 percent of swine herds are infected with pseudorabies.

At a large plant, two people will be needed to do the collection of blood samples on a full-time basis, at a cost to the government of $25,000 to $30,000 per year.

At smaller plants, where not enough swine are slaughtered to warrant having an employee collect blood samples full time, APHIS pays for each sample collected. Rates range from $0.45 to $0.90 cents per sample.

The sample is sent to a lab for testing. It costs approximately $1 per sample for testing. APHIS has some contracts and cooperative agreements with universities to do some testing. The cost is negotiated with each laboratory separately. The rate can be up to $1.50 per sample.

There are 757 plants that slaughter swine. Eleven plants account for 48 percent of the total swine killed. In 1998, 101.1 million swine were slaughtered; 98.3 percent of all swine slaughtered are slaughtered under Federal inspection. (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999.) All slaughtering plants that ship products across State lines are subject to Federal inspection. Some 96 percent of the federally inspected swine at slaughter were barrows and gilts (younger pigs, with less fat, that are used for higher quality cuts of pork). There were about 4 million sows and boars slaughtered in 1998. For testing for pseudorabies, these are the swine that we are concerned about. There is about a 40 percent turnover in sows per year.

If a herd tests positive, it is then quarantined. The swine can be sold for slaughter but cannot be sold for breeding stock. Swine sold for breeding stock are typically twice as expensive as swine sold for slaughter.

Costs of Testing for Scrapie at Sheep Slaughtering Plants

As noted previously, the slaughtering plant industry is included in NAICS code 311611. The SBA's definition of small business for NAICS 311611 is a firm with less than 500 employees. Only firms with more than $100 million in sales average more than 500 employees. Two slaughtering plants that process sheep had sales of more than $100 million in 1998. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html*.)

There are 556 federally inspected plants that slaughtered at least one sheep in 1998. Two plants account for over 40 percent of the total sheep slaughtered. (Agricultural Statistics Board, NASS, Livestock Slaughter 1998 Summary, March 1999.) In 1998, 4.429 million sheep were slaughtered, of which 94.8 percent were subject to Federal inspection. Only about 212,000 of these were mature sheep suitable for scrapie testing.

It is estimated that roughly 1.2 percent of all U.S. sheep flocks are infected with scrapie. In 1998, there were only 63 cases of scrapie reported. Given this incidence, approximately 15,000 animals should be sampled at slaughter each year for optimal monitoring for scrapie. Five distinct tissue samples are collected from each animal's head, resulting in about 75,000 samples to be collected. This level of sampling will detect the incidence and distribution of scrapie with a confidence of over 95 percent.

This final rule is not expected to have a significant adverse economic effect on small businesses. Blood and tissue samples will be collected by APHIS or FSIS personnel or by a contractor paid for by USDA. Firms may incur secondary costs for collecting tissue samples for testing as a result of production lines that may have to be slowed down or stopped temporarily. Firms will also incur costs for providing the space, furnishings, and equipment required for the personnel collecting samples, although we believe many firms will be able to minimize these costs by utilizing some of the space and equipment already provided for Federal and State inspectors and firms' quality assurance personnel.

The primary direct costs will be the cost of collecting samples and the cost of testing samples, both of which will be borne by USDA. Over the long term, samples will cost about $5 to $10 each to collect and $30 each to test. Additionally, the plant may incur a cost because the speed at which the processing line moves may be slowed or stopped for a sample to be taken, similar to the effects already caused by FSIS inspections. The sheep or goat carcass would not have to be held by the plant while the testing is done, so it may continue along on the processing line, and the processor will not incur the cost of having to hold the carcass.

Additional testing for scrapie will provide a better record of diseases and enhance our ability to limit the infection of additional flocks with scrapie. While the costs of additional testing are visible, the benefits often are not. The true economic benefit of additional testing is that it will contribute to control and eventual eradication of scrapie, resulting in better overall flock productivity, a reduction in flocks depopulated due to scrapie, and expanded market opportunities for animals that can be marketed as scrapie-free. Production of agricultural commodities varies for many reasons, and it is difficult to determine the change in production due to additional testing. Because the percentage of animals currently infected with scrapie is small, we expect that slaughter testing will result in the identification and quarantine of very few additional infected flocks. Quarantining the animals in these flocks is not likely to have a statistically significant effect on current or future production.

TABLE 3.—PER-UNIT COST OF COLLECTING AND TESTING SHEEP AND GOAT SAMPLES FOR SCRAPIE

Animals slaughtered (1998)	Samples to be collected (2000)	Samples needed	Cost of collection [1] (per unit)	Cost of testing (per sample)
4.03 million	12,000	75,000	$5–10	$30

[1] See footnote 4 to table 1.

TABLE 4.—TOTAL ANNUAL COST OF COLLECTING AND TESTING SHEEP AND GOAT SAMPLES FOR SCRAPIE

Samples needed	Cost of collection (per sample)	Cost of testing (per sample)	Total cost (millions)
75,000	$5–10	$30	$2.625 to 3

Costs of Testing Captive Cervids at Slaughter

Captive cervids might be tested at slaughter for tuberculosis and for chronic wasting disease (CWD). The cost per animal of testing cervids for tuberculosis is similar to the cost per animal of testing cattle for this disease. The cost per animal of testing cervids for CWD is similar to the cost per animal of testing sheep for scrapie.

The number of cervids farmed is small compared to cattle, swine, or sheep. Because it is a small industry, NASS does not collect data about cervid production or slaughter. According to the North American Elk Breeders Association, there are 150,000 to 160,000 elk being raised on farms in North America. This number includes elk raised in Canada and Mexico. The number of deer raised on farms is uncertain, but it is also a very small industry compared to cattle, swine, or sheep.

As stated earlier, the meat packing industry is included in NAICS code 311611. The SBA's definition of small business for NAICS 311611 is a firm with less than 500 employees.

In 1996, 91 percent (1,260) of the total number of firms (1,341) in the meat packing business qualified as small businesses. Only firms with more than $100 million in sales average more than 500 employees. Eighty-one firms had sales of more than $100 million in 1996. (SBA Office of Advocacy, *http://www.sba.gov/advo/stats/int_data.html.*)

Plants that slaughter captive cervids qualify as small businesses. It seems that, currently, there are not enough cervids slaughtered per year to motivate large meat packing businesses to devote production lines to the slaughter of cervids.

This final rule will not have an adverse effect on small businesses that slaughter cervids. Blood samples will be collected either by APHIS, by FSIS, by contractors, or by the firms themselves. Firms will be compensated on a per unit basis for collecting the samples. The costs of testing captive cervids will be similar to the costs of testing cattle. Because of the small number of tests that are expected to be done, this final rule will not have a material effect on small business entities.

Costs of Testing Poultry at Slaughter

In 1997, there were 315 poultry processing firms (NAICS code 311615) according to SBA statistics. To qualify as a small business, firms engaged in meat processing must have less than $500,000 in annual receipts. Even the smallest classification of poultry processing firms, those with fewer than 20 employees, averaged over $1 million in annual receipts in 1999. While this does not exclude the possibility that there may be poultry processing firms that qualify as small businesses, we have been unable to locate any such firms. This final rule will not have a significant adverse effect on small businesses.

It is estimated that this final rule may result in the collection of a maximum of 300 samples per quarter, collected from about 100 different poultry plants, to conduct adequate testing for exotic Newcastle disease, avian influenza, or other diseases that APHIS may wish to monitor. Blood samples will be collected either by APHIS, by FSIS, by contractors, or by the firms themselves. Firms will be compensated on a per unit basis for collecting the samples.

We expect that additional testing conducted after this final rule takes effect will be an insignificant amount compared to the testing and inspection already performed at poultry plants. The NASS Agricultural Statistics Board report entitled ''Poultry Slaughter,'' dated February 4, 2000, gives representative figures for the amount of poultry that is inspected or tested at processing plants, and the fraction that is condemned for failing inspection. In December 1999, the preliminary total live weight of poultry inspected was 3.95 billion pounds, up fractionally

from the previous year. Ante-mortem condemnations during December 1999 totaled 15.3 million pounds. Condemnations were 0.39 percent of the live weight inspected. Post-mortem condemnations, at 62 million pounds (N.Y. dressed weight), were 1.75 percent of quantities inspected.

In contrast, even if APHIS tested poultry plants at the maximum level that might be necessary under disease surveillance scenarios, and if such testing always resulted in destruction of the poultry tested rather than just collection of a test sample, the total effects would be collection of under 120,000 samples per year, and the loss of under 600,000 pounds of poultry per year.

Liability Costs for All Slaughter Industries

Some firms expressed concern that sample collection in plants could result in accidents or injury that increase their liability costs. Collection is often done in potentially hazardous conditions; for example, the floors may be wet, the quarters may be cramped, and there are sharp knives and equipment present.

It is difficult to estimate the average cost incurred because of liability issues. The relevant issue here is the marginal increase in liability costs due to this regulation, which is very small. Slaughtering plants are already involved in a potentially hazardous activity. Adding the requirement to collect blood and tissue samples will not add significantly to the liability incurred by a plant, but a small increase in liability costs may be expected.

Benefits of Additional Testing

Additional testing will provide a better record of diseases and enhance our ability to prevent potential outbreaks of diseases. While the costs of additional testing are visible, the benefits often are not. The true economic benefit of additional testing will be the amount by which production is increased or the amount by which production is not lost due to herds being depopulated because of disease. The benefits of this program include better animal disease control, greater productivity in flocks and herds, fewer animals lost to disease, and greater opportunity to develop export markets for animals and products that can have their disease status backed up by an effective slaughter testing program. Increased testing of slaughter samples will allow us to more quickly identify and isolate herds or flocks affected by disease, reducing the number of animals lost to disease. Production of agricultural commodities varies for many reasons, and it is difficult to determine the change in production due to additional testing. Because the percentages of animals currently infected with diseases such as pseudorabies and tuberculosis are very small, additional testing for these diseases resulting in the quarantine of some additional herds may not have a statistically significant effect on current or future swine and cattle production, but effective surveillance for these diseases can dramatically increase export markets, increasing the value of herds. Another benefit of additional testing will be that it will contribute to lowering the overall costs of animal disease control programs by generating epidemiological data to make these programs more effective. APHIS alone has spent hundreds of millions of dollars in the past decade on these programs, and more hundreds of millions of dollars on indemnity programs to buy and destroy diseased animals. Over time, a more effective slaughter testing program could reduce these costs. However, in the short-term, a more effective slaughter testing program may detect a higher incidence of diseases, and so may generate greater costs. Gains will accrue in the long-term from improved herd and flock health, reduced disease costs, reduced prophylactic costs, and expanded export opportunities.

Cattle Industry Benefits

This final rule will not affect the number of samples from cattle collected to test for brucellosis or the way in which the testing is conducted. There will be no economic effect due to this final rule with respect to collecting blood samples for cattle brucellosis. With regard to cattle tuberculosis, on average one herd per year has to be eradicated because of a positive tuberculosis test. The value of the average size herd in 1996 and 1997 ranged from $46,200 to $52,976. The value of a herd that has to be eradicated can vary widely depending on the size of the herd and market prices. If one cow is found to be tuberculosis positive, the entire herd is quarantined and may be depopulated. Eliminating the cost of depopulating a herd will represent only a small part of the benefit of additional testing. One benefit of this final rule will be the value of the herds that do not have to be depopulated. As discussed above, another benefit to both the cattle industry and the general public will result from improved disease control and resultant increased productivity.

Swine Industry Benefits

Elimination of pseudorabies directly impacts producer income. Producers who are able to eliminate this disease from their herds are able to earn up to $4 more per hog. In addition, pseudorabies kills numerous young piglets and causes reproductive problems in sows. Historically, each year pseudorabies has cost several billion dollars in lost producer revenues and the cost of control measures. To the extent that collecting blood samples and testing contributes to faster elimination of pseudorabies, this rule will have a positive economic impact on producer incomes. APHIS hopes to eliminate pseudorabies within the next year. Additional slaughter testing should allow pseudorabies to be eliminated from U.S. swine herds, or reduced to an insignificant level, several months earlier than would otherwise be possible. The additional slaughter testing that will be allowed will also help establish baseline data that could be used to develop disease control programs to reduce the impact on industry of other swine diseases such as porcine reproductive and respiratory syndrome.

Sheep Industry Benefits

Improved surveillance will aid eradication of scrapie, which will directly affect producer income. Producers who are able to eliminate this disease from their flocks lose fewer animals to disease and can, therefore, maintain more animals at a lower production cost per animal. They can also sell their animals at a higher price and with fewer regulatory costs and may be able to sell to additional foreign markets. To the extent that collecting samples and testing contributes to elimination of scrapie, this final rule will have a positive economic effect on producer incomes. The additional slaughter testing that will be conducted will also help establish baseline data that could be used to develop disease control programs to reduce the economic effect on industry of other sheep diseases.

Poultry Industry Benefits

As noted above, the additional testing that will be conducted under this final rule will serve as a minor but valuable supplement to the poultry testing already conducted in accordance with the National Poultry Improvement Plan.

The poultry industry, like other animal industries, will benefit in the form of increased productivity and possible expansion of overseas markets. More effective disease surveillance is

particularly important in the poultry industry because outbreaks of severe avian disease frequently must be controlled by destroying a number of poultry houses in a flock or the entire flock. This often means the loss of tens of thousands of poultry to control a single outbreak. More effective surveillance can also help reopen poultry export markets more quickly following an avian disease outbreak, by documenting containment of a problem.

Cervid Industry Benefits

In addition to the benefits cited above for other industries, the cervid industry at present faces the possibility that its major export markets will be cut off unless there is an effective slaughter testing surveillance program for CWD. The Republic of Korea recently banned importation of elk antlers from the United States due to concerns about this disease, and other countries may follow. The elk industry depends on foreign markets for a large part of its revenue, and these markets have indicated that they may not import U.S. elk products unless there is a reasonably effective testing program to ensure the products are not from CWD-positive elk.

Overall Summary

The total direct cost of the testing this final rule envisions for cattle, swine, and sheep is between $12.933 million and $25.848 million, borne by APHIS. However, as noted above, APHIS already conducts some of this testing on a voluntary basis, although we collect only a fraction of the samples we believe are needed for an effective testing program. If we subtract the cost of testing APHIS is already conducting, the new total direct costs are between about $3.4 million and $4.6 million. In addition to these direct costs for cattle, swine, and sheep, there will be direct testing costs for slaughter testing of horses, cervids, and poultry. The extent of testing to be done in this area is still uncertain, but it will be much smaller than the program for cattle, sheep, and swine, and should not amount to more than a few million dollars in annual direct costs. In addition to direct testing costs borne by APHIS, slaughtering plants will bear certain direct costs related to providing space and access for sample collection, and possible losses if production lines must be slowed for sample collection. We requested comments providing data on costs that slaughter plants might incur, including costs due to slowing the production line as well as office space, equipment, and other costs, but we did not receive any specific data on these subjects.

The benefits of this program include better animal disease control, greater productivity in flocks and herds, fewer animals lost to disease, and greater opportunity to develop export markets for animals and products that can have their disease status backed up by an effective slaughter testing program.

The overall costs of this program that are borne by industry are expected to be relatively minor, though further information is needed to assess costs for those plants that need to make adjustments to their operations to comply. In most cases, small businesses will have to do little more than to allow sample collectors to have access to their production lines.

In the following table, costs are compared for the level of slaughter sampling and testing APHIS currently conducts and the increase in such activities we expect under this final rule. This table does not include the benefits achieved by current and proposed sampling activity levels, because data are not available to quantify the benefits. As discussed above, the benefits result from avoiding animal disease outbreaks, and there are too many possible outbreak scenarios to allow a meaningful calculation of a benefits range. The expected benefits result from the expectation that sampling and testing helps APHIS avoid some additional animal disease outbreaks, thereby avoiding: (1) The direct cost of dealing with an outbreak (cleaning and disinfection, compensation to producers, quarantine enforcement, etc.), (2) production losses, (3) induced price changes, and (4) the effect of the outbreak on other sectors of the economy. In view of the fact that the economic output of U.S. livestock industries exceeds $100 billion, an avoided impact of even a fraction of 1 percent on this sector will substantially exceed the total sampling costs estimated in table 5.

TABLE 5.—COSTS OF SAMPLING FOR CATTLE BRUCELLOSIS AND TUBERCULOSIS, SWINE PSEUDORABIES AND BRUCELLOSIS, AND SHEEP SCRAPIE

	Low range	High range
Current sampling costs	$9,494,700	$21,224,800
Additional sampling costs	3,394,300	4,591,200

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

The information collection burden in this final rule includes 120 hours that were not included in the proposed rule. Specifically, the additional hours are for compliance by rendering plants, which were added to the coverage of the final rule. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0212.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste

Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 71 as follows:

PART 71—GENERAL PROVISIONS

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

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

■ 2. In § 71.1, the definitions of *livestock* and *moved (movement) in interstate commerce* are revised and a definitions of *Food Safety and Inspection Service (FSIS)* is added in alphabetical order to read as follows:

§ 71.1 Definitions.

* * * * *

Food Safety and Inspection Service (FSIS). The Food Safety and Inspection Service, United States Department of Agriculture.

* * * * *

Livestock. Horses, cattle, bison, captive cervids, sheep and goats, swine, and other farm-raised animals.

* * * * *

Moved (movement) in interstate commerce. Shipped, transported, delivered, or otherwise aided, induced, or caused to be moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops along the way, such as at a stockyard or dealer premises for feed, water, rest, or sale.

* * * * *

■ 3. A new § 71.21 is added to read as follows:

§ 71.21 Tissue and blood testing at slaughter.

(a) Any person moving livestock or poultry interstate for slaughter or rendering may only move the animals to a slaughtering establishment or a rendering establishment that has been listed by the Administrator [8] for the purposes of this part. Livestock or poultry may not be removed from the premises of a slaughtering establishment or a rendering establishment listed by the Administrator except under a permit issued by APHIS, and in accordance with applicable FSIS regulations in this title. A slaughtering establishment or rendering establishment may receive livestock or poultry in interstate commerce only if the establishment has been listed by the Administrator. The Administrator may list a slaughtering establishment or a rendering establishment after determining that collecting samples for testing from the establishment is not currently necessary for the purposes of APHIS disease surveillance programs and the establishment has agreed to allow testing and to provide the access and facilities required by this section upon future APHIS notification that testing is required at the establishment. The Administrator will list a slaughtering or rendering establishment after determining that it meets the following facility and access requirements:

(1) The establishment provides space and equipment in accordance with paragraph (b) of this section [9] within their facility for blood and tissue sample collection;

(2) The establishment allows APHIS, FSIS, or APHIS contractors to take blood and tissue samples from all livestock or poultry at the facility without cost to the United States, and specifically allows these personnel access to the processing line to collect samples; and

(3) The establishment allows APHIS, FSIS, or APHIS contractors to record the identification of individual animals and retain any external or internal identification devices.

(b) The establishment must provide office and sample collection space, including necessary furnishings, light, heat, and janitor service, rent free, for the use by APHIS, FSIS, or APHIS contractors collecting samples for blood and tissue testing under this section. The Administrator will inform each establishment of the exact amount and type of space required, taking into account whether APHIS will be conducting complete tests at the facility, or only collecting samples and sending them elsewhere for testing. At the discretion of the Administrator, small plants need not furnish facilities as prescribed in this section if adequate facilities exist in a nearby convenient location. In granting or denying listing of an establishment, the Administrator will consider whether the space at the facility:

(1) Is conveniently located, properly ventilated, and provided with lockers suitable for the protection and storage of supplies;

(2) Has sufficient light to be adequate for proper conduct of sample collection and processing;

(3) Includes racks, receptacles, or other suitable devices for retaining such parts as the head, glands, and viscera, and all parts and blood to be collected, until after the post-mortem examination is completed;

(4) Includes tables, benches, and other equipment on which sample collection and processing are to be performed, of such design, material, and construction as to enable sample collection and processing in a safe, ready, efficient, and clean manner;

(5) Has adequate arrangements, including liquid soap and cleansers, for cleansing and disinfecting hands, dissection tools, floors, and other articles and places that may be contaminated by diseased carcasses or otherwise; and

(6) Has adequate facilities, including denaturing materials, for the proper disposal in accordance with this chapter of tissue, blood, and other waste generated during test sample collection.

(c) The Administrator will give the operator of the establishment actual notice that APHIS, FSIS, or an APHIS contractor will be taking blood and/or tissue samples at the establishment. The Administrator may give the operator of the establishment notice in any form or by any means that the Administrator reasonably believes will reach the operator of the establishment prior to the start of sample collection.

(1) The notice will include the anticipated date and time sample collection will begin. The notice will also include the anticipated ending date and time.

(2) The Administrator will give the operator of the establishment as much advance notice as possible. However, the actual amount of notice will depend on the specific situation.

(d) *Denial and withdrawal of listing.* The Administrator may deny or withdraw the listing of an establishment upon a determination that the establishment is not in compliance with the requirements of this section.

(1) In the case of a denial, the operator of the establishment will be informed of the reasons for the denial and may appeal the decision in writing to the Administrator within 10 days after receiving notification of the denial. The appeal must include all of the facts and reasons upon which the person relies to show that the establishment was wrongfully denied listing. The Administrator will grant or deny the appeal in writing as promptly as

[8] A list of these slaughtering or rendering establishments may be obtained by writing to National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231.

[9] FSIS also has equipment and space requirements for official establishments at § 307.2(c) of this title.

circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(2) In the case of withdrawal, before such action is taken, the operator of the establishment will be informed of the reasons for the proposed withdrawal. The operator of the establishment may appeal the proposed withdrawal in writing to the Administrator within 10 days after being informed of the reasons for the proposed withdrawal. The appeal must include all of the facts and reasons upon which the person relies to show that the reasons for the proposed withdrawal are incorrect or do not support the withdrawal of the listing. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the establishment. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0212.)

Done in Washington, DC, this 1st day of March 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–4810 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 122

Required Advance Electronic Presentation of Cargo Information: Revised Compliance Dates for Air Cargo Information

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of revised compliance dates.

SUMMARY: This document advises the public of the revised implementation schedule set forth by the Bureau of Customs and Border Protection requiring the advance electronic transmission of information for cargo brought into the United States by air. The original date set for compliance was March 4, 2004. There will be staggered starting dates for compliance, with the earliest compliance date set for August 13, 2004.

DATES: The compliance date for the advance electronic transmission of inbound air cargo information published December 5, 2003 (68 FR 68140) is modified pursuant to § 122.48a(e)(2). The implementation schedule set forth in the **SUPPLEMENTARY INFORMATION** discussion establishes three different compliance dates when CBP will require electronic transmission of inbound air cargo manifest data, depending on the location of the airport where cargo arrives in the United States.

FOR FURTHER INFORMATION CONTACT: David M. King, Manifest and Conveyance Branch, (202) 927–1133.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that the Bureau of Customs and Border Protection (CBP) promulgate regulations providing for the mandatory collection of electronic cargo information, by way of a CBP-approved electronic data interchange system, before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule specifically intended to effectuate the provisions of the Act. In particular, a new § 122.48a was added to the CBP Regulations (19 CFR 122.48a) to implement the Act's provisions relating to inbound air commerce. Section 122.48a(a) describes the general requirement that for inbound aircraft with commercial cargo aboard, CBP must electronically receive information concerning the incoming cargo in advance of its arrival. Section 122.48a(e)(1) set a general compliance date of March 4, 2004 for those air carriers required to participate, and other parties electing to participate, in advance automated cargo information filing. However, pursuant to § 122.48a(e)(2) CBP has set forth a revised implementation schedule in order to complete necessary modifications to the approved electronic data interchange system, train CBP personnel at affected ports and complete certification testing of new participants.

The CBP-approved electronic data interchange system, through which the affected parties will be required to transmit and receive information pursuant to these regulatory provisions, is known as the Air Automated Manifest System (Air AMS). Although CBP and certain trade members presently participate in Air AMS on a voluntary basis, the final rule established procedures not currently supported by the existing system edits in Air AMS. Therefore, CBP has undertaken to modify certain critical aspects of Air AMS. CBP will introduce these changes by May 13, 2004, when a 90-day certification testing period begins for all parties who develop Air AMS communications.

Accordingly, it is necessary for CBP to revise the compliance dates for the advance electronic transmission of air cargo information as specified in the following implementation schedule. Compliance dates are staggered because they will allow CBP to deploy training resources for its personnel on a regional basis and prevent CBP from having to conduct certification testing for all new participants at one time.

AIR AMS IMPLEMENTATION SCHEDULE

Date:	Ports in the following locations:
August 13, 2004	Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia.
October 13, 2004	Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin.
December 13, 2004	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington.

Beginning on the dates set forth in the implementation schedule above, CBP will require electronic transmission of advance information for any cargo that arrives in the United States by air at a port of entry within one of the locations specified.

Technical Requirements

The technical specifications required for participation in Air AMS are detailed in the CBP publication Customs Automated Manifest Interface Requirements (CAMIR–AIR), currently available on the CBP website at: *http://www.cbp.gov/xp/cgov/import/operations_support/automated_systems/ams/camir_air/.*

Once the changes to Air AMS are introduced, CBP will update CAMIR–AIR with the new technical specifications. Those seeking to develop software based on the new system edits may begin certification testing of such software after May 13, 2004. Existing Air AMS participants and potential Air AMS participants will have until the revised compliance date to complete changes to their software or procure software that is compliant with the new specifications.

Dated: February 27, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–4725 Filed 3–3–04; 8:45 am]

BILLING CODE 4820–02–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1607

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–3

DEPARTMENT OF JUSTICE

28 CFR Part 50

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

[OMB Number: 3046–0017]

Agency Information Collection Activities: Adoption of Additional Questions and Answers To Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures as They Relate to the Internet and Related Technologies

AGENCIES: Equal Employment Opportunity Commission; Office of Federal Contract Compliance Programs, DOL; Department of Justice; Office of Personnel Management.

ACTION: Adoption of Additional Questions and Answers to clarify and provide a common interpretation of the Uniform Guidelines on Employee Selection Procedures as they relate to the Internet and related technologies.

SUMMARY: The agencies that issued the Uniform Guidelines on Employee Selection Procedures (UGESP or Uniform Guidelines) (43 FR 38290 *et. seq.,* August 25, 1978, 29 CFR part 1607, 41 CFR part 60–3, 28 CFR 50.14, and 5 CFR 300.103(c)) have previously recognized the need for an interpretation of the Uniform Guidelines, as well as the desirability of providing additional guidance to users and enforcement personnel, by publishing two sets of Questions and Answers (44 FR 11996, March 2, 1979; 45 FR 29530, May 2, 1980). These Additional Questions and Answers are intended to provide further guidance in interpreting the Uniform Guidelines with respect to the Internet and related technologies. This document solicits public comment on the information collection requirements in the Additional Questions and Answers.

DATES: This document contains information collection requirements that have not yet been approved by the Office of Management and Budget. The Equal Employment Opportunity Commission will publish a document in the **Federal Register** announcing the effective date. Submit written comments on or before May 3, 2004.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. The Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free-number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of a FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free-telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Carol Miaskoff, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission at (202) 663–4637.

SUPPLEMENTARY INFORMATION: This supplementary information section provides the public with access to the

information it will need to comment on the Additional Questions and Answers. It consists of an Introduction, Background on Internet Recruiting, Additional Questions and Answers, Request for Comments, and Overview of the Collection of Information.

Introduction

Because of the number and importance of the issues addressed in the Uniform Guidelines on Employee Selection Procedures, and the dual needs of providing an interpretation and providing guidance to employers and other users and Federal personnel who have enforcement responsibilities, the Equal Employment Opportunity Commission and the other issuing Federal agencies adopted two sets of Questions and Answers (44 FR 11996, March 2, 1979; 45 FR 29530, May 2, 1980) to clarify and interpret the Uniform Guidelines. These UGESP agencies recognized that it might be appropriate to address additional questions at a later date. The Additional Questions and Answers included in this document are intended to clarify how the Uniform Guidelines on Employee Selection Procedures apply in the context of the Internet and related technologies. However, this document does not solicit comments on the Uniform Guidelines.

The Internet and related electronic data processing technologies have enjoyed an exponential expansion since the late 1990s and now are established as important recruiting and job-seeking tools. Characterized by massive amounts of information rapidly transmitted between job seekers and employers, these technologies encourage employers and job seekers to explore the labor market broadly and freely. While the Internet and related technology has transformed recruitment and job hunting in recent years, our country's employment nondiscrimination laws, such as Title VII of the Civil Rights Act of 1964 (Title VII) and Executive Order 11246, as amended, continue to apply to all aspects of employment including recruitment. The advent of the Internet and related technology raises questions about how to monitor employment practices when employers and job seekers use online resources.

In early 1999, concerns about EEO compliance and online recruitment came to focus on the Uniform Guidelines on Employee Selection Procedures.[1] At that time, the Equal Employment Opportunity Commission (''EEOC'' or Commission) in conjunction with the other UGESP agencies—the Department of Labor (''DOL''), the Department of Justice (''DOJ''), and the Office of Personnel Management (''OPM'')—sought clearance from the Office of Management and Budget (''OMB'') for UGESP's recordkeeping requirements under the Paperwork Reduction Act. In 2000, the OMB instructed the EEOC to consult with its sister agencies and address the ''issue of how use of the Internet by employers to fill jobs affects employer recordkeeping obligations.''[2] The OMB instructed the EEOC, in cooperation with DOL, DOJ, OPM and OMB, to ''evaluate the need for changes to the questions and answers accompanying the Uniform Guidelines necessitated by the growth of the Internet as a job search mechanism.'' This document is the product of that evaluation. Each agency may provide further information, as appropriate, through the issuance of additional guidance or regulations that will allow each agency to carry out its specific enforcement responsibilities.

The Uniform Guidelines on Employee Selection Procedures were issued in 1978 by the EEOC, the Department of Labor, the Department of Justice, and the Office of Personnel Management under Title VII and Executive Order 11246. The UGESP serves two major purposes. First, it addresses certain recordkeeping issues. For example, UGESP describes the evidence that employers should have available to analyze whether their employment selection procedures had a disparate impact on protected groups.[3] Second, UGESP details methods for validating tests and selection procedures that are found to have a disparate impact. Disparate impact is when an employer uses a practice or standard, like a hiring or promotion requirement or an employment test, that has a statistically significant disproportionate negative effect on a protected group, even though the standard or test is not intentionally discriminatory. Such a practice or standard is unlawful under Title VII if it is not job-related and consistent with business necessity.

UGESP states that employers should maintain ''records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group.''[4] UGESP provides for employer self-analysis for disparate impact based on these records or other information. The Federal agencies that enforce Title VII and/or Executive Order 11246 may use these records or other information to investigate disparate impact charges or litigate cases.

UGESP provides for the maintenance of records or other information on ''applicants.'' A 1979 guidance in Question and Answer format, issued by the EEOC, DOL and sister UGESP agencies, provides a general definition of ''applicant.''[5] Interpreting the definition of ''applicant'' in the context of the Internet and related electronic data processing technology is the focus of this document. With this interpretation, the UGESP agencies are providing guidance about when employers should identify the race, gender, and ethnicity of their applicant pool when they use the Internet and related technologies. This document and the UGESP do not alter, in any way, the legal rights and responsibilities of employers, applicants and employees under Title VII and Executive Order 11246, under any legal theory including disparate impact. The right of applicants or employees to file a charge or complaint of discrimination, or to file a lawsuit, are unchanged by UGESP and by this document's discussion of the term ''applicant.''

The UGESP agencies have collaborated in conducting the evaluation OMB directed in 2000. This evaluation shows that the Internet and related technologies have had the effect of encouraging both job seekers and employers to ''scout the possibilities'' more freely and casually than in the pre-Internet era due to many factors, including the broad reach and relative anonymity of the Internet, the sophisticated capabilities of online and related data processing tools, and the marginal cost of making more contacts. The scope and speed of this technology is to be encouraged; it advertises employment opportunities to a broad audience. Necessary to the effectiveness of online recruitment, however, is the ability to manage the data that are received. In light of this new technology, which has created a new context for the employment market, the agencies have concluded that they must update the Questions and Answers

[1] 29 CFR part 1607 (2002) (EEOC); 41 CFR part 60–3 (2002) (DOL). For simplicity, citations to UGESP hereinafter are in the form ''UGESP, Section ____.'' Under this format, for example, ''UGESP Section 3A,'' corresponds with 29 CFR 1607.3A (2002) (EEOC) and 41 CFR 60–3.3A (2002) (DOL).

[2] Notice of OMB Action, OMB No. 3046–0017 (July 31, 2000).

[3] This document uses the term ''disparate impact'' rather than ''adverse impact'' because the Civil Rights Act of 1991 refers to ''disparate impact.'' *See* 42 U.S.C. 2000e–2(k)(1) (2001).

[4] UGESP, Section 4A.

[5] Question and Answer No. 15, Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the UGESP, 44 FR 11998 (March 2, 1979). These Questions & Answers were promulgated without notice and comment.

accompanying UGESP. The Questions and Answers below reflect the agencies' considered judgment in light of the historical understanding that ''[t]he precise definition of the term 'applicant' depends upon the [employer's] recruitment and selection procedures.''[6]

Before summarizing these conclusions, it is important to emphasize the larger legal context of this discussion. Under Title VII and Executive Order 11246, as amended, employers and their recruiters are responsible for ensuring that all aspects of their recruitment and selection processes are nondiscriminatory. An employer's obligation to avoid discriminatory practices attaches regardless of the definition of ''applicant.'' Furthermore, employers must select employees without discriminating ''against any individual * * * because of such individual's race, color, religion, sex, or national origin.'' 42 U.S.C. 2000e–2(a)(1). Under Title VII, it is unlawful for employers to fail or refuse to hire on these bases; for employment agencies to fail or refuse to refer for employment or otherwise discriminate on these bases; and for labor organizations to exclude from membership, fail to refer, or to exclude from apprenticeship programs on these bases. 42 U.S.C. 2000e–2.

Background: Internet Recruiting

General Summary

UGESP and the existing interpretive guidance were promulgated in the late 1970s, when employers and government agencies did not contemplate the extent to which electronic data processing technology would be used as a tool in the job market. Currently, these technologies, most prominently the Internet and the World Wide Web,[7] have been used extensively for recruitment[8] and job hunting.[9]

Online recruitment enjoyed rapid expansion in the late 1990s. This period was characterized by the development of huge third-party databases of resumes and job listings; by 2003, one industry-leader reported having over 22.5 million resumes in its database.[10] In addition, companies as well as many Federal agencies of all sizes now offer career Web pages as part of their Web sites.[11]

Human resource departments and recruiters using these online resources have been ''overwhelmed'' with resumes.[12] For example, it was reported that a major health care employer received 300,000 online resumes in one year.[13] A smaller Pennsylvania employer reported that it received 6,000 to 8,000 resumes a year before going online, but began receiving about 24,000 resumes a year since it went online.[14]

Software systems that scan, sort and track electronic resumes and related communications are increasingly used to manage this bulk of information. Such systems are available through third-party Internet providers or on a customized basis.[15] Employers and recruiters also are developing new ways to use this technology for more focused recruitment, for example, using corporate Web sites and e-mail to learn more about Web site visitors' interests and experience and then sending targeted e-mails when vacancies arise.[16]

The Internet and its related technologies also have proven to be a useful tool for people who are looking for jobs. Some studies show that the Internet is now the second most-popular way to look for technology and non-technology jobs, with personal networking placing first.[17]

The Internet is conducive to casual exploration of employment opportunities and assessment of the job market. One study shows that seventy-two percent of people who visit corporate career Web sites are already employed.[18] Individuals who visit an employer's career Web site can often submit a resume or personal profile for multiple jobs simultaneously.[19] People also can explore employment opportunities by using services such as job ''agents'' (*i.e.*, the person identifies the type of job in which he or she is interested and the ''agent'' e-mails the individual when a match is found); and ''metasearches'' (*i.e.*, searches that extend beyond the job board to other Web sites).[20] ''Passive'' job seekers post resumes online and wait to see if recruiters or employers seek them out. Other individuals are discovered by recruiters researching online professional listings and organizational directories. For some positions, typically in retail or service environments, people may submit their information electronically through

[6] *Id.*

[7] With recognition that the Internet and the World Wide Web are different, this document sometimes uses the terms interchangeably for purposes of simplicity.

[8] Online job boards have created a global job market. One industry-leader provides local content in local languages in 22 countries. *Monster's Founder Eyes the Future,* Financial Executive, July 1, 2003, at 20. Fifty-seven percent of companies are choosing to recruit online as opposed to forty-nine percent in 2000. *Getting the Word Out,* Business First, October 25, 2002, at 33. A January 2001 survey by SHRM showed that eighty-eight percent of the HR managers surveyed reported using Internet job postings. *See* Suzanne M. Bruyère & William A. Erickson, Cornell U., *E-Human Resources: A Review of the Literature and Implications for People with Disabilities* 12 (2001).

[9] One job bank reported that its site attracts 2.7 million job seeker visits each month. Alan J. Liddle, *State Restaurant Associations 'Bank' on Power of Internet Recruitment,* Nation's Restaurant News, February 24, 2003, at 8. In 2002, it was reported that more than eighteen million people per year posted resumes on one third party provider. Daniel C. Feldman & Brian S. Klaas, *Internet Job Hunting: A Field Study of Applicant Experiences with Online Recruiting,* 41 Human Resource Management 175 (2002). Millions of resumes are posted on 5,000 smaller job boards. Peter Cappelli, *Making the Most of On-Line Recruiting,* Harv. Bus. Rev., March 2001, at 139, 140; *but cf.* Feldman, *supra,* at 182 (Internet job hunting ranked second in effectiveness to personal contacts and networks).

[10] Greg Sterling, *Click to Open Resume, Hit Delete,* Wired News, *at www. wired.com/news/business/0,1367,57264,00.html* (February 7, 2003). In 2001 it was reported that there were 110 million job listings and twenty million ''unique'' resumes on the World Wide Web at any given time. Skip Corsini, *Wired to Hire,* Training, June 2001, at 50.

[11] According to a 2003 study, ninety-four percent of the world's largest organizations have ''corporate Careers websites.'' iLogos Research, *Global 500 Website Recruiting 2003 Survey, at www.ilogos.com* (2003). Another researcher estimates that eighty-five percent of companies with more than 500 employees in North America have ''rudimentary'' or better career sites. Allan Schweyer, *Is Internet Recruiting Working,* Recruiters Network, *at www.recruitersnetwork.com/articles/article.cfm?ID=1400.* (revised May 14, 2003). *See also* Bruyère & Erickson, *supra* note 8, at 20–21 (discussing third-party Internet services that enable small and medium-sized employers to easily create a career site on their own Web site in a few minutes for a cost of $1 for a job posting and $.25 for each resume collected).

[12] When a company with more than 100,000 employees implemented a recruitment campaign in 2002 to increase the number of resumes received electronically, its monthly resume submissions grew to more than 2.3 times the average from the year 2000. Ellen Gilbert, *Recruitment Strategies for a Competitive Marketplace,* Pharmaceutical Executive, November 1, 2002, at 134. After commencing recruitment on the Web, another employer began receiving 20,000 to 40,000 resumes annually, many of which were unsolicited. Bill Roberts, *System Addresses 'Applicant' Dilemma: Web-exclusive Recruiting Process Takes Compliance Burden Off HR's Shoulders,* HR Magazine, Sept. 1, 2002, at 111.

[13] *See* Bruyère & Erickson, *supra* note 8, at 23.

[14] Pat Curry, *Log On for Recruits,* IndustryWeek.com, *at http://www.industryweek.com/CurrentArticles/asp/articles.asp?ArticleID=919* (October 16, 2000).

[15] *See* Cappelli, *supra* note 9, at 141–142. *See also* Roberts, *supra* note 12.

[16] *See* Cappelli, *supra* note 9, at 140–141 (discussing targeted online e-Recruiting and relationship building).

[17] National statistics continue to show that word of mouth is considered the most effective way to find a job. One company's statistics showed that an average of seventy-six percent of jobs nationwide are found through networking and only eight percent through Internet methods. *Getting Out the Word,* Business First, October 25, 2002, at 33. Websites are also valuable recruitment tools. *See* Bruyère & Erickson, *supra* note 8, at 21 (''corporate [w]eb sites have become the primary means students use to research companies and evaluate career opportunities, replacing company brochures and annual reports.'')

[18] *See* Bruyére & Erickson, *supra* note 8, at 19.

[19] Job seekers report a preference for application methods that would not require them to re-key resumes. *See* Feldman & Klaas, *supra* note 9, at 188.

[20] Bruyére & Erickson, *supra* note 8, at 18.

onsite computer kiosks provided by the employer.

Job seekers, like employers, complain about the overwhelming amount of data available on the Internet; some job seekers also complain about being unable to focus their job searches because some online listings provide only generalized descriptions of positions.

Internet and Electronic Data Processing Technologies Used for Recruitment and Selection

Internet-related technologies and applications that are widely used in recruitment and selection today include:

E-mail: Electronic mail allows for communication of large amounts of information to many sources with remarkable ease. Recruiters, employers, and job seekers use e-mail lists to share information about potential job matches. Recruiters send e-mails to lists of potential job seekers. These lists are obtained through various sources of information, such as trade or professional lists and employer Web site directories. Employers publish job announcements through e-mail to potential job seekers identified through similar means. Job seekers identify large lists of companies to receive electronic resumes through e-mail. E-mail allows all of these users to send the same information to one recipient or many, with little additional effort or cost.

Resume databases: These are databases of personal profiles, usually in resume format. Employers, professional recruiters, and other third parties maintain resume databases. Some third-party resume databases include millions of resumes, each of which remains active for a limited period of time. Database information can be searched using various criteria to match job seekers to potential jobs in which they may be interested.

Job Banks: The converse of the resume database are databases of jobs. Job seekers search these databases based on certain criteria to identify jobs for which they may have some level of interest. Job seekers may easily express interest in a large number of jobs with very little effort by using a job bank database. Third-party providers, such as America's Job Bank, may maintain job banks or companies may maintain their own job bank through their Web sites.

Electronic Scanning Technology: This software scans resumes and individual profiles contained in a database to identify individuals with certain credentials.

Applicant Tracking Systems/ Applicant Service Providers: Applicant tracking systems began primarily to help alleviate employers' frustration with the large number of applications and resumes received in response to job postings. They also serve the wider purpose of allowing employers to collect and retrieve data on a large number of job seekers in an efficient manner. Whether in the form of custom-made software or an Internet service, the system receives and evaluates electronic applications and resumes on behalf of employers. For example, an employer could have the group of job seeker profiles from a third party provider's system searched, as well of those received on its own corporate Web site entered into one tracking system. The system would then pull a certain number of profiles that meet the employer-designated criteria (usually a particular skill set) and forward those profiles to the employer for consideration.

Applicant Screeners: Applicant screeners include vendors that focus on skill tests and other vendors that focus on how to evaluate general skills. Executive recruiting sites emphasize matching job seekers with jobs using information about the individual's skills, interests, and personality.

Additional Questions and Answers

This document solicits public comment on the information collection requirements in the Additional Questions and Answers.

Additional Questions and Answers

(94) Q: Do federal employment nondiscrimination laws apply to employers and other UGESP-covered entities when they use the Internet and related electronic data processing technologies for recruitment and selection?

A: *Yes.* Title VII and Executive Order 11246, as amended, apply when covered employers use the Internet and related electronic data processing technologies for recruitment and selection. Title VII covers private and public employers, employment agencies, and labor organizations as these terms are defined at 42 U.S.C. 2000e; *id.* at 2000e–16 (Federal Government). Title VII covers discrimination on the bases of race, color, religion, sex, or national origin. Executive Order 11246, as amended, which covers Federal Government contractors, their subcontractors, and their vendors, also prohibits employment discrimination because of race, color, religion, sex, or national origin.

(95) Q: Is Internet recruitment, like traditional recruitment, exempt from UGESP requirements?

A: *Yes.* As a business practice, recruitment involves identifying and attracting potential recruits to apply for jobs. Under UGESP, ''recruitment practices are not considered * * * to be selection procedures,'' [21] and the UGESP requirements geared to monitoring selection procedures do not apply. Just as recruiters traditionally researched paper copies of professional and employer publications and listings to identify potential recruits, so recruiters now search huge bodies of information online—which include new resources such as personal Web sites and a variety of resume databases—for the same purpose. Online recruitment also involves organizing the search results into usable formats.

(96) Q: For recordkeeping purposes, what is meant by the term ''applicant'' in the context of the Internet and related electronic data processing technologies?

A: The term 'applicant' is discussed in the 1979 set of questions and answers promulgated by the agencies to clarify and provide a common interpretation of UGESP.[22] Question & Answer 15 of that publication states:

> The precise definition of the term 'applicant' depends upon the user's recruitment and selection procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities.[23]

In order for an individual to be an applicant in the context of the Internet and related electronic data processing technologies, the following must have occurred:

(1) The employer has acted to fill a particular position;

(2) The individual has followed the employer's standard procedures for submitting applications; and

(3) The individual has indicated an interest in the particular position.

To elaborate on the three prongs of this test:

(1) *The employer has acted to fill a particular position.*

An example under the first prong is:

Example A: Individuals who register online for Customer Service Representative positions with an Internet and cable television service provider are asked to complete online

[21] UGESP, Section 2C.

[22] Question and Answer No. 15, Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the UGESP, 44 FR 11998 (March 2, 1979).

[23] *Id.*

personal profiles for the employer's resume database. The company acts to fill two vacancies at its Greater New York Service Center, and identifies 200 recruits from the database who have indicated that they are available to work in the New York area. One hundred of these people respond affirmatively and timely to the employer's inquiry about current interest in the particular New York vacancies. Even if the employer chooses to interview only 25 people for the position, all 100 are UGESP ''applicants.''

(2) *The individual has followed the employer's standard procedures for submitting applications.*

If everyone who applies online must complete an online personal profile, only those individuals who do so can be UGESP applicants. If job seekers must use an electronic kiosk or contact a store manager to apply for a sales position, only those who do so can be UGESP applicants. If an employer e-mails online job seekers to ask if they are currently interested in a particular vacancy, only those who meet the employer's deadline can be UGESP applicants. These procedures and directions must be nondiscriminatory because recruitment and the application processes are subject to Title VII and Executive Order 11246.

(3) *The individual has indicated an interest in the particular position.*

The core of being an ''applicant'' is asking to be hired to do a particular job for a specific employer. An individual can only accurately assess her interest in an employment opportunity of which she is aware.

With respect to Internet recruiting, this means that people who post resumes in third party resume banks or on personal Web sites are not UGESP ''applicants'' for all employers who search those sites. By posting a resume, the individual is advertising her credentials to the world and indicating a willingness to consider applying for new positions that may be brought to her attention. The individual is not indicating an interest in a particular position with a specific employer. If an employer contacts this individual about a particular position after finding her resume or personal profile online, and the individual indicates an interest in that position, then the individual becomes a UGESP ''applicant,'' if she also meets the second prong of the test set forth above. Similarly, if an employer contacts an individual about a particular position in response to an unsolicited resume submitted online, and the individual indicates an interest in that position, then the individual becomes a UGESP ''applicant'' if she also meets the second prong of the test.

Furthermore, even if the individual expresses an interest in a whole category of positions in response to an employer's solicitation—for example, marketing opportunities—the individual is not an applicant but is identifying the kinds of positions in which she may be interested. She is not indicating an interest in a particular position with a specific employer. It is only with respect to a particular position that an individual can assess her interest and choose whether or not to apply.

If an individual submits a resume or personal profile repeatedly to the same employer (for example, by adding numerous online job listings to her ''shopping cart'') or simply sends resumes (for example, by using automated online tools that identify job listings and submit resumes), the individual again is identifying the kinds of positions in which she is interested and is not automatically an applicant.

In certain circumstances, however, actions by a job seeker in response to an employer-hosted job listing will display hallmarks of an actual, individual assessment of interest in a particular position that the employer is acting to fill. For example, a job seeker's interest in a particular position becomes evident when the job seeker complies with an employer's procedural requirements that are unique to that position. Thus, completion and submission of an electronic application form, which form is unique for a particular position, indicates that the job seeker has a specific interest in that particular position.

Example B: Game Park is hiring park rangers, who perform specified duties and receive a starting salary within a particular range. Game Park posts an announcement on its Web page stating that it is accepting applications for its next park ranger training class, which starts in six months, and that all people who complete the required forms within one month will be evaluated for entrance into the class. Job seekers are directed to complete a detailed questionnaire asking about their experience in wildlife management, forest fire prevention, firearm safety and first aid. This profile is only suitable for the position of park ranger; it cannot be used for other Game Park positions. When these profiles are compiled into a database, all of the job seekers will be ''applicants'' if they satisfy the second prong of the above-referenced test.

(97) Q: Are all the search criteria that employers use subject to disparate impact analysis?

A: *Yes.* All search criteria used are subject to disparate impact analysis. Disparate impact analysis can be based on Census or workforce data. If a disparate impact is shown, the employer must demonstrate that its criteria are job-related and consistent with business necessity for the job in question. 42 U.S.C. 2000e–2(k).

Example C: An employer has two large printing plants. The company's employment Web page encourages individuals who visit to register to be considered as printers by submitting personal profiles online. Some basic identifying information is required, and one question asks for total years of printing experience.

The employer authorizes the hiring of three new printers at one of the plants. To identify job seekers, Human Resources turns to several resources including its internal database. Even before it identifies those who properly followed the employer's online procedures and who are actually interested in these positions at this time, the employer searches the database to identify job seekers with two years printing experience. The search identifies 120 individuals, of whom only 50 express an interest in the positions and followed all the application procedures. These 50 people are UGESP applicants.

However, the impact of the employer's screen for two years' printing experience can be analyzed using workforce and Census data. For example, the experience requirement could be assessed based on relevant labor force statistics. If a disparate impact on a protected group were shown, then the employer would have to show that two years of experience was job-related and consistent with business necessity for its printing positions.

(98) Q: Are employment tests, including those administered online, subject to UGESP?

A: *Yes.* Online tests, including tests of specific or general skills, are selection procedures rather than recruitment under UGESP because the test results are used as ''a basis for making employment decisions.'' [24] Employers and recruiters who use such tests should maintain records or other information ''which will disclose the impact which its tests * * * have upon employment opportunities of

[24] UGESP, Section 2C.

persons by identifiable race, sex or ethnic group.'' [25] If employment tests have a disparate impact, they are lawful only if they are ''job-related for the position in question and consistent with business necessity.'' 42 U.S.C. 2000e–2(k)(1)(A)(i).

Request for Comments

The UGESP agencies invite comments about these Additional Questions and Answers from all interested parties, as well as comments enabling the agencies to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of Collection

Collection Title: Recordkeeping Requirements of the Uniform Guidelines on Employee Selection Procedures, 29 CFR part 1607, 41 CFR part 60–3, 28 CFR part 50, 5 CFR part 300.

OMB Number: 3046–0017.

Type of Respondent: Businesses or other institutions; Federal Government; State or local governments and farms.

North American Industry Classification System (NAICS) Code: Multiple.

Standard Industrial Classification Code (SIC): Multiple.

Description of Affected Public: Any employer, Government contractor, labor organization, or employment agency covered by the Federal equal employment opportunity laws.

Respondents: 865,962 firms are included in the affected public, according to U.S. Census statistics.

Responses: 865,962.

Reporting Hours: 2,548,573.97.

Number of Forms: None.

Form Number: None.

Frequency of Report: None.

Abstract: The recordkeeping issues addressed by UGESP are used by respondents to assure that they are complying with Title VII and Executive Order 11246; by the Federal agencies that enforce Title VII and/or Executive Order 11246 to investigate, conciliate and litigate charges of employment discrimination; and by complainants to establish violations of Federal equal employment opportunity laws.

Burden Statement: There are no reporting requirements associated with UGESP. The only paperwork burden derives from the recordkeeping. With respect to paperwork burden, the Additional Questions and Answers would present a solution to problems employers currently face in applying the Guidelines on Employee Selection Procedures in the context of the Internet and related technologies. Therefore, the Additional Questions and Answers would not involve an increase in paperwork burdens associated with attempts to apply existing guidelines to the context of the Internet and related technologies.

Only employers covered under Title VII and Executive Order 11246 are subject to UGESP. For the purpose of burden calculation, employers with 15 or more employees are counted. Based on examination of the latest available U.S. Census Bureau firm data, the number of firms in this category is approximately 865,962. According to figures based on statistics from the U.S. Census Bureau, the total number of employees employed by firms in this category is 117,957,331. Assuming one record per employee, this results in 117,957,331 records. Additionally, statistics from the Bureau of Labor Statistics indicate that the number of individuals, both employed and unemployed, actively seeking employment from all employers, total 14 million. Assuming that each of these individuals submits on average five applications, this results in 70 million potential records from a recordkeeping perspective. Therefore, the total number of records reflecting employees employed by firms and all job seekers is 187,957,331.

From the private employer survey the Commission conducts, it determined that 80 percent of the private employers file their employment reports electronically. From this same survey the Commission also learned that when records are computerized, the burden hours for reporting, and thus for recordkeeping, are about one-fifth of the burden hours associated with non-computerized records. Further, the Additional Questions and Answers apply to the Internet and related electronic data processing technologies, which involves computerized recordkeeping.

The Additional Questions and Answers would clarify how employers should address applicant recordkeeping in the context of the Internet and related technologies. In the absence of such clarification, employers would be faced with significant, additional paperwork burdens based on the rapid expansion of the Internet and related technologies for recruiting. The Commission is unaware of any systematic data to accurately quantify the burdens associated with how employers were attempting to address applicant recordkeeping in the Internet context prior to this clarification. The Commission will be in a better position to assess these issues after the additional Questions and Answers have been implemented. At this time, the Commission assumes that, with this clarification, the basis for the estimate of the cost per record has not changed since the initial burden calculations in 1979. Inflation adjustments would derive a current cost per record (manual recordkeeping) of $0.56 and current cost per record (computerized recordkeeping) of $0.11.

The number of burden hours can be obtained by dividing the total cost of recordkeeping by the hourly cost of labor needed to collect and compile such data.

The current cost per hour of personnel for UGESP recordkeeping is $14.75/hr (hourly rate for personnel clerks from BLS compensation survey).

Computerized recordkeepers = (.80) × (187,957,331) × ($0.11) = $16,540,245.12

Manual recordkeepers = (.20) × (187,957,331) × ($0.56) = $21,051,221.07

Total recordkeeping cost = $37,591,466.19

$$\text{Total hours} = \frac{\text{Total recordkeeping cost}}{\text{Cost per hour}} = \frac{\$37{,}591{,}466.19}{\$14.75/\text{hour}} = 2{,}548{,}573.97 \text{ hours}$$

[25] UGESP, Section 4A.

Signed at Washington, DC, on February 24, 2004.

Cari M. Dominguez,

Chair, Equal Employment Opportunity Commission.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards, Department of Labor.

R. Alexander Acosta,

Assistant Attorney General, Civil Rights Division, Department of Justice.

Kay Coles James,

Director, Office of Personnel Management.

[FR Doc. 04–4090 Filed 3–1–04; 1:53 pm]

BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09–04–003]

RIN 1625–AA09

Drawbridge Operation Regulation; Sturgeon Bay Ship Canal, Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulation governing the operation of the Bayview bridge, mile 0.3 over Sturgeon Bay Ship Canal, in Sturgeon Bay, WI. This action was requested by the Wisconsin Department of Transportation (DOT) to facilitate deck repairs on the drawbridge.

DATES: This temporary rule is effective 6 a.m. on April 1, 2004, until 6 p.m. on July 1, 2004.

ADDRESSES: Documents indicated in this preamble as being in the docket are part of docket CGD09–04–003 and are available for inspection or copying at Commander (obr), Ninth Coast Guard District, 1240 E. 9th St., Room 2019, Cleveland, OH, 44199, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6084.

FOR FURTHER INFORMATION CONTACT: Scot Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902–6087.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The request to revise the operating schedule for this temporary final rule required extensive coordination with known affected marine entities, Wisconsin DOT, and the City of Sturgeon Bay, WI. The final temporary schedule was not finalized in time to publish a NPRM and still have the work start at the best possible time for all affected parties.

Background and Purpose

Wisconsin DOT requested a temporary change to the operating regulations for the Bayview bridge, mile 0.3 over Sturgeon Bay Ship Canal in Sturgeon Bay, WI, to perform deck maintenance work. The Bayview bridge navigation span provides a vertical clearance of 42 feet above Mean Low Water in the closed to navigation position. The waterway carries commercial, recreational, and public vessel traffic. The bridge is normally required to open on signal for vessels year-round under the general provisions of 33 CFR 117.5. In order to perform the necessary deck replacement work, Wisconsin DOT requested that the drawbridge open on the hour, every three hours, Monday through Friday, between the hours of 6 a.m. and 6 p.m. to minimize disruptions to the contractor. This schedule was not considered reasonable by the Coast Guard and was revised so the bridge would open every hour, on the hour, between 6 a.m. and 6 p.m., Monday through Friday, for recreational vessels. Commercial and public vessels will be requested to provide at least 2-hours advance notice prior to passing during these work hours, and should be passed without delay. The request from Wisconsin DOT also included two separate 3-day periods between April 15 and June 15, 2004, where the bridge would not be required to open for any vessels for concrete pouring and curing. The dates of these closure periods can not, and have not, been identified due to the nature of the work, but Wisconsin DOT is required to provide those dates to the Coast Guard 10–14 days in advance of anticipated closure periods. The Coast Guard will publish a temporary deviation covering those dates when they have been finalized.

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). The temporary drawbridge schedule still provides for the passage of vessels during work hours. The unspecified closure periods, which are necessary for some of the repair work, will be published as early as possible in the Ninth Coast Guard District Local and/or Broadcast Notice to Mariners and prior to the work beginning. These conditions and schedules have been approved by known affected marine entities.

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. Passage through the drawbridge will still be available except during the closure periods that have not been scheduled. During the closure periods all entities will be equally affected.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. None were identified because passage will still be provided for except during the required closure periods.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of P. L. 102–587, 106 Stat. 5039.

■ 2. From 6 a.m. on April 1 to 6 p.m. on July 1, 2004, add temporary § 117.T1102 to read as follows:

§ 117.T1102 Sturgeon Bay Ship Canal.

The draw of the Bayview bridge, mile 0.3 at Sturgeon Bay, shall operate as follows:

(a) Between the hours of 6 a.m. and 6 p.m., Monday through Friday, the bridge shall open once an hour, on the hour, for recreational vessels. (b) Commercial vessels shall provide at least 2-hours advance notice prior to passage. (c) Public vessels shall be passed at all times.

Dated: February 25, 2004.

R. F. Silva,

Rear Admiral, Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 04–4779 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–011]

Drawbridge Operation Regulations; Ocean Springs, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the U.S. 90 Bascule Span Highway Bridge across Back Bay of Biloxi, mile 0.0 at Ocean Springs, Harrison County, Mississippi. This deviation allows the bridge to remain closed to navigation from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004. The deviation is necessary to align the speed reducer and to replace some of the old welded flooring plates with new steel channel sections on the drawbridge.

DATES: This deviation is effective from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Mississippi Department of Transportation has requested a temporary deviation in order to align the speed reducer and to replace some of the old welded flooring plates with new steel channel sections on the U.S. 90 Bascule Span Highway Bridge across Back Bay of Biloxi, mile 0.0 at Ocean Springs, Harrison County, Mississippi. The replacement of the old flooring plates and alignment of the speed reducer is necessary for the continued safe operation of the draw span of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position continuously

from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004.

Presently the bridge opens on signal except that from 6:30 a.m. to 7:05 a.m., 7:20 a.m. to 8:05 a.m., 4 p.m. to 4:45 p.m. and 4:55 p.m. to 5:30 p.m., Monday through Friday except holidays, the draw need not open for the passage of vessels.

The bascule span bridge has a vertical clearance of 14 feet above mean high water, elevation 1.75 feet Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of commercial fishing vessels, tugs with barges in tow and various sizes and types of recreational pleasure craft including sailing vessels. Bridge tender logs show that in February, 2003 the bridge was opened 120 times to pass navigation, an average of 4 times per day. In March, 2003 it was opened 164 times to pass navigation, an average of 5.4 times per day. The bridge will not be able to open for emergencies during the closure period. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 23, 2004.

Bradford W. Black,

Captain, U.S. Coast Guard, Acting Bridge Administrator.

[FR Doc. 04–4777 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–02–147]

RIN 1625–AA09

Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, Mile 1059.0, Lauderdale-by-the-Sea, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Commercial Boulevard Bridge (SR 870), Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Florida. This rule requires the bridge to open on signal, except that from 7 a.m. to 6 p.m. each day of the week, the bridge need only open on the hour, twenty minutes past the hour and forty minutes past the hour. This action is intended to improve vehicular traffic movement while not unreasonably interfering with vessel traffic movement.

DATES: This rule is effective April 5, 2004.

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 [CGD07–02–147] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Branch, Seventh District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 18, 2003, we published a temporary deviation (TD) entitled Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Broward County, Florida in the **Federal Register** (67 FR 11919). We received 38 letters commenting on the temporary deviation. No public meeting was requested, and none was held. On February 28, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Broward County, Florida in the **Federal Register** (68 FR 9609). We received three letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The City of Fort Lauderdale requested a change in regulations governing the operation of the Commercial Boulevard Bridge (SR 870) to ease vehicular traffic congestion approaching the bridge and in the surrounding beachside intersections and roadways. Commercial Boulevard is congested in this area due to an abundance of condominiums on the beach and an increase of non-seasonal tourism. The existing regulations for this bridge are published in 33 CFR 117.261(ee) and require the bridge to open on signal, except that, from November 1 through May 15, from 8 a.m. to 6 p.m., Monday through Friday, the draw need only open on the hour, quarter-hour, half-hour, and three-quarter hour, and from 8 a.m. to 6 p.m. on Saturday, Sunday, and Federal holidays, the draw need open only on the hour, twenty minutes after the hour, and forty minutes after the hour. The bridge has a vertical clearance of 15 feet and a horizontal clearance of 90 feet. This rule will improve vehicular traffic movement by placing the bridge on a twenty minute schedule from 7 a.m. to 6 p.m., each day of the week.

Discussion of Comments and Changes

We received thirty-eight comments on the temporary deviation; thirty-one were in favor of the twenty minute schedule, and seven comments requested that the schedule be changed to an hour and half-hour schedule. We also received three comments on the notice of proposed rulemaking, which were all in favor of the twenty minute schedule.

We have carefully considered the comments and decided not to change the proposed rule. A thirty minute schedule is not practicable as vessels would experience a greater delay in traversing the waterway, especially due to other bridge operating schedules in the area.

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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule provides for regularly scheduled openings and only differs from the current operating schedule by several minutes per opening per hour.

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, because the regulation will only affect the bridge's current operation by several minutes per opening per hour and continue to provide for navigational needs.

Assistance for Small Entities

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

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 the preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.261 revise paragraph (ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ee) Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea. The draws shall open on signal; except that, from 7 a.m. to 6 p.m., the draws need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: February 23, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–4780 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–082–0072; FRL–7626–1]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County Ozone, PM–10 and CO Nonattainment Areas; Approval of Revisions to Maricopa County Area Cleaner Burning Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are approving revisions to the Arizona Cleaner Burning Gasoline

(CBG) program currently approved in the State implementation plan (SIP). Specifically, we are approving revisions that, among other changes, replace Arizona's interim CBG program with a permanent program, amend the wintertime CBG program to limit the types of gasoline that may be supplied, and remove the minimum oxygen content requirement for summertime gasoline.

EFFECTIVE DATE: April 5, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region 9's Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901. Due to increased security, please call 24 hours ahead of your visit so that we can arrange to have someone meet you.

Electronic Availability

This document and the Technical Support Document (TSD) for this rulemaking are also available as electronic files on EPA's Region 9 Web page at *http://www.epa.gov/region09/air/phoenixcbg/.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Phone: (520) 622–1622; e-mail: *tax.wienke@epa.gov.*

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

I. Background

On September 29, 2003 (68 FR 55920), EPA published a notice of proposed rulemaking for the State of Arizona. The notice proposed approval of revisions to the SIP for Arizona's CBG program. These revisions to the Arizona CBG program have been adopted by the Arizona Department of Environmental Quality (ADEQ) and the State legislature since EPA approval of the interim CBG program in 1998.

ADEQ submitted the changes to its CBG program to EPA for approval into the SIP in five separate SIP submittals: *SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area,* February 1999 (''CBG Permanent Rules''), State Implementation Plan Revision for the Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area, March 2001 (''Summertime Minimum Oxygen Content Removal''), *Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas,* August 2001 (''CBG Wintertime Rules''), *Supplement to Cleaner Burning Gasoline Program State Implementation Plan Revision,* September 2001 (''Technical Supplement'') and *Supplement to Cleaner Burning Gasoline Program State Implementation Plan Revision,* January 2004 (''Statutory Supplement'').[1] The key changes from the interim CBG program approved into the SIP in 1998 are described below.

Since 1997, ADEQ has adopted several amendments to its CBG rule in order to make it a permanent rule and to reflect changes made by the State legislature to the fuel provisions of the Arizona Revised Statutes (ARS). Most of these changes involve the removal of SIP-approved requirements and options. The ''CBG Permanent Rules'' include the following key changes from the interim rules currently approved in the SIP:

- The standards for Type 3 gasoline (modeled after Federal Phase 1 reformulated gasoline [RFG]), which was only available as an option in 1998, have been removed along with references to this fuel option.[2]
- Summertime minimum oxygen content standards for Type 1 gasoline (modeled after Federal Phase 2 RFG) have been removed by specifying a 0.0% minimum oxygen content for April 1 through November 1 in Table 1 of the rule.[3]
- The option of supplying Type 1 fuel during the winter fuel season (November 2 through March 31) has been removed by including wintertime fuel specifications that limit suppliers to Type 2 gasoline (modeled after California Air Resources Board (CARB) Phase 2) beginning in 2000. With this change, requirements for wintertime NO_X surveys have also been removed because Type 2 gasoline does not include a NO_X performance standard.
- The option to provide non-ethanol oxygenated fuel during the winter has been removed by amending the wintertime oxygen content provisions to require fuel containing 10% ethanol, unless the use of a non-ethanol oxygenate is approved by the Director of ADEQ.[4]
- NO_X performance standards for Type 1 gasoline and summer survey requirements have been amended to conform with changes made by EPA to the Federal RFG regulations in December 1997 (62 FR 68196).[5]
- The area subject to the program has been redefined to include all of Maricopa County as well as some western portions of Pinal County and a small part of southern Yavapai County.[6]

A more complete description of Arizona's submittals and the rationale for our approval are presented in the notice of proposed rulemaking (68 FR 55920, Sept. 29, 2003), and associated Technical Support Document (available at *www.epa.gov/region09/air/phoenixcbg/*).

II. Public Comments on the Proposed Action

We received two comment letters on the September 29, 2003, proposal. The first, from the Western States Petroleum Association (WSPA), strongly supported the proposed SIP approval. The second, from the Arizona Center for Law in the Public Interest (ACLPI), raised concerns regarding the impact on ambient ozone concentrations. ACLPI's comments are addressed below.

In addition to these comments, we received e-mails submitted prior to publication of the proposal in the **Federal Register**, apparently reacting to news stories about the CBG program and MTBE. While these e-mails do not appear to address our proposed action and therefore do not appear to be intended as comments, we discuss them below to address potential confusion over the nature of today's action.

ACLPI Comments

Comment: ACLPI suggests EPA's finding under CAA section 110(l)—that the CBG program revisions will not interfere with attainment and reasonable further progress—is not sufficiently definitive. Specifically, ACLPI notes that, ''EPA acknowledges that this removal [of the summertime minimum oxygen content requirement] 'could result in increases in VOC and CO emissions and a decrease in NO_X emissions' all of which would have the effect of increasing ozone.'' ACLPI argues that the basis for EPA's finding is the unsupported assumption that

[1] In accordance with section 110(k)(1)(B), these SIP submittals were deemed complete by operation of law six months after submittal.

[2] This change was included in ADEQ's February 1999 ''CBG Permanent Rules'' submittal and reflects changes to the Arizona Revised Statutes by HB 2307.

[3] For additional information, see ADEQ's March 2001 ''Summertime Minimum Oxygen Content Removal'' submittal. These changes reflect amendments to the Arizona Revised Statutes by SB 1504.

[4] This change was also included in ADEQ's August 2001 ''CBG Wintertime Rules'' submittal implementing changes to the Arizona Revised Statutes by HB 2347.

[5] *See* ADEQ's August 2001 ''CBG Wintertime Rules'' submittal.

[6] The definition of the covered area has been changed in several statutory and regulatory revisions. The final definition submitted for EPA approval is described in ADEQ's August 2001 ''CBG Wintertime Rules'' submittal and reflects statutory changes made by HB 2189.

oxygen content will not affect emissions from newer vehicles and therefore the projected emissions changes are ''relatively small'' and are more than offset by Phoenix's general downward trend in ambient ozone concentrations from 1996 to 2002.

Response: We concluded in our proposal that the removal of the two percent minimum oxygen requirement for summertime CBG is not a relaxation of the SIP because the SIP-approved regulations already allowed the use of non-oxygenated CBG (CBG Type 2 produced under the averaging option) during the summer control period. Thus, the fuel options allowed under the revised State rules will be no less stringent than those allowed under the current SIP. This side-by-side comparison of regulatory requirements is appropriate for purposes of satisfying CAA section 110(l) in areas meeting the NAAQS. *See Hall* v. *EPA,* 273 F.3d 1146, 1160 n. 11 (9th Cir. 2001) (noting ''no relaxation'' test would ''clearly be appropriate in areas that achieved attainment under preexisting rules'').

We nonetheless went further in working with ADEQ to assess the changes in emissions and ozone concentrations likely to occur as a result of this change to the CBG program. ACLPI notes our preliminary conclusion that small emissions increases might not be a concern given the declining ozone concentrations in the area. As noted above, this preliminary assessment was not the basis for our 110(l) determination. Nor was it the end of our analysis.

To confirm this preliminary conclusion we conducted detailed modeling to predict not only how emissions might change but what these emission changes would mean for ozone concentrations. First, we looked at how historical ozone concentrations would have been affected by the potential fuel changes. Our modeling showed that the new fuel, if used in place of the baseline fuel, would have resulted in a four percent decrease in the ozone design value from the 1999 baseline year. Second, to evaluate future ozone concentrations, we conducted a qualitative analysis to predict likely trends in emissions and concentrations. We explained that with newer vehicles, the effect of gasoline oxygen content on vehicle emissions is likely to diminish, and any small emissions changes will be overwhelmed by emission reductions achieved by new engine controls. Between these two findings, we concluded that the fuel provided to the area will be better for ozone concentrations than the fuel used in the area at the time of attainment and that emissions from vehicles will continue to decline into the future.

ACLPI does not acknowledge the analysis provided. Instead, ACLPI points to our note that there is not enough data to conclude that gasoline oxygen content will affect emissions from the newest generation of vehicles. ACLPI implies that we therefore do not know how fuel changes will affect emissions in the future.

While our models for estimating vehicle emissions do not yet include data for the newest generation of vehicles, we know how gasoline oxygen content affects older vehicles and we know that as the overall fleet of vehicles changes, the effect of oxygen content diminishes.[7] In addition, we know that as the fleet changes to include more newer vehicles, engine technologies will result in significant emission reductions that overwhelm this diminishing effect from gasoline oxygen content. Thus, even though we cannot model the specific effect of oxygen content on newer vehicles, it is reasonable to conclude that emissions will continue to improve with changes to the fleet.

Comment. ACLPI also claims that it is anticipated that Phoenix will violate the new 8-hour ozone standard and therefore objects to EPA's failure to analyze the potential impact on 8-hour ozone concentrations.

Response. While we did not conduct a separate analysis for 8-hour ozone concentrations, we did explain that the analysis described above should ensure that the revisions to the fuel program will not interfere with 8-hour ozone attainment. Modeling showed that the new fuels likely to be provided to the area will result in a decrease in peak ozone concentrations as compared to the fuel provided in 1999. In addition, motor vehicle emissions will continue to decline as improvements in engine technologies will overwhelm the diminishing effect of gasoline oxygen content on these emissions.

Related E-mails Submitted to EPA

We received four e-mails, all submitted before the September 29 publication of the proposed action—one on September 8, one on September 15 and two from the same person on September 23. The first two of these e-mails encouraged ADEQ to move away from using MTBE as an oxygenate. The final two raised questions about how emission reductions would be achieved if the area no longer had a CBG program with MTBE.

These e-mails suggest some confusion regarding the nature of the action being taken by ADEQ and EPA. We therefore felt it important to reiterate that our action does not ban MTBE from Arizona summertime gasoline. The revisions to the CBG program remove the minimum summertime oxygen content requirement, but do not ban the use of MTBE or any other oxygenate during the summer. Our approval of these revisions likewise, does not preclude the use of MTBE.

With this in mind, we evaluated the fuel formulations refiners are likely to supply the area. We concluded approval of these CBG program revisions may result in a mixture of MTBE-oxygenated CBG and non-oxygenated CBG (*i.e.*, ethanol-oxygenated fuel appears unlikely). The cheapest fuel to produce will likely be non-oxygenated Type 1 CBG. We used these likely fuels to evaluate air quality impacts and concluded these changes will not adversely affect air quality in the area.

III. Final Action

In today's action, we are finding that the Arizona CBG program implemented in the Maricopa County area meets CAA and EPA requirements for a state fuels program. In addition, under CAA section 110(l), we are finding that the SIP revisions submitted by ADEQ do not interfere with any applicable requirements for CO, ozone, and PM–10 attainment and reasonable further progress (RFP) or any other requirements of the CAA applicable to the Phoenix area. The basis for these findings is discussed in the proposal for today's action. *See* 68 FR 55920.

We have evaluated the submitted SIP revisions and have determined that they are consistent with the CAA and EPA regulations. Therefore, we are approving the Arizona CBG program into the Arizona SIP under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D to address ozone, CO and PM–10 nonattainment in the Maricopa County area.

Specifically, we are approving the following elements of the CBG program: Arizona Administrative Code (AAC) R20–2–701, R20–2–716, R20–2–750 through 762, and title 20, chap. 2, art. 7, Tables 1 and 2 (March 31, 2001); and Arizona Revised Statutes (ARS) §§ 49–541(1)(a), (b), and (c) (as codified on

[7] The benefit of adding oxygen to gasoline is to ''lean out'' chemically an engine that is running rich (*i.e.*, too much fuel, not enough air (oxygen)), so that complete combustion occurs (*i.e.*, the additional air/oxygen results in CO being converted to CO_2). Newer vehicles, however, include sophisticated feedback controls, which enable these vehicles to maintain air/fuel ratios within tight parameters. These ratios are maintained with or without the addition of oxygen to gasoline. As a result, the benefits of gasoline oxygenates will decline as these feedback controls improve in newer vehicles.

August 9, 2001), 41–2124 (as codified on April 28, 2000), 41–2123 (as codified on August 6, 1999), 41–2113(B)(4) (as codified on August 21, 1998), 41–2115 (as codified on July 18, 2000), and 41–2066(A)(2) (as codified on April 20, 2001).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to a state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Statutory and Executive Order Review

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 26, 2004.

Wayne Nastri,

Regional Administrator, Region 9.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(112) and (c)(113) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(112) Revised regulations were submitted on August 15, 2001, by the Governor's designee as part of the submittal entitled *Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas.* The incorporated materials from this submittal supercede those included in the submittals entitled *SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area,* submitted on February 24, 1999, and *State Implementation Plan Revision for the Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area,* submitted on March 29, 2001.

(i) Incorporation by reference.

(A) Arizona Administrative Code.

(*1*) AAC R20–2–701, R20–2–716, R20–2–750 through 762, and Title 20, Chap. 2, Art. 7, Tables 1 and 2 (March 31, 2001).

(113) Revised statutes were submitted on January 22, 2004, by the Governor's designee as part of the submittal entitled *Supplement to Cleaner Burning Gasoline Program State Implementation Plan Revision.* The incorporated materials from this submittal supercede those included in the submittals entitled *SIP Revision, Arizona Cleaner Burning Gasoline Permanent Rules—Maricopa County Ozone Nonattainment Area,* submitted on February 24, 1999, *State Implementation Plan Revision for the*

Cleaner Burning Gasoline Program in the Maricopa County Ozone Nonattainment Area, submitted on March 29, 2001, and *Arizona Cleaner Burning Gasoline Rule to Revise the State Implementation Plan for the Maricopa County Carbon Monoxide, Ozone, and PM10 Nonattainment Areas,* submitted August 15, 2001.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) ARS sections 49–541(1)(a), (b), and (c), 41–2124, 41–2123, 41–2113(B)(4), 41–2115, and 41–2066(A)(2) (as codified on March 31, 2001).

[FR Doc. 04–4814 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA190–7008a; FRL–7631–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Pennsylvania; Control of Emissions from Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a section 111(d)/129 negative declaration submitted by the Pennsylvania Department of Environmental Protection (PADEP). The negative declaration certifies that small municipal waste combustion (MWC) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (the Act), do not exist within its air pollution control jurisdiction, excluding the jurisdictions of the Health Departments (air pollution control agencies) in Allegheny and Philadelphia counties.

DATES: This rule is effective on May 3, 2004 without further notice, unless EPA receives adverse written comment by April 5, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *wilkie.walter@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in part II of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the Act requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the Act, also requires EPA to promulgate EG for MWC units that emit a mixture of air pollutants. These pollutants include organics (*i.e.,* dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 6, 2000 (65 FR 76350 and 76378), EPA promulgated small municipal waste combustion unit new source performance standards, 40 CFR part 60, subpart AAAA, and emission guidelines (EG), subpart BBBB, respectively. The designated facility to which the EG apply is each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of municipal solid waste (MSW) and commenced construction on or before August 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.,* negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

The Harrisburg Materials, Energy, Recycling and Resource Recovery Facility was the only known designated facility (based on the derated capacity of its two combustion units) subject to the EG. However, on June 18, 2003, the City of Harrisburg permanently ceased operation of its two small MWC units. Permanent closure of the units was confirmed by PADEP staff during inspections of the facility on August 4 and 11, 2003.

II. Final EPA Action

The PADEP has determined that there are no designated facilities, subject to the small MWC unit EG requirements, in its air pollution control jurisdiction. Accordingly, the PADEP Bureau of Air Quality Director has submitted to EPA a negative declaration letter certifying this fact. The submittal date of the letter is October 30, 2003.

Therefore, EPA is amending part 62 to reflect the receipt of the negative declaration letter from the PADEP. Amendments are being made to 40 CFR part 62, subpart NN (Pennsylvania). These amendments exclude the local Pennsylvania air pollution control jurisdictions that submitted their own approvable negative declarations—Allegheny and Philadelphia (City) counties.

After publication of this **Federal Register** notice, if a small MWC unit is later found within jurisdiction of the PADEP, then that unit will become subject to the requirements of the Federal small MWC 111(d)/129 plan, as promulgated on January 31, 2003 (68 FR 5144).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 negative declaration if adverse comments are filed. This rule will be effective on May 3, 2004 without further

notice unless EPA receives adverse comment by April 5, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA190–7008 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *wilkie.walter@epa.gov,* attention PA190–7008. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

Considerations when Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

III. Statutory and Executive Order Reviews

A. General Requirements

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

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d)/129 negative declarations, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 111(d)/129 negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 negative declaration, to use VCS in place of a section 111(d)/129 negative declaration submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Pennsylvania negative declaration for small MWC units may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administration practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Carbon monoxide, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste Treatment and disposal.

Dated: February 25, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart NN—Pennsylvania

■ 2. Subpart NN is amended by adding § 62.9647 to read as follows:

Emissions from Existing Small Municipal Waste Combustion Units

§ 62.9647 Identification of plan—negative declaration.

October 30, 2003 letter from the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, certifying that there are no existing small municipal waste combustion units within Pennsylvania, excluding Allegheny and Philadelphia counties, that are subject to 40 CFR part 60, subpart BBBB.

[FR Doc. 04–4818 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WI118–1; FRL–7632–2]

Notice of Deficiency for Clean Air Act Operating Permit Program in Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and 40 CFR 70.10(b), EPA is publishing this Notice of Deficiency (NOD) for the State of Wisconsin's Clean Air Act title V operating permit program. EPA has examined the facts and circumstances associated with the State's title V operating permit program and based on the totality of those facts and circumstances before the Agency, hereby issues this NOD. As explained more fully below, EPA has determined that the State's title V program does not comply with the requirements of the Clean Air Act (Act) or with the implementing regulations at 40 CFR part 70, in the following respects: (1) Wisconsin has failed to demonstrate that its title V program requires owners or operators of part 70 sources to pay fees that are sufficient to cover the costs of the State's title V program in contravention of the requirements of 40 CFR part 70 and the Act; (2) Wisconsin is not adequately ensuring that its title V program funds are used solely for title V permit program costs and, thus, is not conducting its title V program in accordance with the requirements of 40 CFR 70.9 and the Act; (3) Wisconsin has not issued initial title V permits to all of its part 70 sources within the time allowed by the Act and 40 CFR 70.4; and (4) Wisconsin has failed to implement properly its title V program in several respects, including its

issuance of title V permits that contain terms that do not have certain underlying applicable requirements, that do not contain all applicable requirements, and that do not make certain requirements Federally enforceable. Publication of this notice is a prerequisite for withdrawal of the State's title V program approval, but EPA is not withdrawing this program through this action.

EFFECTIVE DATE: February 22, 2004. Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Susan Siepkowski, EPA Region 5 (AR–18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353–2654, *siepkowski.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

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IV. Administrative Requirements

I. Background

On January 27, 1994, the Wisconsin Department of Natural Resources (WDNR) submitted to the Administrator for approval its proposed title V program. EPA granted interim approval of Wisconsin's program on April 5, 1995. WDNR submitted corrections on March 28, 2001, September 5, 2001, and September 17, 2001 to address the issues identified in the interim approval. EPA approved the corrections submitted by WDNR, finding that they adequately addressed the conditions of the April 1995 interim approval. EPA gave Wisconsin final full approval of its title V program effective on November 30, 2001.

In addition to submitting corrections to EPA in 2001 in accordance with EPA's interim approval, Wisconsin submitted certain other proposed revisions to its title V program. One of Wisconsin's proposed program revisions concerns its fee schedule. Although EPA has not taken action on this proposed program revision, Wisconsin has nonetheless implemented the change, which includes elimination of the inflation adjustment factor from its title V fee schedule. In a December 6, 2002 letter, EPA informed WDNR that EPA was reviewing the permit fee component of Wisconsin's title V permit program, and requested that Wisconsin provide information regarding its fees. Specifically, EPA requested that WDNR submit a description of the State's title V fee structure, a demonstration that Wisconsin's fee schedule resulted in the collection of revenues sufficient to cover the title V permit program costs, a description of the title V permit program activities and costs, and a description of the activities funded by part 70 fees, including personnel. Wisconsin provided some, but not all, of the requested information in a series of three written submissions to EPA dated March 3, 2003, April 18, 2003, and June 5, 2003.

On or about December 16, 2002, Sierra Club and a coalition of Wisconsin environmental groups submitted to EPA their ''Petition Seeking The U.S. EPA To Protect Wisconsin Families From Air Pollution By Issuing The State A Notice Of Deficiency For Failing To Adequately Administer Its Title V Permit Program'' (Sierra Club Petition). The Sierra Club Petition raised fee issues similar to those identified by EPA in its December 6, 2002 letter to WDNR, including, for example, WDNR's failure to charge title V fees sufficient to cover permit program costs, and WDNR's illegal use of title V monies to fund portions of non-title V program and staff. The Sierra Club Petition also raised WDNR's failure to act timely on applications for title V permits.

EPA has enforcement discretion under the Act to determine whether to issue a NOD under section 502(i) of the Act. *See Public Citizen, Inc.* v. *EPA,* 343 F.3d 449, 463–65 (5th Cir. 2003). In this case, EPA has fully examined the facts and circumstances associated with Wisconsin's title V operating permit program and based on the totality of those facts and circumstances determined that issuance of a NOD is appropriate. The deficiencies associated with Wisconsin's title V permit program are described below.

II. Description of Action

EPA is publishing this NOD to notify the State of Wisconsin and the public that, based on the totality of facts and circumstances, EPA has found deficiencies in the Wisconsin title V operating permit program. Publication of this document in the **Federal Register** satisfies 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR part 70 and the Act. The deficiencies being noticed today are described more fully below, but include Wisconsin's failure to demonstrate that it requires owners or operators of part 70 sources to pay fees that are sufficient to cover the costs of the State's title V permit program; Wisconsin's failure to ensure that its title V program funds are used solely for title V permit program costs; Wisconsin's failure to issue initial title V permits to all of its part 70 sources within the time allowed by the Act; and Wisconsin's failure to implement properly several aspects of its title V permit program, including its issuance of title V permits that contain terms that do not have certain underlying applicable requirements, that do not contain all applicable requirements, and that do not make certain requirements federally enforceable.

A. Title V Fee Schedule

1. Inadequate Fee Schedule Demonstration

Pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a state title V program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, and the State must ensure that any fee collected be used solely for title V permit program costs. Although 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) require that a state's title V permit program include a fee schedule that results in the collection of sufficient fees to cover all title V permit program costs, states have flexibility in developing the components of that fee schedule. *See* 40 CFR 70.9(b)(3).

In one of its 2001 title V proposed program revisions, Wisconsin disclosed that it had removed the inflation adjustment factor from its title V fee schedule. Although EPA has not yet taken action on this proposed program revision, Wisconsin has implemented the change. Based on this information and consistent with 40 CFR 70.9(b)(5), EPA in December 2002 requested from Wisconsin a detailed fee demonstration, showing that the State's collection of fees is sufficient to cover the title V permit program costs. As discussed more fully below, the information subsequently provided by Wisconsin in response to EPA's request does not demonstrate that the revised fee schedule results in the collection of fees in an amount sufficient to cover its actual permit program costs, as required by 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b)(1).

a. The Costs of Wisconsin's Title V Program Are Unknown

In response to EPA's December 2002 request, WDNR specifically declined to provide information regarding the actual costs of implementing its title V program and, thus, Wisconsin has not shown that the fees it is collecting are adequate to cover its actual title V

permit program costs. WDNR's response does assert, however, that the State is collecting the presumptive minimum fee amount as described at 40 CFR 70.9(b)(2). As explained further below, EPA disagrees with Wisconsin's characterization that it is meeting the presumptive minimum fee requirements of 40 CFR 70.9(b)(2), and finds that Wisconsin has failed to demonstrate that its title V fees are sufficient to cover actual permit program costs.

b. Wisconsin Has Not Demonstrated That It Collects Fees Sufficient To Fund Its Permit Program

1. Commingled Funds

EPA will presume that a state's fee schedule satisfies the requirements of 40 CFR 70.9(b)(1), if the fee schedule meets the requirements of 40 CFR 70.9(b)(2) (the presumptive minimum fee requirements). 40 CFR 70.9(b)(2) provides, in pertinent part, that a fee schedule is presumed to be sufficient to cover title V permit program costs if it would result in the collection and retention of an amount not less than $25 per ton, adjusted for inflation, times the total tons of actual emissions of each regulated pollutant emitted from each part 70 source. The regulations allow the state to exclude from this calculation the amount per source that exceeds 4,000 tons per year. 40 CFR 70.9(b)(2)(ii). EPA finds that WDNR has not demonstrated that it is using a fee schedule that results in the collection of the presumptive minimum fee amount, as required by 40 CFR 70.9(b)(2).

Specifically, the fee revenue information Wisconsin provided on March 3, 2003, shows that the State is not distinguishing between fees collected from sources operating under different Clean Air Act programs. The information provided shows that Wisconsin does not account separately for or maintain separate accounts for fees collected under title V and other non-title V fee-based programs. Thus, the State cannot provide an accurate picture of its title V fee collections. By including non-title V fee revenues in its calculation of ''Emission Fee Revenue 1992–2001,'' WDNR has overstated the amount of fees it is collecting as part of the title V permit program. The degree of the overstatement cannot be determined from the information provided by Wisconsin. Accordingly, Wisconsin has not demonstrated that it is collecting an amount equal to or in excess of the presumptive minimum fee, as required by 40 CFR 70.9(b)(2).

2. No Adjustment for Inflation

As explained above, 40 CFR 70.9(b)(2) sets forth specific requirements for calculating the presumptive minimum amount of fees that must be collected to cover title V permit program costs. One of those requirements is that states must adjust annually for inflation the $25 figure used in the presumptive fee calculation. 40 CFR 70.9(b)(2)(i) and (b)(2)(iv).

Wisconsin's fee schedule, as currently being implemented by the state, does not allow for adjustments to reflect inflation; it relies instead on billing for emissions in excess of the 4,000 ton per year amount that states may exclude from the presumptive fee calculation. *See* 40 CFR 70.9(b)(2)(ii)(B). In particular, Wisconsin's fee schedule requires the state to bill sources for each 1,000 tons of emissions beyond the 4,000 ton per year amount provided by 40 CFR 70.9(b)(2)(ii)(B). Wisconsin claims, without appropriate record support, that, by billing for emissions in excess of the tons to be billed under the presumptive fee schedule, it is collecting more revenue than it would by merely adjusting for inflation.

Wisconsin's original fee structure approved in 1995 followed the presumptive minimum fee schedule formula described in 40 CFR 70.9(b)(2). However, the Wisconsin legislature removed the provision for annual adjustments for inflation for fees billed after 2002. The State bills for emission fees in arrears; its fee bills are for the prior year's emissions. The effect of freezing the fees in 2001 is that the amounts billed in 2001 for the year 2000 also are calculated at the rate established in 2001. Wisconsin has not adjusted its emission fee rates to reflect the effects of inflation since 2000. By effectively freezing its fees at the 2000 level, Wisconsin has departed from the presumptive fee formula set forth in 40 CFR 70.9(b)(2). EPA cannot evaluate Wisconsin's claim that it is still collecting an amount greater than the amount it would collect using the presumptive minimum rate formula based on the information provided by the State, because Wisconsin has provided no actual fee billing or collection information for years after 2001.

Because Wisconsin has not demonstrated that it collects fees that cover the actual permit program costs, the State's program does not comply with the requirements of the Act and 40 CFR 70.9.

B. Wisconsin Has Not Demonstrated That It Is Adequately Administering Its Fees and Resources

40 CFR 70.10(b) provides that states must conduct approved state title V programs in accordance with the requirements of 40 CFR part 70 and any agreement between the state and EPA concerning operation of the program. Information provided to EPA by Wisconsin in its 2001 title V proposed program revision submissions and its responses to EPA's December 6, 2002 fee demonstration request disclose significant internal fee management deficiencies that demonstrate that WDNR is not conducting its title V program in accordance with the requirements of Act and 40 CFR part 70 and, therefore, is not adequately administering its title V program.

1. Use of Title V Funds for Non-Title V Purposes

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.9(a) provide that state title V programs must ensure that all title V fees are used solely for permit program costs. The information provided by WDNR in response to EPA's December 6, 2002 fee demonstration request discloses that Wisconsin is not using all title V fees for permit program costs.

a. Use of Title V Funds for Subsidization of Employees Performing Non-Title V Work

Wisconsin is diverting title V fees to complete non-title V work. According to information submitted to EPA by Wisconsin, only 66 of 99 title V funded employees attributed activities on their timesheets in fiscal year 2002 to title V. In addition, many of those 99 employees work in areas such as mobile sources, which typically are not associated with title V. Furthermore, title V funded 13 positions located outside of Wisconsin's Air Division. WDNR did not provide EPA with any information regarding the activities of these positions. Accordingly, WDNR is not ensuring that all title V fees that it collects are used solely for title V permit program costs, contrary to 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

b. Use of Title V Funds for Non-Title V Grant Matching

Information provided by Wisconsin establishes that when it applied for Federal non-title V grant monies, WDNR satisfied the ''matching funds'' requirement by using the total balance of funds in the account that holds fees collected under title V and fees collected from non-title V sources. Thus, Wisconsin is using title V money

for non-title V purposes. Accordingly, WDNR is not ensuring that all title V fees that it collects are used solely for title V permit program costs, contrary to 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

2. Insufficient Staffing

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4 provide that a state must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. EPA has determined that Wisconsin is not adequately staffing its title V program.

In Wisconsin's January 27, 1994, initial program submittal, Wisconsin estimated that it would need 300 agency staff to carry out its title V program. Wisconsin has never revised that estimate. As discussed above, Wisconsin currently has 99 title V funded positions in the Air Division. Further, of that number, only 66 of those employees reported working on title V activities on their time sheets in fiscal year 2002, and many of those 99 positions work in areas not typically associated with title V. Finally, Wisconsin's 2004–2005 budget includes a $1.1 million reduction in fee spending authority (not a reduction in fees collected) and a reduction of 11.5 title V positions. Accordingly, because it is not employing staff sufficient, by its own estimate, to carry out its program, Wisconsin is not complying with the requirements of the Act and 40 CFR 70.4.

C. Failure To Timely Issue Title V Permits

Section 503(c) of the Act, 42 U.S.C. 7661b(c), and 40 CFR 70.4 require that a permitting authority must act on all initial title V permit applications within three years of the effective date of the program.

EPA granted interim approval to Wisconsin's title V program on April 5, 1995. Pursuant to section 503 of the Act, Wisconsin was to have completed issuance of initial title V operating permits to all of its part 70 sources by April 5, 1998. 42 U.S.C. 7661b(c). WDNR failed to meet this deadline and originally projected it would issue all operating permits by December 2005. In response to EPA's December 2002 fee demonstration request, WDNR stated that, due to the new budget reductions, it may not complete issuance of title V operating permits to all of its part 70 sources until 2009, eleven years after they were due. WDNR has operated its program for over eight years, but has issued only 73% of its permits. As of January 26, 2004, Wisconsin has issued 426 of 578 title V permits.

Recently, Wisconsin indicated that it is undertaking steps to complete issuance of title V operating permits to all of its part 70 sources by December 31, 2004. While EPA finds this intention encouraging, EPA is issuing this notice based on the totality of facts and circumstances currently associated with the State's title V program.

D. Additional Program Issues

1. Expiration of NSR Permits

Each source subject to title V must have a permit to operate that assures compliance with all applicable requirements. 42 U.S.C. 7661c(a), 40 CFR 70.1. The regulations define ''applicable requirement'' to include, among other things, any term or condition of any preconstruction permit issued pursuant to programs approved or promulgated under title I, including parts C or D of the Act. 40 CFR 70.2. Generally, title V does not impose new substantive air quality control requirements. 40 CFR 70.1(b). Therefore, to be included in a title V permit, applicable requirements, such as permit conditions in previously issued permits, must exist independent of the title V permit. In addition, a state, through its Attorney General or other applicable counsel, must provide a legal opinion demonstrating that the state has adequate authority to carry out all aspects of the title V program, including authority to incorporate all applicable requirements into title V permits. 40 CFR 70.4(b)(3)(v).

Title I of the Act authorizes permitting authorities to establish in preconstruction permits source specific terms and conditions necessary for sources to comply with the requirements of the Prevention of Significant Deterioration and New Source Review programs. Wisconsin interprets its statutes, Wis. Stat 285.66(1), and regulations Wis. Admin code NR 405.12, to provide that its preconstruction permits expire after 18 months. Because Wisconsin's rules do not ensure these source specific permit terms remain in effect and exist independently of a title V permit, it allows the basis for these conditions to expire and could cause Wisconsin to lose the authority to include such conditions in a renewed title V permit.

Title V does not provide the authority for the establishment and maintenance of State Implementation Plan (SIP) approved permit requirements. Therefore, Wisconsin's interpretation that its title V program, Wis. Stat. 285.63, provides authority to create source-specific limitations, such as Best Available Control Technology requirements, in title V permits, is inconsistent with EPA's regulations. Because Wisconsin's rules do not assure that construction permit conditions exist independently of title V permits and because its interpretation that its title V program provides the authority to create source specific limitations, the State's program does not meet the program approval requirements of title V and part 70. *See* 66 FR 64039, 64040 (12/11/01).

2. Combined NSR and Title V Permits

States have the option of integrating their pre-construction and title V programs. *See* 57 FR 32250, 32259 (July 21, 1992). 40 CFR part 70 requires that to implement an integrated permit program, the state permitting authority must: (1) Have in place procedures that substantially comply with all procedural requirements of part 70, 40 CFR 70.7(d)(1)(v); (2) comply with the permit content requirements in 40 CFR 70.6, including the requirement to specify the origin of and authority for each term or condition in a title V permit, 40 CFR 70.7(d)(1)(v); and (3) ensure that the NSR conditions do not expire to assure compliance with applicable requirements, 42 U.S.C. 7661c(a) and 40 CFR 70.1(b).

Wisconsin has been issuing combined pre-construction and title V permits for several years. Wisconsin does not identify NSR conditions or specify the origin and authority of the NSR conditions in combined permits. Furthermore, Wisconsin does not have any provisions to ensure that the NSR conditions are permanent. Wisconsin's integrated title V/pre-construction program does not meet the requirements of 40 CFR part 70.

3. Federal Enforceability

40 CFR 70.6(b) provides that all terms and conditions in a title V permit are federally enforceable, that is, enforceable by EPA or citizens. However, the permitting authority can designate as not federally enforceable any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. 40 CFR 70.6(b)(2) and 40 CFR 70.2 (definition of applicable requirement).

All terms and conditions of a permit issued pursuant to a program approved into a state's SIP are federally enforceable. 40 CFR 52.23. Wisconsin, however, does not identify all terms and conditions of its construction permit as federally enforceable. Instead, Wisconsin currently identifies permit requirements in title V permits originating from Wisconsin's non-SIP

toxics program (Wis. Admin. Code NR 445) as enforceable by the state only, even when the requirements were established in a permit issued pursuant to a SIP-approved program. Wisconsin's failure to include the terms established in a permit issued pursuant to a SIP-approved program into the federally enforceable side of its title V permits is contrary to 40 CFR 70.6.

4. Insignificant Emission Unit Requirements

40 CFR 70.5(c) authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels which need not be included in the permit application. An application may not omit, however, information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA approved schedule. Moreover, nothing in part 70 authorizes a state to exempt insignificant emission units (IEUs) from the permit content requirements of 40 CFR 70.6. Furthermore, the July 21, 1992 preamble to the part 70 regulations provides that the IEU exemption does not apply to permit content. 57 FR 32273 (July 21, 1992).

Wisconsin's regulations contain criteria for sources to identify IEUs in their applications, (Wis. Admin. Code NR 407), and require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. Although Wisconsin's regulations are consistent with EPA's regulations at 40 CFR part 70, the State is not properly implementing its regulations because it is not including these applicable requirements in its title V permits. Therefore, Wisconsin's implementation of its regulations is inconsistent with part 70.

III. Federal Oversight and Sanctions

40 CFR 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70, EPA has notified the state of the noncompliance, and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1) lists a number of potential bases for program withdrawal, including inadequate fee collection, failure to comply with the requirements of part 70 in administering the program, and failure to timely issue permits.

40 CFR 70.10(b), which sets forth the procedures for program withdrawal, requires as a prerequisite to withdrawal that the EPA Administrator notify the permitting authority of any finding of deficiency by publishing a notice in the **Federal Register.** Today's notice satisfies this requirement and constitutes a finding of program deficiency. If Wisconsin has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after issuance of this notice of deficiency, EPA may, among other things, withdraw approval of the program using procedures consistent with 40 CFR 70.4(e) and/or promulgate, administer, and enforce a Federal title V program. *See* 40 CFR 70.10(b)(2). Additionally, 40 CFR 70.10(b)(3) provides that if the state has not corrected the deficiency within 18 months after the date of the finding of deficiency and issuance of the NOD, then the state would be subject to the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act, 18 months after that notice. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this notice within 18 months after signature of this notice.[1] These sanctions would be applied in the same manner, and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Wisconsin's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will assess whether the state has taken significant action to correct the deficiencies outlined in this notice. *See* 40 CFR 70.10(b)(2) (providing that 90 days after issuance of NOD, EPA may take certain actions).

IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed with the United States Court of Appeals for the appropriate circuit within 60 days of March 4, 2004.

[1] Section 179(a) provides that unless such deficiency has been corrected within 18 months after the finding, one of the sanctions in section 179(b) of the Act shall apply as selected by the Administrator. If the Administrator has selected one of the sanctions and the deficiency has not been corrected within 6 months thereafter, then sanctions under both sections 179(b)(1) and 179(b)(2) shall apply until the Administrator determines that the state has come into compliance.

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

Dated: February 22, 2004.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 04–4822 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7631–4]

Delaware: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Delaware has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Delaware's changes through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Delaware's revisions to its hazardous waste program will take effect. If we receive comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the revisions to Delaware's program that were the subject of adverse comment.

DATES: This final authorization will become effective on May 3, 2004, unless EPA receives adverse written comments by April 5, 2004. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization, or portions thereof, will not take effect as scheduled.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. Comments may also be submitted

electronically to: *ellerbe.lillie@epa.gov* or by facsimile at (215) 814–3163. Comments in electronic format should identify this specific notice. You may inspect and copy Delaware's application from 8 a.m. to 4:30 p.m., at the following addresses: Delaware Department of Natural Resources & Environmental Control, Division of Air & Waste Management, Solid and Hazardous Waste Management Branch, 89 Kings Highway, Dover, DE 19901, Phone number 302–739–3689 and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Has EPA Made in This Rule?

EPA concludes that Delaware's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Delaware final authorization to operate its hazardous waste program with the revisions described in its application for program revisions, subject to the procedures described in section E, below. Delaware has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Delaware has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision serves to authorize revisions to Delaware's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by today's action are already effective and are not changed by today's action. Delaware has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize Delaware's program revisions. If EPA receives comments which oppose this authorization, or portions thereof, that document will serve as a proposal to authorize the revisions to Delaware's program that were the subject of adverse comment.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, or portions thereof, we will withdraw this rule, or portions thereof, as appropriate, by publishing a document in the **Federal Register** before the rule would become effective. EPA will base any further decision on the authorization of Delaware's program changes on the proposal mentioned in the previous section. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose the authorization of a particular revision to the State's hazardous waste program, we will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Delaware Previously Been Authorized for?

Initially, Delaware received final authorization to implement its hazardous waste management program effective June 22, 1984 (53 FR 23837). EPA granted authorization for revisions to Delaware's regulatory program effective October 7, 1996 (61 FR 41345); October 19, 1998 (63 FR 44152); September 11, 2000 (65 FR 42871); and August 8, 2002 (67 FR 51478).

G. What Changes Are We Authorizing With Today's Action?

On November 28, 2003, Delaware submitted a program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Delaware's revision application includes various regulations which are equivalent to, and no less stringent than, changes to the Federal hazardous waste program, as published in the **Federal Register** on November 8, 2000, June 28, 2001, November 20, 2001 and April 9, 2002. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Delaware's final authorization for the following program revisions:

Delaware seeks authority to administer the Federal requirements that are listed in Table 1. This Table lists the State analogs that are being recognized as no less stringent than the appropriate Federal requirements. Unless otherwise stated, the State's statutory references are to the Delaware Regulations Governing Hazardous Waste (DRGHW), amended and effective July 1, 2002 and July 11, 2002. The statutory references are to 7 Delaware Code Annotated (1991).

TABLE 1

Description of Federal Requirement (Revision Checklists [1])	Analogous Delaware Authority
	RCRA Cluster IX, [2] HSWA
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, 65 *FR* 67068–67133, 11/08/00 Revision Checklist 189.	7 Delaware Code (7 Del. Code) Chapter 63, § 6305 Delaware Regulations Governing Hazardous Waste (DRGHW) 261.32, 261 Appendices VII and VIII, 268.33, 268.40/Table
	RCRA Cluster XI, non-HSWA
Change of Official EPA Mailing Address, 66 *FR* 34374–34376, 06/28/01, Revision Checklist 193.	7 Del. Code, § 6305 DRGHW 260.11(a)(11)
	RCRA Cluster XII, HSWA/non-HSWA
Inorganic Manufacturing Chemical Manufacturing Wastes Identification and Listing, 66 FR 58258–58300; 67 FR 17119–17120, 11/20/01; 04/09/02, Revision Checklist 195.	7 Del. Code, §§ 6304, 6305 DRGHW 261.4(b)(15), 261.32, 261 Appendix VII, 268.36 (New paragraph), 268.40/Table

[1] A Revision Checklist is a document that addresses the specific changes made to the Federal regulations by one or more related final rules published in the **Federal Register.** EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization Web page at *http://www.epa.gov/epaoswer/hazwaste/state.*

[2] A RCRA ''Cluster'' is a set of Revision Checklists for Federal rules, typically promulgated between July 1 and June 30 of the following year.

In addition, Delaware will be authorized to carry out, in lieu of the Federal program, State-initiated revisions to provisions of the State's Program. The following State-initiated revisions equivalent and analogous to the numerically-identical RCRA provisions found at Title 40 of the Code of Federal Regulations: DRGHW 254.53, 264.344(c)(1), 265.1085(i), Part 265 Appendix I, Part 268 Appendix VIII, 279.11 Table 1. Another State-initiated revision being authorized by this notice is DRGHW 122.1(c)(7), which is equivalent and analogous to 40 CFR 270.1(c)(7). Delaware will also be authorized to carry out, in lieu of the Federal program, State-initiated revisions to provisions of the State's Program which are more stringent than is required by the RCRA program and are presented in section H.

H. Where Are the Revised Delaware Rules Different From the Federal Rules?

The Delaware hazardous waste program contains some provisions which are more stringent than is required by the RCRA program. The more stringent provisions are being recognized as a part of the Federally-authorized program and include the following:

1. At DRGHW 261.21(a)(1) and (3) Delaware deleted outdated language that referred to the approval of equivalent test methods. The State does not allow alternative test methods and thereby still remains more stringent.

2. At DRGHW 264.1033(l)(3)(ii), 264.1052(c)(2), (d)(6)(iii), 264.1053(g)(2), 264.1057(d)(2), 264.1058(c)(2), 264.1084(k)(1), 264.1085(f)(1), and 264.1086(c)(4)(iii) Delaware is more stringent because it requires a facility to make a first effort at repair of a defective pollution control device or component to be within one calendar day after detection instead of five calendar days as EPA requires.

3. At DRGHW 265.37 Delaware is more stringent because it clarifies that an owner or operator must require written documentation of receipt to establish arrangements for emergency services. EPA states arrangements must be made but does not require written documentation.

4. At DRGHW 265.1033(k)(3)(ii), 265.1052(d)(6)(ii), 255.1053(g)(2), 265.1057(d)(2), 265.1058(c)(2), 265.1085(k)(1), 265.1086(f)(1), and 265.1087(c)(4)(iii) Delaware is more stringent because it requires a facility to make a first effort at repair of a defective pollution control device or component to be within one calendar day after detection instead of five calendar days as EPA requires.

5. At DRGHW 279.42(b) Delaware is more stringent because it only allows used oil transporters the use of the State's form when requesting EPA identification (ID) numbers. EPA allows the use of the form or a letter for EPA ID numbers.

I. Who Handles Permits After This Authorization Takes Effect?

After authorization, Delaware will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which it issued prior to the effective date of this authorization. Until such time as formal transfer of EPA permit responsibility to Delaware occurs and EPA terminates its permit, EPA and Delaware agree to coordinate the administration of permits in order to maintain consistency. EPA will not issue any additional new permits or new portions of permits for the provisions listed in section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authorization to operate the program on Indian lands, since there are no Federally-recognized Indian lands in Delaware.

K. What Is Codification and Is EPA Codifying Delaware's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart I, for this authorization of Delaware's program changes until a later date.

L. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (*see* Supplementary Information: section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866. 2. *Paperwork Reduction Act*—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. *Regulatory Flexibility Act*—After considering the economic impacts of

today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. *Unfunded Mandates Reform Act*—Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. *Executive Order 13132: Federalism*—Executive Order 12132 does not apply to this rule because it will not have federalism implications (*i.e.,* 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). 6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects 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). 7. *Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. 8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. 9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective on May 3, 2004.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 20, 2004.

James W. Newsom,

Acting Regional Administrator, EPA Region III.

[FR Doc. 04–4820 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 67

[USCG–2001–8825]

RIN 1625–AA28 (Formerly RIN 2115–AG08)

Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: On February 4, 2004, the Coast Guard published a final rule in the **Federal Register**, which inadvertently contained errors in the preamble. This document corrects those errors.

DATE: Effective on March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Williams, Deputy Director, National Vessel Documentation Center, Coast Guard, telephone 304–271–2506.

SUPPLEMENTARY INFORMATION: The Coast Guard published a final rule in the **Federal Register** of February 4, 2004 (69 FR 5390; FR Doc. 04–2230). The rule contained inadvertent errors in the preamble, under the heading, *List of Changes to the SNPRM.* These errors are nonsubstantive, but we are correcting them to prevent confusion.

In final rule FR Doc. 04–2230 published on February 4, 2004 (69 FR 5390), make the following corrections. On page 5392, in the third column, in item number 12, under the *List of Changes to the SNPRM*, remove the first paragraph which begins with the words, ''The grandfather provision * * *'' and ends with the words, ''* * * prohibited by this rule.'' In its place add the following paragraph:

''The grandfather provision in § 67.20(b) has one change. The date before which an endorsement must be issued to be eligible for the grandfather provision is changed from the effective date of this final rule to the date of publication of this rule. The purpose of the grandfather provision is to protect existing business arrangements. Changing the effective date (which, at the time the SNPRM was written, we expected to be 30 days after the publication date) of the rule to the date of publication prevents the establishment of new business arrangements that would be prohibited by this rule.''

The second and third paragraphs under item 12 remain unchanged.

Dated: February 26, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection.

[FR Doc. 04–4782 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031229327–4073–02; I.D. 121603B]

RIN 0648–AR58

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery

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

ACTION: Final 2004 specifications for the Atlantic deep-sea red crab fishery.

SUMMARY: NMFS issues final specifications for the 2004 Atlantic deep-sea red crab (red crab) fishery. The target total allowable catch (TAC) and fleet days at sea (DAS) for fishing year (FY) 2004 are 5.928 million lb (2.69 million kg) and 780 fleet DAS, respectively. One qualified limited access vessel has opted out of the fishery for FY2004; therefore, the four remaining limited access vessels are each allocated 195 DAS. The intent of

the specifications is to conserve and manage the red crab resource and provide for a sustainable fishery. In addition, this action corrects a citation in the regulations implementing the Red Crab Fishery Management Plan (FMP).

DATES: The final 2004 specifications are effective from April 5, 2004 through February 28, 2005. The amendment to § 648.262 is effective April 5, 2004.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the 2004 Red Crab Fishing Year, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov/ro/doc/nero.html*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the analysis of impacts and alternatives contained in these final specifications. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281–9272.

SUPPLEMENTARY INFORMATION: This final rule implements the final specifications for the FY2004 red crab fishery. Regulations implementing the FMP require the New England Fishery Management Council (Council) to review annually the red crab specifications. The Council's Red Crab Plan Development Team (PDT) meets at least annually to review the status of the stock and the fishery. Based on this review, the PDT reports to the Council's Red Crab Committee, no later than October 1, any necessary adjustments to the management measures and recommendations for the specifications. Specifications include the specification of optimum yield (OY), the setting of any target TAC, allocation of DAS, and/or adjustments to trip/possession limits. In developing the management measures and recommendations for the annual specifications, the PDT reviews the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

Final 2004 Specifications

Based on the available biological information and the Council's subsequent recommendation, the maximum sustainable yield (MSY) and OY for FY2004 remain the same as during FY2003. The FMP defines the target TAC as equal to OY, and OY is set at 95 percent of MSY, unless adjusted through the annual specifications process. The MSY for FY2004 is estimated to be 6.24 million lb (2.83 million kg); therefore, absent any new information on which to base a change in OY, OY and the target TAC remain at 5.928 million lb (2.69 million kg).

Five vessels qualified for a limited access permit in the red crab fishery for the 2002 and 2003 fishing years. The fleet was allocated 780 DAS for FY2003, which translated into 156 DAS for each of the five limited access vessels.

The Council considered six alternative ways to determine the fleet DAS allocation most appropriate to achieve the objectives of the FMP. Each alternative would have resulted in a different fleet DAS allocation. A complete description of each alternative is found in section 4.0 of the Council's Red Crab Specifications document and is not repeated here. The total fleet DAS for FY2004 would have varied from 745 under Alternative 1, to 874 under Alternative 4. An explanation of the reasons the Council selected the preferred alternative is found in the Classification section of the proposed specifications (69 FR 1561; January 9, 2004) and is not repeated here.

Based on the Council's analysis in its annual Red Crab Specifications document, NMFS concurs with the Council's recommendation that the FY2003 specifications continue to meet the objectives of the FMP and should be maintained for FY2004; therefore, the following specifications are implemented for FY2004:

Target TAC and DAS

Target TAC: 5.928 million lb (2.69 million kg)

Fleet DAS: 780

Vessel DAS: 195 (since one of the five vessels with a limited access permit has opted out of the fishery for FY2004, the remaining four vessels will thus receive 195 DAS each)

In accordance with § 648.260(b)(2), because the effective date of this rule falls after the start of the fishing year on March 1, 2004, fishing may commence under the levels set in the previous year's specifications (156 DAS per vessel), until these specifications become effective. Once these specifications become effective, qualified limited access red crab vessels will have access to their allocation of DAS for FY2004 (195 DAS per vessel). However, all DAS used by a vessel on or after March 1, 2004, will be counted against any DAS allocation the vessel ultimately receives for the 2004 fishing year.

Comments and Responses

One comment on the proposed specifications was received from the New England Red Crab Harvesters' Association (NERCHA), submitted on behalf of its membership, which includes all of the red crab limited access permit holders. A second comment was received from an interested party in which some of the issues raised did not specifically address the proposed specifications.

Comment 1: NERCHA supports the specifications as published in the **Federal Register** on January 9, 2004. NERCHA states that it will attempt to harvest the 2004 target TAC for red crab without exceeding the OY.

Response: NMFS acknowledges NERCHA's comment and is implementing the specifications as proposed.

Comment 2: One commentor expressed general support for environmental reforms, marine sanctuaries, and improved enforcement of fishery regulations. The commentor suggested that the red crab TAC be reduced to 2.5 million lb (1.13 million kg) and by 10 percent in each subsequent year thereafter. The commentor also suggested that the fleet DAS be reduced from 780 to 340 and by 10 percent each subsequent year thereafter, and further stated that incidental taking should not be allowed. The commentor questioned the accuracy of the population estimates, which, she stated, were 2 years old and did not include the 2003 catch data.

Response: These specifications are designed to provide for the fair and efficient use of the Federal commercial red crab quota. While NMFS acknowledges the importance of the general issues raised by the commentor, this final rule is not the proper mechanism to address those concerns.

The commentor gave no specific rationale for her suggestion that the TAC and fleet DAS be reduced from what was proposed. The reasons presented by the Council and NMFS for implementing these specifications are discussed in the preambles to both the proposed and final specifications, and are sufficiently analyzed within the Red Crab Specifications document. These specifications were developed based on the best data available at the time, in accordance with the process established by the Magnuson-Stevens Fishery Conservation and Management Act. There is no known scientific basis for reducing the target TAC and fleet DAS allocation to the levels suggested by the commentor.

Changes From the Proposed Rule

In § 648.262, paragraphs (b)(2) and (b)(6) erroneously refer to § 648.260(c) when they should refer to § 648.260 because there is no § 648.260(c). Referring to § 648.260(c) was, therefore, an inadvertent error made in earlier rulemaking and is corrected.

Classification

This action is exempt from review under Executive Order 12866.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA), prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed specifications, and the analyses completed to support the action. A copy of the IRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed specifications included a detailed summary of the analyses contained in the IRFA and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the legal basis and reasons for the action, and its objectives, can be found in the preambles of the proposed specifications (69 FR 1561; January 9, 2004) and these final specifications, and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Two comments were received on the proposed specifications; neither referred specifically to the IRFA or to any economic impacts that the rule may have. No changes to the proposed specifications were required to be made as a result of public comments. For a summary of the comments received, refer to ''Comments and Responses.''

Description and Estimate of Number of Small Entities to which Final Specifications Will Apply

All of the affected businesses (fishing vessels) are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed $3.5 million annually. All fishing vessels with Federal limited access red crab permits are considered affected businesses; there are currently five vessels so identified, although one has declared out of the fishery for FY2004.

Description of Projected Reporting, Recordkeeping, and other Compliance Requirements

No additional collection-of-information, reporting, or recordkeeping requirements are included in these final specifications. These specifications do not duplicate, overlap, or conflict with any other Federal rules.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

The economic impacts of this action could have varied based on which method was selected to calculate annual fleet DAS. If the individual DAS had been less than what was allocated in FY2003, resulting in fewer landings, then it is probable that the economic impacts would be negative for the limited access fleet compared to FY2003. On the other hand, if an alternative were selected that allocated a greater number of individual DAS to each vessel than in FY2003 (as is the case here), thereby increasing landings, economic impacts would likely be positive compared to FY2003. It is important to note that one vessel with a limited access permit has opted out of this fishery for FY2004, resulting in that vessel's DAS being allocated equally among the remaining limited access vessels. Thus, individual DAS allocations for active limited access vessels during FY2004 are higher than the FY2003 allocations. Sections 8.8 and 8.9 of the RIR and IRFA section of the Council's Red Crab Specifications document describe the economic impacts that would be expected from each of the alternatives.

Preferred Alternative

The preferred alternative consists of no changes in the target TAC available to the fishery or in the total number of fleet DAS from FY2003, but because one vessel opted out of the FY2004 fishery, the allocation of DAS per vessel is increased from 156 to 195.

Under Alternatives 1 through 4, the allocation of DAS per vessel for each of the four limited access vessels in the FY2004 fishery would have varied from 186 to 218. Alternative 1 would have resulted in an allocation of 186 DAS to each of the four participating vessels, based on a fleet allocation of 745 DAS. Alternative 2 would have resulted in an allocation of 215 DAS to each participating vessel, based on an allocation of 861 DAS to the fleet. Alternative 3 would have resulted in an allocation of 210 DAS per participating vessel, based on a fleet allocation of 840 DAS. Alternative 4 would have resulted in an allocation of 218 DAS to each of the participating vessels, based on an allocation of 874 DAS to the fleet. The PDT also evaluated an additional alternative, referred to as alternative 4a. This alternative would have provided for an annual fleet allocation of 794 DAS. This would translate into 198 DAS per vessel for each of the four vessels in the fishery in FY2004. A complete description of each alternative is found in section 4.0 of the Council's Red Crab Specifications document and is not repeated here.

The No Action/Status Quo Alternative was selected because the current management measures have been in place for only a short time, and there is no basis to revise the allocation at this time. Consequently, this DAS allocation, as was determined for the FY2003 specifications, is justified because it is the alternative most likely to allow vessels to harvest the 2004 TAC without exceeding it, based on preliminary data available for the same specifications in place for FY2003.

Summary of Economic Impacts

Uncertainty about the status of the red crab stock, as well as the limited time-series available in the data, makes it difficult to accurately predict the economic outcomes of the various alternatives.

The level of landings and revenue expected is considered directly related to the allocated number of DAS, and Alternative 4 would have provided the most fleet DAS. The ranking of alternatives (using FY2002 and FY2003 combined data) based solely on fleet DAS, from highest to lowest, would be Alternative 4, Alternative 2, Alternative 3, Alternative 4a, the preferred alternative, and finally, Alternative 1. As expected, the highest number of fleet DAS (Alternative 4) would have had the

greatest potential to ensure that vessels harvest at least the available TAC, but carried with it the highest risk of exceeding the TAC.

According to section 8.8 of the Red Crab Specifications document, Alternative 1 would be expected to generate the lowest level of landings and revenue because it allocates 35 fewer fleet DAS than the preferred alternative. On the other hand, Alternatives 2, 3, and 4 would allocate more fleet DAS than the preferred alternative; 81, 60, and 94 more fleet DAS, respectively. The additional allocated DAS would have enabled each vessel to take extra trips, and the economic benefits would have been expected to increase compared to FY2003 with more DAS available. But each of these other alternatives would increase the risk of exceeding the TAC. The opting out of one red crab vessel for FY2004, however, means that the remaining four vessels are allocated 195 DAS each, an increase over the FY2003 allocation of 156 DAS, under the preferred alternative. This increase in individual DAS significantly increases the potential landings and economic benefits for these vessels, compared to FY2003. In balancing the FMP objectives of providing the fleet with the greatest number of landings without exceeding the TAC, the preferred alternative is considered to represent the optimal DAS allocation by maximizing the potential economic benefits to affected vessels while minimizing the risk to the red crab resource of exceeding the TAC.

Section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Atlantic deep-sea red crab limited access vessel or dealer permits. In addition, copies of these final specifications and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.nero.noaa.gov/*.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: February 27, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fissheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.262 paragraphs (b)(2) and (b)(6) are revised to read as follows:

§ 648.262 Effort control program for red crab limited access vessels.

* * * * *

(b) * * *

(2) *For fishing years 2003 and thereafter.* Each limited access permit holder shall be allocated 156 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(B)(2) or the TAC is adjusted consistent with § 648.260.

* * * * *

(6) *Adjustments in annual red crab DAS allocations.* Adjustments to the annual red crab DAS allocation, if required to meet fishing mortality goals, may be implemented pursuant to § 648.260.

* * * * *

[FR Doc. 04–4876 Filed 3–1–04; 3:21 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031104274–4011–02; I.D. 022604C]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter I Fishery for Loligo Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for Loligo squid in the Exclusive Economic Zone (EEZ) will be closed effective March 5, 2004. Vessels issued a Federal permit to harvest Loligo squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* squid per trip for the remainder of the quarter (through March 31, 2004). This action is necessary to prevent the fishery from exceeding its Quarter I quota and allow for effective management of this stock.

DATES: Effective 0001 hours, March 5, 2004, through 2400 hours, March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, fax 978–281–9135, e-mail *don.frei@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2004 specification of DAH for *Loligo* squid was set at 16,872.4 mt (69 FR 4861, February 2, 2004). This amount is allocated by quarter, as shown below.

TABLE 1.—*Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons[1]	Research Set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II (Apr-Jun)	17.61	2,971.2	N/A
III (Jul-Sep)	17.3	2,918.9	N/A
IV (Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.4	127.5

[1]Quarterly allocations after 127.6 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and

other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter I will be harvested. Therefore, effective 0001 hours, March 5, 2004, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, April 1, 2004, when the Quarter II quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: February 27, 2004.

Bruce C. Morehead,

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

[FR Doc. 04–4877 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 43
Thursday, March 4, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–54–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–Trent 800 series turbofan engines. This proposal would require revising the Time Limits Manual for RR RB211–Trent 800 series turbofan engines. These revisions would include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This proposal results from the need to require enhanced inspection of selected critical life-limited parts of RB211–Trent 800 series turbofan engines. We are proposing this AD to prevent failure of critical life-limited rotating engine parts, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by May 3, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–54–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–54–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

A recent FAA study analyzing 15 years of accident data for transport category airplanes identified several root causes for a failure mode that can result in serious safety hazards to transport category airplanes. This study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that started and grew to failure. Cracks can start from causes such as unintended excessive stress from the original design, or they may start from stresses induced from material flaws, handling, or damage from machining operations. The failure of a rotating part can present a significant safety hazard to the airplane by release of high-energy fragments that could injure passengers or crew by penetration of the cabin, damage flight control surfaces, sever flammable fluid lines, or otherwise compromise the airworthiness of the airplane.

Based on these findings, the FAA, with the concurrence of the Civil Aviation Authority (CAA), which is the Airworthiness Authority for the United Kingdom (U.K.), has developed an intervention strategy to significantly reduce uncontained engine failures. This intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. The intervention strategy is to conduct enhanced, nondestructive inspections of rotating parts, which could most likely result in a safety hazard to the airplane in the event of a part fracture. We are considering the need for additional rulemaking. We might issue future ADs to introduce additional intervention strategies to further reduce or eliminate uncontained engine failures.

Properly focused enhanced inspections require identification of the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The CAA, with close cooperation of RR, has completed a detailed analysis that identifies the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high-energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. The inspections currently recommended by the manufacturer would become mandatory for those parts listed in the

compliance section as a result of this proposed AD. Furthermore, we intend that additional mandatory enhanced inspections resulting from this AD would serve as an adjunct to the existing inspections. We have determined that the enhanced inspections will significantly improve the probability of crack detection on disassembled parts during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Engine Manual.

Additionally, this proposed AD would:

- Allow air carriers that operate under the provisions of 14 CFR part 121 with an FAA-approved continuous airworthiness maintenance program, and maintenance facilities to verify completion of the enhanced inspections.
- Allow the air carrier or maintenance facility to retain the maintenance records that include the inspections resulting from this proposed AD, if the records include the date and signature of the person who performed the maintenance action.
- Require retaining the records with the maintenance records of the part, engine module, or engine until the task is repeated.
- Establish a method of record preservation and retrieval typically used in existing continuous airworthiness maintenance programs.
- Require adding instructions in an air carrier's maintenance manual on how to implement and integrate this record preservation and retrieval system into the air carrier's record keeping system.

For engines or engine modules that are approved for return to service by an authorized FAA-certificated entity, and that are acquired by an operator after the effective date of the proposed AD, you would not need to perform the mandatory enhanced inspections until the next piece-part opportunity. For example, you would not have to disassemble to piece-part level, an engine or module returned to service by an FAA-certificated facility simply because that engine or module was previously operated by an entity not required to comply with this proposed AD. Furthermore, we intend that operators perform the enhanced inspections of these parts at the next piece-part opportunity after the initial acquisition, installation, and removal of the part after the effective date of this proposed AD. For piece parts not approved for return to service before the effective date of this AD, the proposed AD would require that you perform the mandatory enhanced inspections before approval of those parts for return to service. The proposed AD would allow installation of piece parts approved for return to service before the effective date of this AD. However, the proposed AD would require an enhanced inspection at the next piece-part opportunity.

This proposal would require, within the next 40 days after the effective date of this proposed AD, revisions to the Time Limits Manual.

FAA's Determination and Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc RR RB211 Trent 800 series turbofan engines of the same type design that are used on Boeing 777 airplanes registered in the United States, the proposed AD would require revisions to the Time Limits Manual for RR RB211–Trent 800 series turbofan engines to include required enhanced inspection of selected critical parts at each piece-part exposure.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 350 engines of the affected design in the worldwide fleet. We estimate that 90 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 75 work hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Since this is an added inspection requirement, included as part of the normal maintenance cycle, no additional part costs are involved. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $438,750.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–54–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2003–NE–54–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 3, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–Trent 800 series turbofan engines. These engines are installed on, but not limited to, Boeing 777 airplanes.

Unsafe Condition

(d) This AD results from the need to require enhanced inspection of selected critical life-limited parts of RB211–Trent 800 series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within the next 40 days after the effective date of this AD, revise the Time Limits Manual (TLM), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: GROUP A PARTS MANDATORY INSPECTION.

(1) Inspections referred to as 'Focus Inspect' in the applicable Engine Manual inspection Task are mandatory inspections for the components given below, when the conditions that follow are satisfied:

(i) When the component has been completely disassembled to piece-part level as given in the applicable disassembly procedures contained in the Engine Manual; and

(ii) The part has more than 100 recorded flight cycles in operation since the last piece-part inspection; or

(iii) The component removal was for damage or a cause directly related to its removal; or

(iv) Where serviceable used components, for which the inspection history is not fully known, are to be used again.

(2) The list of Group A Parts is specified below:

Part nomenclature	Part number	Inspected per overhaul manual task
Low Pressure Compressor Rotor Disc	All	72–31–16–200–801
Low Pressure Compressor Rotor Shaft	All	72–31–20–200–801
Intermediate Pressure Compressor Rotor Shaft	All	72–32–31–200–801
Intermediate Pressure Rear Shaft	All	72–33–21–200–801
High Pressure Compressor Stage 1 to 4 Rotor Discs Shaft	All	72–41–31–200–801
High Pressure Compressor Stage 5 & 6 Discs and Cone	All	72–41–31–200–802
High Pressure Turbine Rotor Disc	All	72–41–51–200–801
Intermediate Pressure Turbine Rotor Disc	All	72–51–31–200–801
Intermediate Pressure Turbine Rotor Shaft	All	72–51–33–200–801
Low Pressure Turbine Stage 1 Rotor Disc	All	72–52–31–200–801
Low Pressure Turbine Stage 2 Rotor Disc	All	72–52–31–200–802
Low Pressure Turbine Stage 3 Rotor Disc	All	72–52–31–200–803
Low Pressure Turbine Stage 4 Rotor Disc	All	72–52–31–200–804
Low Pressure Turbine Stage 5 Rotor Disc	All	72–52–31–200–805
Low Pressure Turbine Rotor Shaft	All	72–52–33–200–801

Alternative Methods of Compliance

(g) You must perform these mandatory inspections using the TLM and the applicable Engine Manual unless you receive approval to use an alternative method of compliance under paragraph (h) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Maintaining Records of the Mandatory Inspections

(i) You have met the requirements of this AD by using a TLM changed as specified in paragraph (f) of this AD, and, for air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), by modifying your continuous airworthiness maintenance plan to reflect those changes. You must maintain records of the mandatory inspections that result from those changes to the TLM according to the regulations governing your operation. You do not need to record each piece-part inspection as compliance to this AD. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or use an alternative system that your principal maintenance inspector has accepted if that alternative system:

(1) Includes a method for preserving and retrieving the records of the inspections resulting from this AD; and

(2) Meets the requirements of section 121.369(c); and

(3) Maintains the records either indefinitely or until the work is repeated.

(j) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the Time Limits Manual as specified in paragraph (f) of this AD, and do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

Related Information

(k) CAA airworthiness directive No. G–2003–0003, dated November 25, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on February 25, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–4799 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 30, 37, 39, 42, 44, and 47

RIN 1076–AE49

Implementation of the No Child Left Behind Act of 2001; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; correction.

SUMMARY: The Bureau of Indian Affairs proposed a rulemaking to implement the No Child Left Behind Act of 2001 in the **Federal Register** of February 25, 2004 (67 FR 8752). The direct Internet response address given was in error. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, PO Box 1430, Albuquerque, NM 87103–1430; Phone: 505/248–7240; e-mail: *efreels@bia.edu*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** document published on February 25, 2004, there was an error in the direct Internet response address. The Bureau of Indian Affairs is correcting the document as follows:

In proposed rule document (**Federal Register** document 04–3714) make the following correction:

On page 8752, in the first column, 17 lines from the bottom of the column, the direct Internet response address should read: ''*http://www.blm.gov/nhp/news/regulatory/index.htm*.''

Dated: February 26, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–4695 Filed 3–3–04; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–014]

RIN 1625–AA09

Drawbridge Operation Regulations; Socastee River (SR 544), Atlantic Intracoastal Waterway, Mile 371, Horry County, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove the regulations governing the operation of the Socastee (SR 544) Swing Bridge across the Atlantic Intracoastal Waterway, mile 371, Horry County, South Carolina. This proposed rule would require the bridge to open on signal.

DATES: Comments and related material must reach the Coast Guard on or before May 3, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave., Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of docket [CGD07–04–014] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave., Miami, FL 33131, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–04–014], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE. 1st Ave., Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The South Carolina Department of Transportation has requested that the Coast Guard remove the existing regulations governing the operation of the Socastee (SR 544) Swing Bridge and allow the bridge to open on signal. The request is made because of the close proximity of a new high-level fixed bridge. The majority of vehicular traffic in the area currently utilizes the high-level fixed bridge.

The Socastee (SR 544) Swing Bridge is located on the Atlantic Intracoastal Waterway, mile 371, Horry County, South Carolina. The current regulation governing the operation of the Socastee Swing Bridge is published in 33 CFR 117.911(b) and requires the bridge to open on signal; except that, from April 1 through June 30 and October 1 through November 30 from 7 a.m. to 10 a.m. and 2 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need open only on the quarter and three-quarter hour. From May 1 through June 30 and October 1 through October 31 from 10 a.m. to 2 p.m., Saturdays, Sundays and Federal holidays, the draw need open only on the quarter and three-quarter hour.

Discussion of Proposed Rule

The Coast Guard proposes to change the operating regulations of the Socastee Swing Bridge to open on signal. A new high-level fixed bridge has recently been constructed in close proximity to the swing bridge and currently the majority of vehicular traffic utilizes this new bridge. This action would remove the regulations that provide for scheduled openings for the swing bridge and improve navigation for vessels transiting the area.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of the Department of Homeland Security is unnecessary. By opening on signal, the swing bridge would meet the needs of navigation and obviate the need to meet any scheduled openings.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities, because the proposed rule would remove scheduled openings restrictive to vessel traffic. Vehicular traffic, on the other hand, can use the new bridge nearby to transit over the waterway.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

There is also a point of contact for comment on actions by employees of the Coast Guard. Small businesses may send comments on the actions of

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.911 [Amended]

2. In § 117.911 remove and reserve paragraph (b).

Dated: February 19, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–4778 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–015]

RIN 1625–AA09

Drawbridge Operation Regulations; CSX Railroad, Manatee River, Mile 4.5, Bradenton, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the CSX Railroad Bridge across the Manatee River, mile 4.5, Bradenton, Florida. This proposed rule would allow the bridge to operate using an automated system, without an onsite bridge tender. Currently, the bridge is required to open on signal.

DATES: Comments and related material must reach the Coast Guard on or before May 3, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave., Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of docket (CGD07–04–015) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–04–015), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE. 1st Ave., Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The CSX Railroad owner has requested that the Coast Guard remove the existing regulations governing the operation of the CSX Railroad Bridge over the Manatee River and allow the bridge to operate utilizing an automated system. The request is made because there are only four short train transits per day. Under the proposed rule, the bridge would remain in the open position to vessel traffic at all other times.

The CSX Railroad Bridge is located on the Manatee River, mile 4.5, Bradenton, Florida. The current regulation governing the operation of the CSX Railroad Bridge is published in 33 CFR 117.5 and requires the bridge to open on signal.

Discussion of Proposed Rule

The Coast Guard proposes to change the operating regulations of the CSX Railroad Bridge so that the bridge can operate automatically. There are only four train transits per day across this bridge. The proposed action would remove the requirement that a bridge tender be present to open the bridge on signal for vessel traffic. The bridge would remain in the open position until a train approaches to cross the bridge. When a train approaches, the CSX signal department will send an electronic signal to the bridge to order the closure sequence to begin. The bridge control system will activate a series of scanners along the water level to detect any marine traffic within the bridge closure area. The bridge control system will turn off the green channel markers, turn on the red bridge warning strobe lights, and simultaneously sound a signal, which will last throughout the entire closing period. The bridge shall remain in the closed position to vessel traffic until the train has sufficiently cleared the bridge area. When the train has cleared, the bridge control system will again sound a signal for the entire period the bridge is opening. When the bridge is in the fully open position, the red bridge warning strobe lights will turn off, and the green channel marker lights will relight. The bridge will remain in the open to vessel traffic position until the next train crossing.

If at any time during the opening or closing sequence, the scanners detect a vessel within the bridge structure, the opening or closing sequence will automatically be halted until the vessel clears the structure. Additional strobe lighting will be placed on the structure to warn vessels of impending closure.

Signs will be posted on both sides of the navigation channel indicating, ''Caution; this bridge operates by remote control.'' A toll-free, CSX contact telephone number will be posted on the signs for emergencies.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of the Department of Homeland Security is unnecessary. Vessel traffic will be able to transit under the bridge with the exception of the short closure periods required for the trains to transit over the bridge.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule will affect vessel traffic under the bridge and daily train crossings over the bridge. However, the proposed rule will not change the number of times the bridge will need to be in a closed position for trains. Additionally, the bridge will remain in the open to navigation position at all other times for the benefit of vessel traffic.

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

Assistance for Small Entities

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

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

Collection of Information

This proposed rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.300 [Redesignated as § 117.299]

2. Redesignate § 117.300 as § 117.299.

3. Add a new § 117.300 to read as follows:

§ 117.300 Manatee River.

The draw of the CSX Railroad Bridge across the Manatee River, mile 4.5 at Bradenton, operates as follows:

(a) The bridge is not tended.

(b) The draw is normally in the fully open position, displaying green lights to indicate that vessels may pass.

(c) As a train approaches, provided the scanners do not detect a vessel under the draw, the lights change to flashing red and a horn continuously sounds while the draw closes. The draw remains closed until the train passes.

(d) After the train clears the bridge, the lights continue to flash red and the horn again continuously sounds while the draw opens, until the draw is fully open and the lights return to green.

Dated: February 23, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–4781 Filed 3–3–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AE78

Board of Veterans' Appeals: Appeals Regulations; Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) published a proposed rule in the **Federal Register** on February 3, 1992 (57 FR 4131) to amend its regulations regarding the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals. The proposed rule and the comments we received have been superseded by events. Accordingly, this document hereby withdraws the proposed rule.

DATES: The proposed rule is withdrawn as of March 4, 2004.

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: In 1988, the Veterans' Judicial Review Act (Pub. L. 100–687, Div. A) was signed into law. On August 18, 1989, VA published a proposed rule in the **Federal Register** (54 FR 34334) to revise the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board). The revisions were deemed necessary in order to provide appellate procedures that conformed to the law and to inform the public about those procedures.

Based on that proposed rule, on February 3, 1992, VA published in the

Federal Register (57 FR 4088) final regulations that amended parts 14 and 19 and added a part 20 to title 38, Code of Federal Regulations. At that time, VA also deemed necessary further additions and revisions to some of the Board's Appeals Regulations and Rules of Practice. VA therefore published on February 3, 1992, as a companion document in the **Federal Register** (57 FR 4131) a proposed rule to clarify certain regulations and, in some instances, provide revised regulations that more accurately reflected the relevant statutory authority. VA is now by this document withdrawing that proposed rule.

Subsequent to the publication of the February 3, 1992, proposed rule, the Board of Veterans' Appeals Administrative Procedures Improvement Act of 1994 (Public Law 103–271) was signed into law on July 1, 1994. In addition, Public Law 105–111, concerning revision of decisions based on clear and unmistakable error, was signed into law on November 21, 1997. These laws significantly altered the appeals process and organization of the Board. The structure of the Board was changed to permit decisions to be made by individual members of the Board rather than by 3-Member ''Sections.'' The Board's jurisdiction was also expanded to include the review of its own decisions for clear and unmistakable error. 38 U.S.C. 7111. Amendments to the Board's Appeals Regulations and Rules of Practice were subsequently published that rendered portions of the February 3, 1992, proposed rule obsolete.

VA believes that withdrawing the February 3, 1992, proposed rule would be less confusing than attempting to sift out the superseded provisions from the ones that could go forward. The Board will reevaluate appropriate amendments to its Regulations and Rules of Practice in light of the intervening changes.

Approved: December 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–4803 Filed 3–3–04; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA190—7008b; FRL–7631–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Commonwealth of Pennsylvania; Control of Emissions From Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the section 111(d)/129 negative declaration submitted by the Pennsylvania Department of Environmental Protection, Bureau of Air Quality. The negative declaration certifies that small municipal waste combustion (MWC) units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (the Act), do not exist within the Commonwealth of Pennsylvania, excluding Allegheny and Philadelphia counties. In the Final Rules section of this **Federal Register**, EPA is approving the State's negative declaration submittal as a direct final rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 5, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *wilkie.walter@epa.gov* or *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA190 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *wilkie.walter@epa.gov,* attention PA190–7008. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically

captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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

2. *By Mail.* Written comments should be addressed to the EPA Regional Office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: February 25, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 04–4819 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7631–3]

Delaware: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Delaware has applied to EPA for final authorization of the revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Delaware. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the revisions by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. However, if we receive comments that oppose this action, or portions thereof, we will withdraw the relevant portions of the immediate final rule, and they will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by April 5, 2004.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. Comments may also be submitted electronically to: *ellerbe.lillie@epa.gov,* or by facsimile at (215) 814–3163. Comments in electronic format should identify this specific notice. You may inspect and copy Delaware's application from 8 a.m. to 4:30 p.m. at the following locations: Delaware Department of Natural Resources & Environmental Control, Division of Air & Waste Management, Solid and Hazardous Waste Management Branch, 89 Kings Highway, Dover, DE 19901, Phone number 302–739–3689 and EPA Region III, Library, 2nd Floor, 1650 Arch Street,

Philadelphia, PA 19103–2029, Phone Number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone Number: (215) 814–5454.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: February 20, 2004.

James W. Newsom,

Acting Regional Administrator, EPA Region III.

[FR Doc. 04–4821 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapters XII and XXV

Notice Inviting Preliminary Informal Public Input in Advance of Rulemaking

AGENCY: Corporation for National and Community Service.

ACTION: Notice inviting preliminary informal public input in advance of rulemaking.

SUMMARY: The Corporation for National and Community Service (the Corporation) intends to undertake formal rulemaking in 2004, to address significant program and policy issues. The Corporation is initiating this rulemaking pursuant to Congressional interest, expressed in the Consolidated Appropriations Act for 2004, indicating that the Corporation should undertake notice and comment rulemaking for ''any significant changes to program requirements or policy.'' Congress also states that the Corporation should ''increase significantly the level of matching funds and in-kind contributions provided by the private sector,'' and ''reduce the total Federal costs per participant in all programs.'' In addition, the Corporation's Board of Directors has directed the Corporation to consolidate its grant provisions and application guidelines and move them into regulation. Finally, on February 27, 2004, President Bush signed an Executive Order entitled ''National and Community Service Programs'' in which he expressed his vision of a culture of service, citizenship, and responsibility in the United States, and a strong, accountable, and efficient national and community service field. The Executive Order directs the Corporation to adhere to certain fundamental principles in implementing policies governing national and community service programs authorized by the national service laws, including (1) Supporting and encouraging greater engagement of Americans in volunteering; (2) increasing responsiveness to State and local needs; (3) making Federal support more accountable and effective; and (4) providing greater involvement for faith-based and other community organizations.

The Corporation intends to undertake two rulemaking processes in 2004—the first to address any significant program and policy issues in time for the 2005 AmeriCorps grant cycle, and the second to respond to the Board's directive that we streamline our guidance and incorporate it into regulation. The Corporation believes that these rulemaking processes will improve the impact, efficiency, and cost-effectiveness of national and community service programs, and the quality and transparency of program guidance and rules.

The issues we plan to address through these rulemaking processes include: AmeriCorps grantee sustainability, including the parameters for capacity-building activities by AmeriCorps members and volunteer recruitment; current limitations on the Federal share of costs (match requirements); performance measures and evaluation; qualifications for AmeriCorps members serving as reading tutors and requirements for programs engaged in literacy activities; timing of the AmeriCorps grant cycle; program selection criteria; and the application process for and funding of the second and third years in a three-year grant. In addition, the Corporation intends to undertake formal rulemaking to reorganize the Corporation's current regulations as codified in chapter 25 of title 45 of the Code of Federal Regulations and publish AmeriCorps grant provisions and guidelines in regulation.

To inform the rulemaking process, the Corporation is inviting preliminary informal input from the public concerning the specific issues identified above, as well as any other issues relating to the Corporation's current grant provisions, guidelines, or regulations. The Corporation's current AmeriCorps grant provisions, and the Corporation's regulations are available at *http://www.cns.gov/about/ogc/regulations.html,* and the Corporation's current AmeriCorps guidelines are posted at *http://www.americorps.org/resources/guidelines2004.html.* We will accept comments in writing, as described below, or orally in one of four conference calls, and five public input meetings we will hold across the country in March and early April, 2004. The Corporation will not respond to this input, but will consider it in drafting any Notice of Proposed Rulemaking. The public will have a separate opportunity to provide formal comment on any proposed rule the Corporation publishes for comment in 2004 or thereafter. Please note that this Notice does not request comments on individual application forms used under the various programs of the Corporation. The Corporation periodically publishes separate requests for comments concerning such application forms.

DATES: Please submit written input to the Corporation as soon as possible. We will consider input as we begin drafting the Notice of Proposed Rulemaking. In addition, the Corporation will hold five public input meetings across the country, and four conference calls to seek oral input under this Notice. *See* Supplementary Information for conference call and input meetings information.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to *rulemaking@cns.gov.*

(2) By fax to 202–565–2796, Attention Nicola Goren, Associate General Counsel.

(3) By mail sent to: Corporation for National and Community Service, Attn: Nicola Goren, Associate General Counsel, 1201 New York Avenue NW., Room 8209, Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Due to continued delays in the Corporation's receipt of mail, we strongly encourage responses via e-mail or fax. You may request this notice in an alternative format for the visually impaired.

FOR FURTHER INFORMATION CONTACT: For further information about the substance of this notice, contact Nicola Goren at 202–606–5000 x.259 (*ngoren@cns.gov*). For further information about the conference calls and public input meetings, please refer to our Web site at *http://www.americorps.org/rulemaking* or call Angela Martin at (202) 606–5000 x.448 (*amartin@cns.gov*). The TDD/TTY number is (800) 833–3722.

SUPPLEMENTARY INFORMATION: For more information on the Corporation, please

visit our Web site at *http://www.nationalservice.org.* When providing oral or written input on the issues outlined above, please especially consider the following questions:

General question: As AmeriCorps continues to grow, what changes can you identify to make the program more efficient and effective?

Sustainability: How can the Corporation ensure that Federal funds are used most effectively to meet community needs? How can the Corporation and the field achieve the right balance of federal and private support? What criteria should the Corporation use to promote sustainability of national and community service programs? To what extent should AmeriCorps members be engaged in fundraising and other capacity-building activities? Should the Corporation limit the number of years for which a program or project may receive funding? To promote grantee sustainability, to what extent should the level of Corporation support for a program or project decrease over time? If the level of Corporation support were to decrease over time, what should be the minimum level of Corporation support? Should the Corporation calibrate sustainability requirements to reflect the differences among the programs, such as size, location, time in operation, or mission? How can the Corporation further support and encourage greater engagement of Americans in volunteering?

Federal share: Should the Corporation calibrate matching requirements to reflect the differences among programs, such as size, location, or track record? How can the Corporation and the field achieve the right balance of federal and private support? Should the Corporation adopt matching requirements for member-related costs that are different from requirements for other program operation costs?

Performance measures and evaluation: How can the Corporation ensure that its grantees are achieving identifiable measurable outcomes? How should the Corporation and its grantees establish appropriate performance measures? How can we identify best practices that merit replication? How can the Corporation ensure that its grantees regularly and effectively evaluate national and community programs?

Qualifications for members serving as reading tutors and requirements for programs engaged in literacy activities: How can we ensure that members serving as reading tutors have the skill and ability to provide the necessary instruction to the populations they serve? How can we ensure that programs engaged in literacy activities achieve reasonable and measurable outcomes?

Timing of grant cycle: For how many months before commencing or continuing a project does a grantee need to know that its application is approved? For how many months before commencing or continuing a project does a grantee need to know that its grant is awarded? What is a reasonable amount of time to prepare an application? Is it useful for the Corporation to have multiple application processes during the course of the year? Does the current cycle work?

Selection Criteria: What criteria should the Corporation use in selecting programs?

Three-year grants: How can the Corporation streamline its grant application process for continuation applications?

Conference Calls and Public Input Meetings

The Corporation is planning five public input meetings across the country and four conference calls in March and early April. Please check our Web site at *http://www.americorps.org/rulemaking* for further information on dates, times, locations, and other information regarding these conference calls and meetings, or contact Angela Martin at (202) 606–5000 x.448 (*amartin@cns.gov*).

Dated: March 1, 2004.

Frank R. Trinity,

General Counsel.

[FR Doc. 04–4856 Filed 3–3–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040223065–4065–01; I.D. 020604A]

RIN 0648–AR91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Control Date

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

ACTION: Advance notice of proposed rulemaking; revised control date.

SUMMARY: The South Atlantic Fishery Management Council (Council) is considering whether there is a need to impose additional management measures limiting entry into the commercial penaeid shrimp fishery in the South Atlantic exclusive economic zone (EEZ). In anticipation of such an action, the Council previously established a control date of September 8, 2000. This document is to inform the public that the Council is establishing a revised control date of December 10, 2003. If the Council and NMFS determine that there is a need to impose additional management measures to control participation in the fishery, a rulemaking to do so may be initiated. Should the Council base such rulemaking on this control date, anyone entering the fishery after the control date would not be assured of future access in the fishery.

DATES: Comments must be submitted by April 5, 2004.

ADDRESSES: Comments should be directed to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, South Carolina 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; email: *email@safmc.net*.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter 727–570–5305; email: *steve.branstetter@noaa.gov* or Ms. Vishwanie Maharaj 843–571–4366; email: *vishwanie.maharaj@safmc.net.*

SUPPLEMENTARY INFORMATION: The commercial penaeid shrimp fishery in the South Atlantic Region is managed under the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) as prepared by the Council and approved and implemented by NMFS. The FMP is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Council has concerns that increased participation in the South Atlantic commercial penaeid shrimp fishery could result in an excess harvesting capacity for the fishery. The Council previously established a control date of September 8, 2000 (65 FR 54474). At its December 2003 meeting, the Council voted unanimously to establish a revised control date for the commercial penaeid shrimp fishery in the South Atlantic EEZ and requested that NMFS notify the industry by publishing a notice of the control date in the **Federal Register**. Accordingly, NMFS publishes this notice to notify the industry that December 10, 2003, is the revised control date for the commercial penaeid shrimp fishery in the South

Atlantic EEZ. Implementation of any program that limits participation or effort in the penaeid shrimp fishery would require preparation of an FMP amendment followed by Secretary of Commerce (Secretarial) review, approval, and implementation. Secretarial review involves publication of a notice of availability of the FMP amendment and publication of proposed and final rules, with pertinent public comment periods.

Establishment of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into this fishery. Fishermen are not guaranteed future participation in the fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The Council may choose to use a different control date or a management regime that does not make use of such a date or to give variably weighted consideration to fishermen active in the fishery before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

This advanced notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

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

Dated: February 27, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–4875 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040223064–4064–01; I.D. 020404F]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2004 Harvest Specifications for Skates

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

ACTION: Proposed 2004 harvest specifications for skates and associated management measures; request for comments.

SUMMARY: NMFS proposes 2004 harvest specifications for skates and associated management measures for the skate fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for skates during the 2004 fishing year. The intended effect of this action is to conserve and manage the skate resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by March 19, 2004.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907–586–7557 or by e-mail. The mailbox address for providing e-mail comments is *2004–Skates-TAC@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 2004 Skates TAC Specifications.

Copies of the final 2003 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2003, are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99510 or from its homepage at *http://www.fakr.noaa.gov/npfmc*. Copies of the Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

In October 2003, the Council made final recommendations on Amendment 63 to the FMP and submitted Amendment 63 for Secretarial approval. Amendment 63 would move skates from the ''other species'' list to the ''target species'' list in the FMP. By listing skates as a target species, a directed fishery for skates in the GOA may be managed to reduce the potential of overfishing skates while providing an opportunity for achieving a long term sustainable yield from the skate resource in the GOA. On December 2, 2003, NMFS published a Notice of Availability on Amendment 63, inviting public comments through February 2, 2004 (68 FR 67390). The Secretary of Commerce approved Amendment 63 on February 27, 2004.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(ii)). Regulations at § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on the proposed annual TACs. The proposed specifications set forth in Table 1 satisfies these requirements. For 2004, the sum of the proposed TAC amounts for skates is 6,993 mt. Pending Secretarial approval of Amendment 63 to the GOA FMP, NMFS will publish, under § 679.20(c)(3), the final skate specifications for 2004 after considering public comments received within the comment period (see **DATES**).

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC levels for each species group are based on the best available biological and socioeconomic information, including methods used to calculate stock biomass, assumed distribution of stock biomass, and estimated incidental catch in other directed groundfish fisheries. In December 2003, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. Most of this information was initially compiled by the Council's GOA Plan Team and is presented in the final 2003 Stock Assessment and Fishery Evaluation (SAFE) report for the GOA groundfish fisheries, dated November 2003. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species'

biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category.

The Plan Team recommended a single gulfwide overfishing level (OFL) for all skate species, a single gulfwide ABC for ''other skates'' (Genus *Bathyraja*), and ABCs for Big and Longnose skates (*Raja binoculata* and *Raja rhina*) combined in the Western, Central, and Eastern Regulatory Areas of the GOA. Additionally, the Plan Team recommended that the TAC for Big and Longnose skates in the Central Regulatory Area not exceed the calculated OFL for Big skates in that area (3,284 mt). The SSC concurred with the Plan Team's recommendation for a single gulfwide OFL for all skate species but recommended a separate ABC for Big and Longnose skates only in the Central Regulatory Area. The SSC believes that this breakout would be a better method to address the immediate management concerns in the Central Regulatory Area given the current data limitations, which include a lack of skate species composition data in both the retained and discarded catch in previous years. The AP and Council concurred with the SSC's ABC recommendations, which are presented in Table 1. The AP and the Council concurred with the Plan Team's TAC recommendation of 3,284 mt for Big and Longnose skates combined in the Central Regulatory Area. The AP and Council recommended that the TAC for all skates, excluding Big and Longnose skates in the Central Regulatory Area, be set at the ABC level of 3,709 mt. These amounts are presented in Table 1.

TABLE 1.—PROPOSED 2004 ABCS, TACS, AND OFL FOR SKATES IN THE WESTERN (W), CENTRAL (C), EASTERN (E), AND GULFWIDE (GW) REGULATORY AREAS OF THE GULF OF ALASKA. (VALUES ARE IN METRIC TONS)

Species/Area	ABC	TAC	Overfishing
Big and Longnose skate[1]/W and Eand ''Other'' skates[2]/GW	3,709	3,709	
Big and Longnose skate/C	4,435	3,284	
Total/GW	8,144	6,993	10,859

[1] Big skate means *Raja binoculata* and Longnose skate means *Raja rhina*.
[2] ''Other'' skates means *Bathyraja* spp.

With respect to the Council's recommendations for final 2004 harvest specifications for groundfish this proposed action would: (1) Raise the gulfwide total OFL levels by 10,859 mt, from 649,460 mt to 660,319 mt, (2) raise the gulfwide total ABC levels by 8,144 mt, from 498,948 mt to 507,092 mt, (3) raise the ''other species'' TAC by 350 mt (5 percent of 6,993 mt), from 12,592 mt to 12,942 mt, (4) raise the gulfwide total TAC levels by 7,343 mt (6,993 mt + 350 mt), from 264,433 mt to 271,776 mt, which is within the required OY range of 116,000 mt to 800,000 mt, and (5) raise the non-exempt American Fisheries Act (AFA) catcher vessel ''other species'' sideboard limitation gulfwide total by 3 mt, from 113 mt to 116 mt.

Additional Management Measures

With respect to other management measures for groundfish in the GOA, NMFS proposes to adopt identical management measures for skates that currently apply to ''other species.'' NMFS proposes that the maximum retainable amount of incidental catch for ''other species'' listed in Table 10 to 50 CFR part 679 would apply to skates as well. NMFS will consider comments on the maximum retainable amount of incidental catch for ''other species'' received within the comment period (see **DATES**). NMFS proposes that for halibut prohibited species management, bycatch mortality in the directed trawl fishery targeting skates would accrue to prohibited species catch (PSC) limits established for the shallow-water complex and bycatch mortality in the directed hook-and-line fishery targeting skates would accrue to the PSC limits established for hook-and-line gear other than demersal shelf rockfish. NMFS proposes that the halibut discard mortality rates would be based on those for ''other species'': 13 percent for hook-and-line gear, 61 percent for trawl gear, and 17 percent for pot gear. NMFS proposes to base sideboard limitations for non-exempt AFA catcher vessels for skates on a gulfwide basis on the ratio of 1995 to 1997 non-exempt AFA catcher vessel catch of ''other species'' to 1995 to 1997 ''other species'' TAC which is 0.9 percent. These amounts are 33 mt (3,709 mt x 0.009) for all skates gulfwide except Big and Longnose skates in the Central Regulatory Area and 30 mt (3,284 mt x 0.009) for Big and Longnose skates in the Central Regulatory Area. Based on these sideboard limitations, NMFS further proposes to close directed fishing for all skates gulfwide for the duration of the 2004 fishing year by non-exempt AFA catcher vessels.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this proposed specification is necessary for the conservation and management of the groundfish fisheries of the Bering Sea and Aleutian Islands and GOA. The Regional Administrator also has determined that this proposed specification is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Section 603(b)). A copy of this analysis is available from the Council (see **ADDRESSES**). This IRFA evaluates the effects of the proposed action on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities that may be directly regulated by this action are those that harvest or may harvest skates in the Central Regulatory Area, either in a targeted skate fishery, or incidentally, while harvesting other species. Vessels fishing with hook-and-line or trawl gear in the GOA may fall into these categories. Pot gear is not effective gear for targeting skates because regulations limit the size of tunnel openings to no more than 36 inches (91 cm) in circumference.

In 2001, the universe of potentially directly regulated small entities included 665 hook-and-line vessels and 124 trawlers. Of these, 650 were small

hook-and-line catcher vessels, 15 were small hook-and-line catcher/processors, 120 were small trawl catcher vessels, and 4 were small trawl catcher/processors. These numbers remain accurate for 2004. These counts are believed to overestimate the numbers of small entities affected since they only take account of operation revenues from groundfish fishing in Alaska, and they do not take account of affiliations between fishing operations and associated processors, or other associated fishing operations. The directed skate fishery emerged in 2003; 77 hook-and-line catcher vessels, 53 trawl catcher-vessels, 13 hook-and-line catcher/processors, and 10 trawl catcher/processors took part in this fishery, producing an estimated ex-vessel gross revenue of about $1.7 million. This suggests average revenues for these vessels were about $11,000.

The Council's proposed specifications could adversely affect small entities harvesting skates in the fishery that has begun to target Big and Longnose skates in the Central Regulatory Area, and could adversely affect small entities in the fisheries harvesting skates incidentally in the Central Regulatory Area. Also, the measures might adversely affect small entities in fisheries harvesting skates incidentally outside of the Central Regulatory Area.

This preferred option would not necessarily eliminate the directed skate fishery in the Central Regulatory Area. A directed fishery could occur if estimated incidental catch needs were sufficiently smaller than the TAC. The Skates SAFE document estimates suggest that this would be the case. The Big/Longnose TAC would be 3,284 mt and estimated bycatch needs are 2,214 mt. This leaves a residual of 1,070 mt for a directed fishery. This, however, is significantly below the 1,700 mt estimated to have been caught in the directed fishery in 2003. Thus, the Council's preferred option is likely to adversely affect the small entities that began to target skates in 2003.

Skates are also taken incidentally in fisheries for other species. Incidental skate catches appear to be relatively important (over 300 mt in total during 1997–2002) in the trawl fisheries for arrowtooth flounder, flathead sole, Pacific cod, rex sole, rockfish and shallow water flats, and in the hook-and-line fisheries for rockfish, sablefish, Pacific cod, and halibut. If estimated targeted and incidental catches of skates reached TAC levels, skates would become a prohibited species and retention of incidental skate catches would be prohibited. If estimated catches approach OFL levels, fisheries taking skates incidentally may be closed, or restricted in regions with high incidental skate catches, in order to protect the skate stocks.

Although fishing in fisheries targeting other species, but harvesting skates incidentally, could be stopped if estimated skate catches approach the OFL level, this is an unlikely outcome. Fishery managers manage stocks to stay within TACs, and rarely approach OFLs. In addition to actually closing a fishery, managers may also have the option of restricting its operations in regions where incidental skate catches are relatively high. Moreover, the high level of species aggregation in this option reduces the likelihood of this. Although this outcome appears unlikely, it remains a concern.

The preferred alternative was compared to the five other options. Option 1 would have created a single GOA-wide OFL, ABC, and TAC for all skate species. This would have had the smallest impact on small entities. However it did not provide protection for individual skate species and it did not provide protection against localized depletion of skate stocks. Option 2 would have created separate GOA-wide OFLs, ABCs, and TACs for Big skates, Longnose skates, and for ''other skates.'' By increasing the number of separate OFLs, this may have increased the potential for closure of fisheries taking skates incidentally. This option would not have provided protection against localized depletion of skates. Option 3 would have created a separate OFL, ABC and TAC for each of the three species or species groups just described, in each of the three main management areas of the GOA. This option would have created the greatest potential (of the options examined) for a closure of a fishery taking skates incidentally to harvests of another species. This option would have provided the greatest protection to skates. Option 4 kept the management area OFLs, ABCs and TACs for Big skates and Longnose skates, but created a single GOA-wide OFL, ABC and TAC for ''other skates''. This reduced the potential for closures compared to Option 3, but increased them relative to Options 1 and 2. Option 5 created a GOA-wide OFL for all species combined. ABCs would be established in each management area in the GOA for a Big/Longnose skate grouping. A GOA-wide ABC would be established for ''other skates.'' In the Central Regulatory Area a TAC would be established for the combined Big/Longnose grouping. This TAC would be set conservatively. This reduced the potential for closures compared to Option 3 and 4. The preferred option, Option 6, used the Central Regulatory Area protections for Big/Longnose skates in Option 5 in order to protect the species and area that were the focus of the directed fishery, and combined them with the provisions in Option 1 that minimized other burdens on small entities.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105 277, Title II of Division C; Pub L. 106 31, Sec. 3027; and Pub L. 106 554, Sec. 209.

Dated: February 27, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–4871 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 43

Thursday, March 4, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–04–01]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for report forms under the Federal milk marketing order program. The data are needed to administer the classified pricing system and related requirements of each Federal order.

DATES: Comments on this notice must be received by May 3, 2004.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact William F. Newell, Chief, Order Operations Branch, USDA/AMS/Dairy Programs—Room 2753–S., 1400 Independence Avenue SW., Stop 0226, Washington, DC 20250–0226, (202) 720–3869, e-mail address: *William.Newell@usda.gov.*

Small businesses may request information on this notice by contacting Clifford M. Carman, Chief, Order Formulation and Enforcement Branch, Dairy Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0231, Room 2971–S, Washington, DC 20250–0231; Telephone (202) 720–7183, Fax: (202) 690–0552, or E-mail: *Clifford.Carman@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives).

OMB Number: 0581–0032.

Expiration Date of Approval: September 30, 2004.

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

Abstract: Federal milk marketing order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (hereinafter, the Act), require milk handlers to report in detail the receipts and utilization of milk and milk products handled at each of their plants that are regulated by a Federal order.

A Federal milk marketing order (hereinafter, Order) is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. Each Order is established under the authority of the Act. The Order requires that handlers of milk in a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under each Order after a public hearing at which evidence is received on the supply and demand conditions for milk in the market. An Order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of farmers on the basis of a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

Milk Orders help ensure adequate supplies of milk and dairy products for consumers and adequate returns to producers.

The Orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers.

Formal rulemaking amendments to the Orders must be approved in referenda conducted by the Secretary.

As of April 1, 2004, there will be 10 Orders. Currently, 11 Orders are in effect. On February 18, 2004, A.J. Yates, Administrator, Agricultural Marketing Service, signed an order terminating the Western Milk Marketing Area, Federal Order Number 135, effective April 1, 2004 (69 FR 8327). At the present time, there are 22 fully-regulated handlers under the Western Order. The projected effect of terminating the Western Order has been included in the estimated number of respondents and responses, and on the estimated hours of annual burden on respondents that are provided later in this document.

During June 2003 while there were 11 Orders, there were 330 fully-regulated handlers, 92 partially-regulated handlers, 44 producer handlers, and 104 exempt handlers. During fiscal year 2003, 59,917 dairy farmers delivered over 115 billion pounds of milk to handlers regulated under the milk orders. This volume represents 68 percent of all milk marketed in the U.S. and 70 percent of the milk of bottling quality (Grade A) sold in the country. The value of this milk delivered to Federal milk order handlers at minimum order blend prices was nearly $13.4 billion. Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 46 billion pounds—40 percent of total producer deliveries. More than 230 million Americans reside in Federal milk order marketing areas—81 percent of the total U.S. population.

Each Order is administered by a market administrator who is selected by the Secretary of Agriculture. The market administrator is authorized to levy assessments on regulated handlers to carry out the market administrator's duties and responsibilities under the Orders. Additional duties of the market administrators are to prescribe reports required of each handler, to assure that handlers properly account for milk and milk products, and to assure that such handlers pay producers and associations of producers according to the provisions of the Order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator.

The forms used by the market administrators are required by the respective Orders that are authorized by the Act. The forms are used to establish: The quantity of milk received by handlers, the pooling status of the handler, the class-use of the milk used by the handler, and the butterfat content and amounts of other components of the milk.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the Orders, and their use is necessary to fulfill the intent of the Act as expressed in the Orders and in the rules and regulations issued under the Orders.

The information collected is used only by authorized employees of the market administrator and authorized representatives of the USDA, including AMS Dairy Programs' headquarters staff.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.07 hours per response.

Respondents: Milk handlers and milk marketing cooperatives.

Estimated Number of Respondents: 739.

Estimated Number of Responses: 20,503.

Estimated Number of Responses per Respondent: 28.

Estimated Total Annual Burden on Respondents: 22,004 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and be mailed to William F. Newell, Chief, Order Operations Branch, USDA/AMS/Dairy Programs—Room 2753–S, 1400 Independence Avenue SW., Stop 0226, Washington, DC 20250–0226, (202) 720–3869, e-mail address: *William.Newell@usda.gov.*

Comments should also reference the date and page number of this issue of the **Federal Register**.

All comments received will be available for public inspection during regular business hours at the same address, or may be viewed at *http://www.ams.usda.gov/dairy/index.htm.*

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

Dated: February 27, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–4859 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yates Duck Creek Federal Oil Well #1 EIS: Medicine Bow-Routt National Forests and Thunder Basin National Grassland

AGENCY: Forest Service, USDA.

ACTION: Revision of a Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Yates Duck Creek Federal Oil Well #1 in the **Federal Register** dated February 25, 2002 (FR Doc. 02–4109, pages 8512–8514). The original notice designated the Regional Forester as the Responsible Official. This revision (1) describes the current status of the Thunder Basin National Grassland Land and Resource Management Plan, 2001 Revision, (2) designates the Forest Supervisor as the Responsible Official, and (3) provides notification of a new estimated date for filing.

FOR FURTHER INFORMATION CONTACT: Liz Moncrief, Supervisor's Office, 2468 Jackson Street, Laramie, Wyoming 82070, (307) 745–2456.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) on a proposal to drill for and develop conventional oil and gas resources with one (1) well on National Forest System lands in Campbell County, Wyoming. The well would be located on Federal Lease # WYW–141191, issued in 1997, in Section 30, T.55N.,R.69W.,6th P.M.

The purpose of the project is to determine the potential for oil and gas development, by drilling one exploratory well in the Duck Creek area. The project potentially includes three phases: (1) Drilling, (2) development and/or production of oil and/or gas if discovered in producible quantities, and (3) abandonment. The initial phase of the project would include constructing access to the drill site, constructing a well pad, and drilling and testing the well. If results of testing indicate that oil and/or gas are present in producible quantities, production equipment and facilities would be installed. Development could include the installation of tanks and treatment equipment on the wellsite and a pipeline to transport the product. The project proposal also includes a plan for abandonment of the well. If oil and/or gas are not present in quantities that justify completion and production, the well would be abandoned and the site and access road reclaimed immediately. If the well is put into production, well abandonment and reclamation of the well site and access road would be performed to achieve a pre-project condition after the reservoir is depleted. The proposed well would be located in the Duck Creek Inventoried Roadless Area. If approved as proposed, the decision would permit road construction and reconstruction to occur in the roadless area. The EIS will comply with the requirements of the National Environmental Policy Act (42 U.S.C. 4321–4370a), the National Forest Management Act (16 U.S.C. 1600–1614), and the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), and their implementing regulations.

DATES: Comments concerning the proposal and the scope of the analysis will be accepted and considered at any time after publication of this notice in the **Federal Register** and prior to a decision being made.

ADDRESSES: Send written comments to Liz Moncrief, Medicine Bow-Routt National Forest Supervisor's Office, 2486 Jackson Street, Laramie, Wyoming 82070. Electronic mail may be sent to: *emoncrief@fs.fed.us,* fax may be sent to 307–745–2398.

FOR FURTHER INFORMATION CONTACT: Liz Moncrief, Forest Service Project Leader, 307–745–2456.

SUPPLEMENTARY INFORMATION: Yates Petroleum Corporation has filed an application with the Bureau of Land Management for a permit to drill and complete one exploration well. Drilling and completion of the well requires construction of access roads, and may include installation of testing and production equipment. As surface management agency, the Forest Service proposes to permit surface operations associated with the development of oil and/or gas resources with the drilling of one (1) well including construction of access roads and production facilities. The Forest Service will prepare an Environmental Impact Statement. This EIS disclose the environmental effects of the proposed oil and gas development.

In 1994, the Forest Service prepared the Thunder Basin Oil and Gas Leasing EIS and issued a Record of Decision (ROD) for future oil and gas development on NFS lands on the Thunder Basin National Grasslands. This decision authorized the Bureau of Land Management (BLM) to lease Federal oil and gas resources in the Duck Creek area subject to certain stipulations described in the ROD, and pertinent to the surface use of the NFS lands. Subsequent to this decision, the

BLM offered the Federal lease for sale. Yates Petroleum purchased the lease in 1997. Pursuant to 43 CFR 3101.1–2 Surface Use Rights, the lessee has a right to develop the oil and gas resources on that lease area, subject to stipulations attached to the lease and other provisions as described.

The Medicine Bow National Forest and Thunder Basin National Grassland Land and Resource Management Plan of 1985, as amended by the April 22, 1994, Record of Decision for the Environmental Impact Statement (EIS) for Oil and Gas Leasing on the Thunder Basin National Grassland, provides stipulations for oil and gas leases, and standards and guidelines for oil and gas development on NFS lands. This proposal is consistent with the 1985 Land and Resource Management Plan.

The following paragraph replaces the previous paragraph to identify the current status of the Management Plan Direction.

Thunder Basin National Grassland Land and Resource Management Plan, 2001 Revision (1)

The Thunder Basin National Grassland portion of the 1985 Plan was revised as part of the Northern Great Plains Management Plan Revision process. The Final EIS and 2001 Revised Thunder Basin National Grassland Plan are completed. A Record of Decision was signed on July 31, 2002. This proposal is consistent with the 2001 Revised Thunder Basin National Grassland Plan and the preferred alternative in the Final EIS.

Decision To Be Made

The Responsible Official will consider the results of the analysis and its findings and then document the final decision in a Record of Decision (ROD). The decision will include a determination of the terms, conditions, and mitigation measures under which the proponent may develop the oil and/or gas resources while also protecting the surface natural resources in the area and providing for public safety.

Responsible Official (2)

Mary Peterson, Forest Supervisor, Medicine Bow-Routt National Forest and Thunder Basin National Grassland, Laramie, Wyoming 82070, is the official responsible for making the Forest Service decision on this action. She will document her decision and rationale in a Record of Decision.

Preliminary Issues

Proposed construction/reconstruction of access roads to the proposed well location would alter the character of portions of the Duck Creek Inventoried Roadless Area.

Public Involvement

At this time, the Forest Service is seeking information, comments and other assistance from Federal, State and local agencies, and other individuals or organizations who have an interest in, or could be affected by the proposed action. The public is encouraged to take part in this process and to visit with Forest Service officials at any time during the analysis, and prior to the decision. While public comments are welcome at any time, comments received within 30 days of the publication of this notice in the **Federal Register** will be most useful for the identification of issues and the analysis of alternatives. Comments may be sent by electronic mail (e-mail) to *emoncrie@fs.fed.us.* Written comments may be mailed to the Medicine Bow—Routt National Forest Supervisors Office, 2468 Jackson Street, Laramie, Wyoming 82070–6535, attention Liz Moncrief. Please reference the *Yates-Duck Creek O&G Well EIS* on the subject line. The name and mailing address of the commenter should be provided with their comments so that future documents pertaining to this environmental analysis and the decision can be provided to interested parties.

Estimated Dates for Filing (3)

The draft EIS is expected to be filed with the environmental Protection Agency (EPA) and available for public review during March 2004. At that time, the EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is important that those interested in the management of this area comment at that time. The final EIS is expected to be available during July 2004. In the final EIS, the Forest Service will respond to any comments received during the public comment period that pertain to the environmental analysis.

The Public's Obligation To Comment

The Forest Service believes it is important to give reviewers an early notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised during the Draft Environmental Impact Statement stage, but are not raised until after completion of the Final Environmental Impact Statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). As a result of these previous court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on this Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives displayed in the document. Reviewers should refer to the Council on Environmental Quality Regulations at 40 CFR 1503.3 for implementing the procedural provisions of the National Environmental Policy Act for addressing these points. Please note that any comments that are submitted in relation to this DEIS will be considered as public information.

Release of Names

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision

regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Responsible Official

Mary Peterson, Forest Supervisor, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, 2468 Jackson Street, Laramie, Wyoming 82070, is the official responsible for making the decision on this Revised Notice of Intent action. She will document her decision and rationale in a Record of Decision.

Dated: February 3, 2004.

Mary H. Peterson,

Forest Supervisor, Medicine Bow-Routt National Forests and Thunder Basin National Grassland.

[FR Doc. 04–4848 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee will meet in Kalispell, Montana March 17th. The purpose of the meeting is to discuss additional funding for the 2004 Title II projects and membership.

DATES: The meeting will be held from 4 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Flathead County Commissioner's Office, Commissioner's Conference Room, 800 South Main, Kalispell, Montana 59901.

FOR FURTHER INFORMATION CONTACT: Kaaren Arnoux, Flathead National Forest, Administrative Assistant, (406) 758–5251.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Time will be available for public input on potential projects the committee may be discussing.

Denise Germann,

Public Affairs Specialist.

[FR Doc. 04–4807 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Proposals (RFP): Farm Labor Housing Technical Assistance Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This RFP announces an availability of funds and the timeframe to submit proposals for Farm Labor Housing Technical Assistance (FLH–TA) grants.

Section 516 of the Housing Act of 1949 authorizes the Rural Housing Service (RHS) to provide financial assistance (grants) to eligible private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. This RFP requests proposals from qualified private and public nonprofit agencies to provide technical assistance to groups who qualify for FLH loans and grants.

Work performed under these grants is expected to result in an increased submission of applications for farm labor housing loans and grants under the section 514 and 516 programs and in an increase of the availability of decent, safe, and sanitary housing for farm laborers.

DATES: The deadline for receipt of all applications in response to this RFP is 5 p.m., Eastern Daylight Time, on May 3, 2004. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), Cash On Delivery, and postage due applications will not be accepted.

ADDRESSES: Applications should be submitted to the USDA—Rural Housing Service; Attention: Douglas MacDowell; Multi-Family Housing Processing Division—STOP 0781, Washington, DC 20250–0781. RHS will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris-Green, Deputy Director, Multi-Family Housing Processing Division—Direct Loans, RHS, USDA, Room 1241, South Building, 1400 Independence Ave. SW., Washington, DC 20250–0781, telephone (202) 720–1604. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The technical assistance grants authorized under section 516 are for the purpose of encouraging the development of domestic and migrant farm labor housing projects under sections 514 and 516 of the Act. Proposals must demonstrate the capacity to provide the intended technical assistance.

The RHS intends to award one grant for each of three geographic regions. When establishing the three regions, consideration was given to such factors as farmworker migration patterns and the similarity of agricultural products and labor needs within certain areas of the United States. A single applicant may submit grant proposals for more than one region; however, separate proposals must be submitted for each region.

Eastern Region: AL, CT, DE, FL, GA, IN, KY, MA, MD, ME, NH, NJ, NY, NC, OH, PA, PR, RI, SC, TN, VI, VT, VA, and WV.

Central Region: AR, IL, IA, KS, LA, MI, MN, MS, MO, NE, ND, OK, SD, TX, and WI.

Western Region: AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY, and the Pacific Territories.

Funding

The RHS has the authority to utilize up to ten (10) percent of its section 516 appropriation for FLH–TA grants. The total FY 2004 appropriation for section 516 is $17,901,000. The total amount of the FY 2004 appropriation that RHS has made available for FLH–TA grants is $1,500,000. Of that amount, up to $562,500 will be available for each of the Eastern and Western Grant Regions and up to $375,000 of the remaining funds will be available for the Central Grant Region. If no proposal is received from an eligible applicant for one of the grant regions, RHS may, at its discretion, (1) use that grant region's funds in one or two of the other regions or (2) chose not to use that grant region's funds for FLH–TA. Work performed under these grants must be completed within three years of entering into the grant agreement provided as Appendix A to this Notice. The disbursement of grant funds during the grant period will be contingent upon the grantee making progress in meeting the minimum performance requirements as described in the Scope of Work section of this notice, including, but not limited to, the submission of loan application packages.

Eligibility

Eligibility for grants under this Notice is limited to private and public nonprofit agencies. Grantees must have

the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for FLH under the section 514 and 516 programs (*see* the Application Requirements section of this Notice). In addition, grantees must possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf; however, the RHS will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met. Nonprofit agencies acting on behalf of the grantee must also meet the eligibility requirements stated above.

Scope of Work

Minimum Performance Requirements:

(1) Grantees shall conduct outreach to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, public agencies (such as housing authorities) and other eligible organizations to further the section 514 and 516 FLH programs. Grantees will make at least twelve informational presentations to the general public annually to inform them about the section 514 and 516 FLH programs.

(2) Grantees shall conduct at least twelve one-on-one meetings annually with groups who are interested in applying for FLH loans or grants and assist such groups with the loan and grant application process.

(3) Grantees shall assist loan and grant applicants secure funding from other sources for the purpose of leveraging those funds with RHS funds.

(4) Grantees shall provide technical assistance during the development and construction phase of FLH proposals selected for funding.

(5) When submitting a grant proposal, applicants need not identify the geographic location of the places they intend to target for their outreach activities, however, applicants must commit to targeting at least five areas within the grant proposal's region. All targeted areas must be distinct market areas and not be overlapping. At least four of the targeted areas must be in different States. If the proposal is selected for funding, the applicant will be required to consult with each Rural Development State Director in the proposal's region for the purpose of developing their list of targeted areas. When determining which areas to target, consideration will be given to (a) The total number of farmworkers in the area, (b) the number of farmworkers in that area who lack adequate housing, (c) the percentage of the total number of farmworkers that are without adequate housing, and (d) areas which have not recently had a section 514 or 516 loan or grant funded for new construction. In addition, if selected for funding, the applicant will be required to revise their Statement of Work to identify the geographic location of the targeted areas and will submit their revised Statement of Work to the National Office for approval. When submitted for approval, the applicant must also submit a summary of their consultation with the Rural Development State Directors. At grant closing, the revised Statement of Work will be attached to, and become a part of, the grant agreement.

(6) During the grant period, each grantee must submit a minimum number of loan application packages to the Agency for funding consideration. The minimum number shall be the greater of (a) at least nine loan application packages for the Eastern and Western Regions and at least seven for the Central Region or, (b) a total number of loan application packages that is equal to 70 percent of the number of areas the grantee's proposal committed to targeting. Fractional percentages shall be rounded up to the next whole number. For example, if the grantee's proposal committed to targeting 13 areas, then the grantee must submit at least ten loan application packages during the grant period (13 areas $\times$ 70 percent = 9.1 rounded up to 10). The disbursement of grant funds during the grant period will be contingent upon the grantee making progress in meeting this minimum performance requirement. More than one application package for the same market area will not be considered unless the grantee submits documentation of the need for more than one FLH facility.

(7) Provide training to applicants of FLH loans and grants to assist them in their ability to manage FLH.

Application Requirements

The application process will be in two phases; the initial application (or proposal) and the submission of a formal application. Only those proposals that are selected for funding will be invited to submit formal applications. All proposals must include the following:

1. A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

a. Applicant's name,

b. Applicant's Taxpayer Identification Number,

c. Applicant's address,

d. Applicant's telephone number,

e. Name of applicant's contact person, telephone number, and address,

f. Amount of grant requested,

g. The FLH–TA grant region for which the proposal is submitted (*i.e.*, Eastern, Central, or Western Region), and

h. Applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (Vol. 68, No. 124, pages 38402–38405).

2. A narrative describing the applicant's ability to meet the eligibility requirements stated in this Notice. If the applicant intends to have other agencies working on their behalf, the narrative must identify those agencies and address their ability to meet the stated eligibility requirements.

3. A detailed Statement of Work covering a three year period that contains measurable monthly and annual accomplishments. The applicant's Statement of Work is a critical component of the selection process. The Statement of Work must include an outreach component describing the grantee's activities to inform potentially eligible groups about the section 514 and 516 FLH program. The outreach component must include a schedule of their planned outreach activities and must be included in a manner so that performance can be measured. In addition, the outreach activities must be coordinated with the appropriate RHS State office and meet the minimum performance requirements as stated in the Scope of Work section of this Notice. The Statement of Work must state *how many* areas the applicant will target for their outreach activities. (**Note:** If selected for funding, the applicant will be required to revise their Statement of Work, after consultation with Rural Development State Directors, *to identify the areas* that will be targeted.) The Statement of Work must also include a component for training organizations on the application process and the long-term management of FLH. The Statement of Work will also describe the applicant's plans to access other funding for the development and

construction of FLH and their experience in obtaining such funding. The Statement of Work must describe any duties or activities that will be performed by other agencies on behalf of the grantee.

4. An organizational plan that includes a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of employee duties to achieve the objectives of the grant program.

5. Organizational documents and financial statements to evidence the applicant's status as a properly organized private or public nonprofit agency and the financial ability to carry out the objectives of the grant program. If other agencies will be working on behalf of the grantee, working agreements between the grantee and those agencies must be submitted as part of the proposal and any associated cost must be included in the applicant's budget. Organizational and financial statements must also be submitted as part of the application for any agencies that will be working on behalf of the grantee to document the eligibility of those organizations.

6. A detailed budget plan projecting the monthly and annual expenses the grantee will incur. Costs will be limited to those that are allowed under 7 CFR parts 3015, 3016 and 3019.

7. To assure that funds are equitably distributed and that there is no duplication of efforts on related projects, all applicants are to submit a list of projects they are currently involved with, whether publicly or privately supported, that are, or may be, related to the objectives of this grant. In addition, the same disclosure must be provided for any agencies that will be working on behalf of the grantee.

8. The applicant must include a narrative describing its knowledge, demonstrated ability, or practical experience in providing training and technical assistance to applicants of loans or grants for the development of multi-family or farmworker housing. The applicant must identify the type of assistance that was applied for (loan or grant, tax credits, leveraged funding, etc.), the number of times they have provided such assistance, and the success ratio of their applications. In addition, information must be provided concerning the number of housing units, their size, their design, and the amount of grant and loan funds that were secured. If the applicant has previously received, or is currently receiving, a FLH–TA grant, the applicant must provide documentation that they met the minimum performance requirements of that grant.

9. A narrative describing the applicant's knowledge and demonstrated ability in estimating development and construction costs of multi-family or farm labor housing and for obtaining the necessary permits and clearances.

10. A narrative describing the applicant's ability and experience in overcoming community opposition to farm labor housing and describing the methods and techniques that they will use to overcome any such opposition, should it occur.

11. A separate one-page information sheet listing each of the ''Application Scoring Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria.

Application Scoring Criteria

The initial application (or proposal) evaluation process designed for this RFP will consist of two phases. The first phase will evaluate the applicant's Statement of Work and the degree to which it sets forth measurable objectives that are consistent with the objectives of FLH–TA grant program. The second phase will evaluate the applicant's knowledge and ability to provide the management necessary for carrying out a FLH–TA grant program. Proposals will only compete against other proposals within the same region. Selection points will be awarded as follows:

Phase I—Statement of Work

The Statement of Work will be evaluated to determine the degree to which it outlines efficient and measurable monthly and annual outcomes as follows:

a. The minimum performance requirements of this Notice require that the grantee commit to targeting at least five areas (at least four of which are in different States). The more areas the applicant commits to targeting, the more scoring points they will be awarded; however, the more areas that they commit to targeting, the more loan application packages they will be expected to submit. The minimum performance requirements of this grant are based, in part, on the number of areas the applicant has committed to targeting. The number of areas within the region that the applicant has committed to targeting for outreach activities:

(1) 5–7 targeted areas: 0 points
(2) 8 targeted areas: 5 points
(3) 9–10 targeted areas: 10 points
(4) 11–12 targeted areas: 15 points
(5) 13 or more areas: 20 points

b. RHS wants the grantee to cover as much of the grant region as possible. RHS does not want the grantee's efforts to be concentrated in a limited number of States. For this reason, additional points will be awarded to grant proposals that target areas in more than four States (the minimum requirement is four). The grant proposal commits to targeting areas in the following number of States:

(1) 4 States: 0 points
(2) 5 States: 5 points
(3) 6 States: 10 points
(4) 7 States: 15 points
(5) More than 7 States: 20 points

(Reminder: Applications only compete within their grant region.)

Phase II—Project Management

a. The number of successful multi-family or FLH loan or grant applications the applicant entity has assisted in developing and packaging:

(1) 0–5 applications: 0 points
(2) 6–10 applications: 10 points
(3) 11–15 applications: 20 points
(4) 16 or more applications: 30 points

b. The number of groups seeking loans or grants for the development of multi-family or FLH projects that the applicant entity has provided training and technical assistance.

(1) 0–5 groups: 0 points
(2) 6–10 groups: 5 points
(3) 11–15 groups: 10 points
(4) 16 or more groups: 15 points

c. The number of multi-family or FLH projects for which the applicant entity has assisted in estimating development and construction costs and obtaining the necessary permits and clearances:

(1) 0–5 projects: 0 points
(2) 6–10 projects: 5 points
(3) 11–15 projects: 10 points
(4) 16 or more projects:15 points

d. The number of times the applicant entity has encountered community opposition *and* was able to overcome that opposition so that farm labor housing was successfully developed:

(1) 0–2 times: 0 points
(2) 2–5 times: 5 points
(3) 6–10 times: 10 points
(4) 11 or more times: 15 points

e. The number of times the applicant entity has been able to leverage funding from two or more sources for the development of a multi-family or FLH project:

(1) 0–5 times: 0 points
(2) 6–10 times: 5 points
(3) 11–15 times: 10 points
(4) 16 or more times: 15 points

f. The number of FLH projects that the applicant entity has assisted with on-

going management (*i.e.,* rent-up, maintenance, etc.):

(1) 0–5 FLH projects: 0 points
(2) 6–10 FLH projects: 5 points
(3) 11–15 FLH projects: 10 points
(4) 16 or more FLH projects: 15 points

g. The level of success that the applicant entity has had in providing assistance to farmworkers (*i.e.,* health, education, housing, etc.).

Evidence that the applicant has had *extensive* success in providing assistance to farmworkers: 20 points.

Evidence that the applicant has had *moderate* success in providing assistance to farmworkers: 10 points.

Evidence that the applicant has had *limited* success in providing assistance to farmworkers: 5 points.

Tie Breakers—In the event two or more proposals are scored with an equal amount of points, selections will be made in the following order:

1. If an applicant has already had a proposal selected, their proposal will not be selected.

2. If there are equally scoring proposals, the lowest cost proposal will be selected.

3. Any remaining proposals that are scored equally will be selected by lottery drawing.

Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0181.

Dated: February 26, 2004.

Arthur A. Garcia,

Administrator, Rural Housing Service.

Appendix A—Farm Labor Housing Technical Assistance Grant Agreement

Form Approved
OMB No. 0575–0181

Farm Labor Housing Technical Assistance Grant Agreement

This agreement dated _____ is between _____, the grantee, organized and operated under _____ (authorizing State statute), and

the United States of America acting through the Rural Housing Service (RHS). RHS agrees to grant a sum not to exceed $_____, subject to the terms and conditions of this agreement; provided, however, that the grant funds actually advanced and not needed for grant purposes shall be returned immediately to RHS. The Farm Labor Housing Technical Assistance (FLH–TA) grant statement of work approved by RHS, is attached, and shall commence within 10 days of the date of execution of this agreement by RHS and be completed by _____(date).

RHS may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this grant agreement or RHS regulations related hereto. The grantee may appeal adverse decisions in accordance with RHS's appeal procedures contained in 7 CFR part 11.

In consideration of said grant by RHS to the grantee, to be made pursuant to section 516 of title V of the Housing Act of 1949, the grantee will provide such a program in accordance with the terms of this grant agreement and applicable regulations.

Part A—Definitions

1. ''Beginning date'' means the date this agreement is executed by both parties and costs can be incurred.

2. ''Ending date'' means the date this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.

3. ''Disallowed costs'' are those charges to a grant which RHS determines cannot be authorized in accordance with applicable Federal cost principles contained in 7 CFR parts 3015, 3016 and 3019, as appropriate.

4. ''FLH–TA'' means Farm Labor Housing Technical Assistance, the purpose for which grant funds are awarded under this agreement.

5. ''Grant closeout'' is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

6. ''RHS'' means the Rural Housing Service, an agency of the United States Department of Agriculture.

7. ''Termination'' of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

Part B—Terms of Agreement

RHS and the grantee agree that:

1. All grant activities shall be limited to those authorized by this grant agreement and section 516 of title V of the Housing Act of 1949.

2. This agreement shall be effective when executed by both parties.

3. The FLH–TA grant activities approved by RHS shall commence and be completed by the date indicated above, unless terminated under part B, paragraph 18. of this grant agreement, or extended by execution of the attached ''Amendment'' by both parties.

4. The grantee shall carry out the FLH–TA grant activities and processes as described in the approved statement of work which is attached to, and made a part of, this grant agreement. Grantee will be bound by the activities and processes contained in the statement of work and the further conditions contained in this grant agreement. If the statement of work is inconsistent with this grant agreement, then the latter will govern. A change of any activities and processes must be in writing and must be signed by the approval official.

5. The grantee shall use grant funds only for the purposes and activities approved by RHS in the FLH–TA grant budget. Any uses not provided for in the approved budget must be approved in writing by RHS in advance.

6. If the grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid to Federal employees or (if lower) an amount authorized by the grantee for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the RHS Federal employee rates will be the maximum allowed.

7. Grant funds will not be used:

(a) To pay obligations incurred before the beginning date or after the ending date of this agreement;

(b) For any entertainment purposes;

(c) To pay for any capital assets, the purchase of real estate or vehicles, the improvement or renovation of the grantee's office space, or for the repair or maintenance of privately owned vehicles;

(d) For any other purpose prohibited in 7 CFR parts 3015, 3016 and 3019, as applicable;

(e) For administrative expenses exceeding 20 percent of the FLH–TA grant funds; or

(f) For purposes other than to encourage the development of farm labor housing.

8. The grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. The disbursal of grants will be governed as follows:

(a) In accordance with 31 CFR part 205, grant funds will be provided by RHS as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. In addition, the grantee must submit Standard Form (SF) 272, ''Federal Cash Transactions Report,'' each time an advance of funds is made. This report shall be used by RHS to monitor cash advances made to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as required by 7 CFR parts 3015, 3016, and 3019, as applicable.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's statement of work and budget and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the RHS and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within 7 calendar days from the date of the Treasury check; or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to RHS that all officers of the

grantee's organization authorized to receive or disburse Federal funds are covered by fidelity bonds in an amount of at least the grant amount to protect RHS's interests.

10. The grantee will submit performance, financial, and annual reports as required by 7 CFR parts 3015, 3016, and 3019, as applicable, to the appropriate RHS office. These reports must be reconciled to the grantee's accounting records.

(a) As needed, but not more frequently than once every 30 calendar days, submit an original and two copies of SF–270, ''Request for Advance or Reimbursement.'' In addition, the grantee must submit a SF–272, each time an advance of funds is made. This report shall be used by RHS to monitor cash advances made to the grantee.

(b) Quarterly reports will be submitted within 15 days after the end of each calendar quarter. Quarterly reports shall consist of an original and one copy of SF–269, ''Financial Status Report,'' and a quarterly performance report summarizing the grantee's activities and accomplishments for the prior quarter. Item 10.g. (total program outlays) of SF–269, will be less any rebates, refunds, or other discounts. The quarterly performance report will provide a summary of the grantee's activities for the prior quarter and their progress in accomplishing the tasks described in the grantee's statement of work. The quarterly report will also inform RHS of any problems or difficulties the grantee is experiencing (*i.e.*, locating sites, finding feasible markets, gaining public support, etc.). The reports will be reviewed by RHS for the purpose of evaluating whether the grantee is accomplishing the objectives of the grant and whether RHS can assist the grantee in any manner. Quarterly reports shall be submitted to a designated official at the RHS National office, with a copy of the report to each State Director within the FLH–TA grant region where the grantee is operating.

(c) Within 90 days after the termination or expiration of the grant agreement, an original and two copies of SF–269 and a final performance report must be submitted to the Agency. The final performance report will include a summary of the project's accomplishments and provide information concerning the degree to which the grantee met each of the grantee's minimum performance requirements, problems that were encountered, and planned future activities of the grantee under FLH–TA grants. Final reports may serve as the last quarterly report.

(d) The RHS may change the format or process of the monthly and quarterly activities and accomplishment reports during the performance of the agreement.

11. In accordance with Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, local, and Indian tribal governments (available in any RHS office), compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds $100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval of RHS.

13. The results of the program assisted by grant funds may be published by the grantee without prior review by RHS, provided that such publications acknowledge the support provided by funds pursuant to the provisions of title V of the Housing Act of 1949, as amended, and that five copies of each such publication are furnished to RHS.

14. The grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingency fee.

15. No person in the United States shall, on the grounds of race, religion, color, sex, familial status, age, national origin, or disability, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of RHS contained in 7 CFR part 1901, subpart E.

16. In all hiring or employment made possible by or resulting from this grant:

(a) The grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, familial status, age, national origin, or disability,

(b) The grantee will ensure that employees are treated without regard to their race, religion, color, sex, familial status, age, national origin, or disability. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship, and

(c) In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the ''Equal Employment Clause'' as specified by Form RD 400–1, ''Equal Opportunity Agreement.''

17. The grantee accepts responsibility for accomplishing the FLH-TA grant program as submitted and included in its preapplication and application, including its statement of work. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to RHS on the status of grantee's FLH-TA grant programs, projects, related activities, and problems.

(c) Inform RHS as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time schedules required and any RHS assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. The grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to RHS any uncommitted balance of grant funds.

(ii) The grantee will furnish to RHS within 90 calendar days after the date of completion of the grant, SF–269 and all financial, performance, and other reports required as a condition of the grant, including a final audit report, as required by 7 CFR parts 3015, 3016, and 3019, as applicable. In accordance with 7 CFR part 3015 and OMB Circular A–133, audits must be conducted in accordance with generally accepted government auditing standards.

(iii) The grantee shall account for any property acquired with FLH-TA grant funds or otherwise received from RHS.

(iv) After the grant closeout, RHS will recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this grant agreement, the Administrator (or his or her designee) can, on reasonable notice, suspend the grant pending corrective action or terminate the grant in accordance with part B, Paragraph 18.(c) of this grant agreement. In such instances, RHS may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. RHS will withhold further advances and grantees are prohibited from further use of grant funds, pending corrective action.

(c) Grant termination will be based on the following:

(i) Termination for cause. This grant may be terminated in whole, or in part, at any time before the date of completion, whenever RHS determines that the grantee has failed to comply with the terms of this agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by RHS or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by RHS in connection with any RHS programs.

(F) Failure to maintain an accounting system acceptable to RHS.

(ii) Termination for convenience. RHS or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) RHS shall notify the grantee in writing of the determination and the reasons for and

the effective date of the suspension or termination. Except for termination for convenience, grantees have the opportunity to appeal a suspension or termination in accordance with 7 CFR part 11.

19. Upon any default under its representations or agreements contained in this instrument, the grantee, at the option and demand of RHS, will repay to RHS forthwith the grant funds received with interest at the rate of 5 percent per annum from the date of the default. The provisions of this grant agreement may be enforced by RHS, at its options and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this grant agreement or by such other proceedings in law or equity, in either Federal or state courts, as may be deemed necessary by RHS to assure compliance with the provisions of this grant agreement and the laws and regulations under which this grant is made.

20. Extension of this grant agreement, modifications of the statement of work, or changes in the grantee's budget may be approved by RHS provided, in RHS's opinion, the extension or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the statement of work during the period of the extension and/or modifications.

21. The provisions of 7 CFR parts 3015, 3016, and 3019, as applicable, are incorporated herein and made a part hereof by reference.

Part C—Grantee Agrees

1. To comply with property management standards for expendable and nonexpendable personal property established by 7 CFR parts 3015, 3016, and 3019.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on a cash basis. The financial management system shall include a tracking system to insure that all program income, including loan repayments, are used properly. The standards for financial management systems are contained in OMB Circular A–110 and 7 CFR part 3015.

(b) Records which identify adequately the source and application of funds for grant supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after the submission of the final performance report, in accordance with part B, paragraph 10. (c) of this grant agreement, except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the 3-year period, the records shall be retained until all litigation, claims, audits, or investigative findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by RHS, the 3-year retention requirement is not applicable.

(c) When records are transferred to or maintained by RHS, the 3-year retention requirement is not applicable.

(d) Microfilm copies may be substituted in lieu of original records. RHS and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by RHS concerning the grantee's actions in soliciting citizen participation in the applications process, including published notices of public meetings, actual public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by RHS or acquired wholly or in part with FLH–TA grant funds without the written consent of RHS.

6. To provide RHS with such periodic reports of grantee operations as may be required by authorized representatives of RHS.

7. To execute Form RD 400–1 and Form RD 400–4, ''Assurance Agreement,'' and to execute any other agreements required by RHS to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000, a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 1857(h). Violations shall be reported to RHS and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a public-held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the grantee shall relinquish any and all copyrights and privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain a notice and be identified by language to the following effect: ''The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

12. That the grantee shall abide by the policies contained in 7 CFR parts 3015, 3016, or 3019, as applicable, which provide standards for use by grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

13. That it is understood and agreed that any assistance granted under this grant agreement will be administered subject to the limitations of section 516 of title V of the Housing Act of 1949 and that all rights granted to RHS herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect RHS's financial interest.

14. That the grantee will adopt a standard of conduct that provides that, if an employee, officer, or agency of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (*i.e.,* partnerships, corporations, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors, or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving FLH–TA grant assistance.

15. That the grantee will be in compliance with and provide the necessary forms concerning the Debarment and Suspension and the Drug-Free Workplace requirements.

Part D—RHS Agrees

1. That it will assist the grantee, within available appropriations, with such technical and management assistance as needed in coordinating the statement of work with local officials, comprehensive plans, and any State or area plans for improving housing for farmworkers.

2. That at its sole discretion, RHS may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of the grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as the grantor may determine to be:

(a) Advisable to further the purposes of the grant or to protect RHS's financial interests therein; and

(b) Consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and RHS's regulations.

Part E—Attachments

The grantee's statement of work is attached to and made a part of this grant agreement.

This grant agreement is subject to current RHS regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this grant agreement to be executed by its duly authorized _____ properly attested to and its corporate seal affixed by its duly authorized _____.

Attest:

Grantee:

By: _____

_____

(Title)

Date of Execution of Grant Agreement by Grantee:

_____

United States of America
Rural Housing Service
By:

_____

_____

Date of Execution of Grant Agreement by RHS:

_____

Form Approved
OMB No. 0575–0181

Amendment To Farm Labor Housing Technical Assistance Grant Agreement

This amendment between _____, herein called the ''Grantee,'' and the United States of America acting through the Rural Housing Service, Department of Agriculture, herein called ''RHS,'' hereby amends the Farm Labor Housing Technical Assistance Grant Agreement originally executed by said parties on _____.

Said grant agreement is amended by extending the ending date of the grant agreement to _____, or by making the following changes noted in the attachments hereto (list and identify proposals) and any other documents pertinent to the grant agreement which are attached to this amendment.

The grantee has caused this ''Amendment To Farm Labor Housing Technical Assistance Grant Agreement'' to be executed by its duly authorized _____ properly attested to and its corporate seal affixed by its duly authorized _____.

Attest: Grantee:

By: _____

_____

(Title)

Date of Execution of Amendment to Grant Agreement by Grantee:

_____

United States of America
Rural Housing Service:

By: _____

_____

(Title)

Date of Execution of Amendment to Grant Agreement by RHS:

_____

[FR Doc. 04–4827 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

[Docket No. 000817241–4074–02]

Identification of Currently Funded Projects Eligible to be Extended for an Additional Year of Funding in Light of the Department of Commerce's Intent to Revise the Postsecondary Internship Program

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC) publishes this notice to announce that the project award period of cooperative agreements under the Postsecondary Internship Program (PIP) is extended for an additional year of funding. The **Federal Register** notice that solicited applications for the program established the total project award period for cooperative agreements under the Postsecondary Internship Program as three (3) years. (65 FR 63231, October 23, 2000) The office administering the program at the time the cooperative agreements were awarded, the DOC Office of Executive Assistance Management, has recently been reorganized, with subsequent realignment of the program management responsibilities to the DOC Office of Human Resources Management (OHRM.) This extension of time will permit DOC's OHRM to implement an overall program review, consider potential enhancements and revisions of the program scope, work requirements and performance measures for the Postsecondary Internship Program. This notice also identifies specific program recipients who will be eligible for an additional year of funding. It is OHRM's intent to assess the future direction of the program especially in outlining initiatives for successful and strategic management of human capital. DOC's OHRM has a workforce restructuring plan in place, has identified best practices for succession planning, and is tracking DOC mission-critical occupations which will suffer a severe and identifiable shortage over the next five years.

DATES: The award period is extended as of March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Mrs. Carin M. Otero, (202) 482–1445.

SUPPLEMENTARY INFORMATION: The Postsecondary Internship Program (PIP) was developed as one vehicle the DOC uses to promote participation of minorities in Federal programs as mandated by Executive Orders and statutes. Title 5, section 7201 of the U.S. Code requires that each Executive agency conduct a continuing program for the recruitment of members of minorities to address under representation of minorities in various categories of Federal employment. Executive Order 13256 provides for Executive departments to enter into, among other things, cooperative agreements with Historically Black Colleges and Universities (HBCUs) to further the goals of the Executive Order, principally that of strengthening the capacity of HBCUs to provide quality education, and to increase opportunities to participate in and benefit from Federal programs. Executive Order 13230 calls for Executive departments to develop plans to increase opportunities for Hispanic Americans to participate in and benefit from Federal education programs. Executive Order 13270 helps ensure that greater Federal resources are available to the tribal colleges. Executive Order 13216 directs Federal agencies to increase participation of Asian and Pacific Islanders in Federal programs.

In order to ensure that the Federal Government can maintain visibility and attractiveness to the ''best and brightest'' college students, this program supports partnerships between Federal departments and nonprofit or educational institutions. This program continues to improve opportunities for college students to prepare for their transition to the workplace and foster human resource diversity at DOC.

As part of the review and revision of the program, DOC amends the award period to provide an additional year of funding, on a non-competitive basis, to current intern program recipients who will be completing the third year of partnership with DOC. The additional year of funding will permit student participation through the 2005 spring session of the program (January through May) which coincides with the academic year. Specifically, the additional year of funding will comprise the 2004 summer session, the 2004 fall session and the 2005 spring session of the program. Funding for the additional year will be at the sole discretion of the DOC and will depend on satisfactory performance by the recipients, the availability of funds, and Agency priorities that support the continuation of the project. DOC has no obligation to provide any additional future funding in connection with this award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Under normal circumstances, Postsecondary Internship Program partners would conduct a new competition at the end of the three year award period. However, due to the addition of a fourth year of funding, the Postsecondary Internship Program did not conduct a competition during 2003. The additional year of funding, as announced in this notice, will allow OHRM the necessary time to review and develop its revised program.

The following program partners are affected by this notice and will be eligible for an additional year of funding, which includes the 2005 spring session for an extension of the project award period for a total of 15 months (3/

1/04–5/31/05), on a non-competitive basis: American Indian Science and Engineering Society, Hispanic Association of Colleges and Universities National Intern Program, Minority Access, Inc., and Oak Ridge Associated Universities.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this notice.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Authority: 5 U.S.C. 7201 and Executive Orders 13216, 13230, 13256, and 13270.

Dated: March 1, 2004.

Deborah A. Jefferson,

Director for Human Resources Management.

[FR Doc. 04–4883 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. A review of regional estimates, research and plans; 2. An update of bureau-wide activities and plans.

DATES: Friday, May 14, 2004, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9600.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Dar Davis of BEA at (202) 606–9208 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Dar Davis at (202) 606–9208.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's regional economic accounts and proposed revisions to the International System of National Accounts. This will be the Committee's eighth meeting.

Dated: February 26, 2004.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 04–4806 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Corrosion–Resistant Carbon Steel Flat Products from Korea: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: March 4, 2004.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of corrosion–resistant carbon steel flat products from Korea. This review covers the period August 1, 2002 through July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Kit Rudd, or Paul Walker, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2667, (202) 482–1385, and (202) 482–0413, respectively.

Background

On September 30, 2003, the Department published a notice of initiation of a review of corrosion–resistant carbon steel flat products (''CORE'') from Korea covering the period August 1, 2002 through July 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review:* 68 FR 56262 (September 30, 2003).

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245–day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245–day period is not practicable for the following reasons. This review covers five companies, and to conduct the sales and cost analyses for each requires the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships. In addition, the Department is analyzing home market sales of subject merchandise for further processing into non–subject merchandise and subsequent export, as well as issues related to scope exclusions of certain products.

Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days until September 1, 2004. The final results

continue to be due 120 days after the publication of the preliminary results.

Dated: February 26, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–4863 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non–Frozen Apple Juice Concentrate From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2002–2003 Antidumping Duty Administrative Review

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

ACTION: Extension of Time Limit

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the 2002–2003 administrative review of the antidumping duty order on certain non–frozen apple juice concentrate from the People's Republic of China. The period of review is June 1, 2002, through May 31, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534, or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively. The order in this review was published on June 5, 2000. (*See Notice of Amended Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Non–frozen Apple Juice Concentrate from the PRC*, 65 FR 35606 (June 5, 2000)).

Background

On July 29, 2003, the Department published in the **Federal Register** the notice of initiation of the antidumping administrative review on certain non–frozen apple juice concentrate from the People's Republic of China (''PRC''). (*See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 68 FR 44524 (July 29, 2003)). The preliminary results are currently due on March 1, 2004.

Extension of Time Limits for Preliminary Results

Additional information is required to evaluate the factors of production and legal structures of the respondent and possible affiliates in the PRC. It is, therefore, not practicable to complete this review within the originally anticipated time limit (i.e., March 1, 2004). Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is postponing the preliminary results of this administrative review for 120 days, until no later than June 29, 2004.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 27, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–4865 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–822]

Stainless Steel Bar from the United Kingdom: 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 January 7, 2004, the Department of Commerce published the preliminary results of the first administrative review of the antidumping duty order on stainless steel bar from the United Kingdom. The review covers one manufacturer/exporter. The period of review is August 2, 2001, through January 28, 2002, and March 8, 2002, through February 28, 2003.[1]

We received no comments and have made no changes in the margin calculations since the preliminary results. Therefore, the final results do not differ from the preliminary results. The final weighted–average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration–Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

The review covers one manufacturer/exporter: Firth Rixson Special Steels Limited (FRSS). The period of review is August 2, 2001, through January 28, 2002, and March 8, 2002, through February 28, 2003.

On January 7, 2004, the Department of Commerce published the preliminary results of the first administrative review of the antidumping duty order on stainless steel bar from the United Kingdom (69 FR 905). We invited parties to comment on the preliminary results of review. We received no comments from any party to the proceeding. We have conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

For purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes

[1] The review period does not include January 29, 2002, through March 7, 2002, for reasons explained in our *Notice of Amended Antidumping Duty Orders: Stainless Steel Bar from France, Germany, Italy, Korea, and the United Kingdom*, 68 FR 58660 (October 10, 2003).

cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 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 scope of this order is dispositive.

Final Results of Review

We made no changes from the preliminary results. For the reasons stated in our preliminary results, we determine that the following weighted–average margin percentage exists:

Manufacturer/exporter	Margin (percent)
Firth Rixson Special Steels Limited	125.77

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.48 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

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

This notice 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 regulations and the terms of an APO is a sanctionable violation. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4866 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Stainless Steel Wire Rod from Italy; Preliminary Results of Full Sunset Review of Countervailing Duty Order

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

ACTION: Notice of Preliminary Results of Full Sunset Review: Stainless Steel Wire Rod from Italy.

SUMMARY: On August 1, 2003, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on stainless steel wire rod (''SSWR'') from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five–Year (Sunset) Reviews*, 68 FR 45219, (August 1, 2003). On the basis of substantive responses filed by domestic and respondent interested parties, the Department is conducting a full sunset review. As a result of this review, the Department preliminarily finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of subsidies at the levels indicated in the *Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq. or Martha Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4340 or (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Department's Regulations:

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five–year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Background:

On August 1, 2003, the Department initiated a sunset review of the countervailing duty order on SSWR from Italy, pursuant to section 751(c) of

the Tariff Act of 1930, as amended, (''the Act''). *See Initiation of Five–Year (Sunset) Reviews*, 68 FR 45219, (August 1, 2003). The Department received a notice of intent to participate on behalf of Carpenter Technology Corporation (''Carpenter Technology''), a domestic interested party, within the applicable deadline specified in section 351.218(d)(1)(I) of the *Sunset Regulations*. Carpenter Technology claimed interested–party status under section 771(9)(C) of the Act, as a U.S. producer of the subject merchandise. Carpenter Technology participated in the original investigation and has been involved in this proceeding since its inception.[1]

On September 2, 2003, we received a response from Cogne Acciai Speciali S.r.l. (''CAS''), at that time, a respondent interested party[2]. *See* Response of CAS, September 2, 2003. CAS qualified as an interested party under section 771(9)(A) of the Act, as a foreign producer and exporter of the subject merchandise. On August 29, 2003, we received a response from the Government of Italy (''GOI'') expressing its willingness to participate in this review as the authority responsible for defending the interests of Italian companies involved in this review. *See* Response of the GOI, August 29, 2003. On August 28, 2003, the Delegation of the European Commission (''EC'') expressed its willingness to participate in this review as the authority responsible for defending the interest of the Member States of the European Union (''EU''). *See* Response of the EC, August 28, 2003. The GOI and EC note that they have in the past participated in this proceeding.

On September 2, 2003, the Department received a complete substantive response from domestic interested parties within the 30–day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(I). *See* Response of Carpenter Technology, September 2, 2003. On September 8, 2003, Carpenter Technology filed a rebuttal response to respondent interested parties' substantive response. No rebuttal response was filed by respondents.

In a sunset review, the Department normally will conclude that there is adequate response to conduct a full sunset review where respondent interested parties account for more than 50 percent, by volume, of total exports of subject merchandise to the United States. *See* 19 CFR 351.218(e)(1)(ii)(A) (63 FR 13516 (March 20, 1998)). Although CAS, accounted for less than the 50 percent threshold that the Department normally considers to be an adequate response under 19 CFR section 351.218(e)(I)(ii)(A), on September 24, 2003, the Department determined that the responses by CAS, the only respondent company in this review, the GOI, and the EC provided an adequate basis for a full review. *See* Memorandum for Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, from Hilary E. Sadler, Esq., Office of Policy, Re: Sunset Review of Stainless Steel Wire Rod from Italy; Adequacy of Respondent Interested Party Response to the Notice of Initiation, September 24, 2003. Therefore, the Department is conducting a full (240 day) sunset review in accordance with 19 CFR 351.218(e)(2)(I).

Originally, the Department's preliminary results of this review were scheduled for November 19, 2003. However, several issues have arisen regarding the recent revocation of the order with respect to CAS and its effect on this sunset review. *See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act: Countervailing Measures Concerning Certain Steel Products From the European Communities*, 68 FR 64858 (November 17, 2003).

Because of the numerous, complex issues in this proceeding, the Department extended the deadlines for the preliminary and final determinations. *See* Section 751(c)(5)(B) of the Act. On February 19, 2004, the Department extended the issuance date of the preliminary determination to February 27, 2004 as well as the issuance date of the final determination on or before June 28, 2004. *See Notice of extension of time limit for preliminary and final results of full sunset review: Stainless Steel Wire Rod from Italy*, 69 FR 8627 (February 25, 2004).

Scope of Review:

For purposes of this review, certain stainless steel wire rod (SSWR or subject merchandise) comprises products that are hot–rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot- rolling or hot–rolling, annealing, and/or pickling and/or descaling, and are normally sold in coiled form, and are of solid cross–section. The majority of SSWR sold in the United States is round in cross–sectional shape, annealed and pickled, and later cold–finished into stainless steel wire or small–diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades SF20T and K–M35FL are excluded from the scope of the order. The percentages of chemical makeup for the excluded grades are as follows:

SF20T:

Carbon ..... 0.05 max
Manganese .... 2.00 max
Phosphorous .. 0.05 max
Sulfur ..... 0.15 max
Silicon ..... 1.00 max
Chromium 19.00/21.00
Molybdenum ... 1.50/2.50
Lead ..... added (0.10/0.30)
Tellurium .... added (0.03 min)

K–M35FL:

Carbon ..... 0.015 max
Manganese .... 0.40 max
Phosphorous .. 0.04 max
Sulfur ..... 0.03 max
Silicon 0.70/1.00
Chromium 12.50/14.00
Nickel ..... 0.30 max
Lead ..... added (0.10/0.30)
Aluminum 0.20/0.35

The products covered by this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 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 thescope of this review is dispositive.

Analysis of Comments Received:

All issues raised in the substantive responses and rebuttals by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of

[1] The original petitioners involved in this case include: AL Tech Specialty Corp. (''AL Tech''), Carpenter Technology Corporation, Republic Engineered Steels (''Republic''), and Talley Metals Technology, Inc. (''Talley''). Carpenter acquired Talley in 1998.

[2] CAS has since been excluded from the countervailing duty order, effective November 7, 2003, pursuant to a section 129 Determination. As a result, CAS is no longer an interested party to this proceeding.

Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated February 27, 2004, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memo include the likelihood of continuation or recurrence of countervailable subsidies and the net subsidy likely to prevail were the order revoked. 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 Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ia.ita.doc.gov/frn, under the heading ''Italy.'' The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review:

We preliminarily determine that revocation of the countervailing duty order on SSWR from Italy would be likely to lead to continuation or recurrence of countervailable subsidies at the rate listed below:

Producers/Exporters	Net Countervailable Subsidy (percent)
Valbruna	0.82
All Others	0.82

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(d)(i). Any hearing, if requested, will be held on April 28, 2004. Interested parties may submit case briefs no later than April 19, 2004, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than April 26, 2004, in accordance with 19 CFR 351.309(d)(I). The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such briefs, not later than June 28, 2004.[3]

This five–year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(I)(1) of the Act.

[3] On November 25, 2003, the Department published the extension of time limit for the preliminary results due to complex issues in this proceeding. See Extension of Time Limit for Preliminary Results of Five-Year Sunset Review, 68 FR 66073 (November 25, 2003). Therefore, final results of this sunset review are due not later than June 28, 2004.

Dated: February 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4864 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012204C]

Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures

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

ACTION: Final notification of conservation and management measures.

SUMMARY: At its twenty-second meeting in Hobart, Tasmania, October 21 to November 7, 2003, the Commission for the Conservation of Antarctic Marine Living Resources (the Commission or CCAMLR), of which the United States is a member, adopted conservation and management measures, pending members' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. The measures have been agreed upon in accordance with Article IX of the Convention on the Conservation of Antarctic Marine Living Resources (the Convention) and are in effect with respect to the United States.

DATES: Effective March 4, 2004.

ADDRESSES: Copies of the CCAMLR conservation and management measures may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robin Tuttle, 301–713–2282.

SUPPLEMENTARY INFORMATION:

Background

Individuals interested in CCAMLR and the Convention Area should see 68 FR 70554 (December 18, 2003) and 50 CFR part 300, subpart G - Antarctic Marine Living Resources.

The conservation and management measures adopted by the twenty-second meeting of CCAMLR restrict overall catches and bycatch of certain species of fish, krill and crab; limit participation in several exploratory fisheries; restrict fishing in certain areas and to certain gear types; set fishing seasons; and amend an annex to the catch documentation scheme (CDS) for *Dissostichus* (toothfish) species. The Commission urges several actions by its members to improve compliance with CCAMLR conservation and management measures.

The full text of the measures and resolutions were included in a preliminary notice published in the **Federal Register** on December 18, 2003 (68 FR 70554) by the Department of State. Public comments were invited on the notice, but no public comments were received. Through this action, NMFS notifies the public that the United States has accepted the measures adopted at CCAMLR's twenty-second meeting.

Compliance

A resolution adopted at the nineteenth meeting of CCAMLR was amended at the twenty-second meeting to urge all contracting parties, when licensing vessels to fish for toothfish, to require as a condition of that license that the vessel land toothfish only in ports of states that are fully implementing the CDS.

The Commission adopted a list of illegal, unregulated and unreported fishing vessels (the IUU vessel list) for vessels suspected of IUU fishing or trading and has placed it on a password-protected section on the CCAMLR website. All CCAMLR members are urged to prohibit trade with these IUU vessels. NMFS intends to implement a prohibition on the importation of toothfish harvested by vessels identified on the CCAMLR IUU vessel list in a future rulemaking.

The Commission agreed to support a trial centralized vessel monitoring system (C-VMS) to be operated from the CCAMLR Secretariat during the 2003/2004 fishing season and open to all members who choose to participate. The United States will participate in the trial.

Catch Documentation Scheme (CDS)

The CDS measure is revised to require that all landings of toothfish be authorized on all Dissostichus Catch Documents (DCD) by the signature of an official of the port of landing, acting under the customs or fisheries authority of the port state. Pursuant to this revision, the United States will no longer accept DCDs signed by other than by an authorized customs or fisheries official of the port state. DCDs signed by the China Fisheries Association, an industry entity, will no longer be accepted.

The Commission also agreed to continue the electronic web-based CDS

(E-CDS) trial through the October 2004 meeting of CCAMLR and to include all interested parties. The United States will continue its participation in the trial.

Incidental Mortality of Seabirds

The measure to minimize the incidental mortality of seabirds in the course of longline fishing or longline fishing research is amended by removing the mandatory requirements for thawed bait; by adding advisory measures for line weighting for autoliners; by requiring the use of a device designed to discourage birds from accessing baits during the haul of longlines in areas defined by CCAMLR as average-to-high or high risk of seabird bycatch; and by revising the specifications for the mandatory use of streamer lines.

Small-scale Research Units (SSRU)

The Commission endorsed its Scientific Committee's revision of SSRUs in Subarea 88.1 to better capture the irregular shapes of the bathymetric features and fishing grounds in the subarea. This revision resulted in 12 new SSRUs that are more similar in size to those in other Convention Subareas.

Prohibitions on Directed Fishing

The Commission prohibited directed fishing for *Dissostichus* species from December 1, 2003, to November 30, 2004, in Statistical Subareas 48.5, 88.2 (north of 65°00′S) and 88.3, and Divisions 58.5.1 outside the French Exclusive Economic Zone (EEZ), and 58.5.2 (east of 79°20′E) and outside the Australian EEZ to the west of 79°20′E.

The Commission continued the prohibitions on directed fishing for *Dissostichus* species in Statistical Division 58.4.4 and Subareas 58.6 and 58.7 outside areas of national jurisdiction until such time that further scientific information is gathered and reviewed by the Scientific Committee and its Working Group on Fish Stock Assessment.

Longstanding prohibitions on directed fishing for certain other finfish species remain in effect.

Dissostichus Species

The Commission revised the general measures for exploratory fisheries for *Dissostichus* species by removing catch limits in fine-scale rectangles; by removing soak time constraints for longlines; by revising the boundaries of SSRUs and introducing new SSRUs; and unless otherwise specified, by setting a catch limit of 100 tons in any SSRU excluding Subarea 88.2.

The Commission set a catch limit of 4,420 tons for the longline fishery for *D. eleginoides* in Subarea 48.3 in the 2003/2004 season, counting any catch of *D. eleginoides* taken in other finfish fisheries in Subarea 48.3 against the catch limit.

The Commission set a combined catch limit of 2,873 tons for trawl fishing for *D. eleginoides* in Division 58.5.2 during the December 1, 2003, to November 30, 2004, season and for longline fishing for *D. eleginoides* in Division 58.5.2 (west of 79°20′E) from May 1, 2004, to August 31, 2004.

The Commission designated several Dissostichus fisheries as exploratory fisheries for the 2003/2004 fishing season. These fisheries are total allowable catch fisheries and are open only to the flagged vessels of countries that notified CCAMLR of an interest by named vessels in the fisheries.

The exploratory fisheries for *Dissostichus* species authorized by the Commission for the 2003/2004 fishing season include the following: (1) longline fishing in Statistical Division 58.4.1 by Argentina, Australia and the United States; (2) longline fishing in Statistical Subarea 48.6 by Argentina, Japan, Namibia, New Zealand, Spain and South Africa; (3) longline fishing in Statistical Division 58.4.2 by Argentina, Australia, Russia, Ukraine and the United States; (4) longline fishing in Statistical Division 58.4.3a (the Elan Bank) outside areas under national jurisdiction by Argentina, Australia, Russia, Ukraine and the United States; (5) longline fishing in Statistical Division 58.4.3b (the BANZARE Bank) by Argentina, Australia, Russia, Ukraine and the United States; (6) trawl fishing in Statistical Division 58.4.3b (the BANZARE Bank) by one Australian vessel; (7) longline fishing in Statistical Subarea 88.1 by Argentina, Japan, Korea, New Zealand, Norway, Russia, South Africa, Spain, Ukraine, United Kingdom, United States and Uruguay; and (8) longline fishing in Statistical Subarea 88.2 by Argentina, Korea, New Zealand, Norway, Russia, South Africa and Ukraine.

Champsocephalus gunnari

The Commission set the overall catch limit for *C.gunnari* in Statistical Subarea 48.3 for the 2003/2004 season at 2,181 tons and continued previously adopted restrictions on the fishery.

The Commission also set the catch limit for *C. gunnari* within defined areas of Statistical Division 58.5.2 for the 2003/2004 season at 292 tons and continued previously adopted restrictions on, and reporting requirements for, the fishery.

Electrona carlsbergi

The Commission agreed that the fishery for *E. carlsbergi* in Statistical Subarea 48.3 had lapsed. Consequently, the Commission has prohibited directed fishing on the species in Subarea 48.3 until further research has been conducted and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Other Finfish

The Commission limited the exploratory fishery for *Macrourus* species in Statistical Divisions 58.4.3a and 58.4.3b in the 2003/2004 fishing season to one Australian-flagged trawler and set the catch limits at 26 and 129 tons respectively.

The Commission also set a total precautionary catch limit of 1000 tons for *Chaenodraco wilsoni*, and 500 tons each for *Lepidonotothen kempi*, *Trematomas eulepidotus* and *Pleuragramma antarcticum* for the 2003/2004 fishing season.

Crab

The Commission set the total allowable catch level for the pot fishery for crab for the 2003/2004 fishing season at 1,600 tons and continued to limit participation to one vessel per member country.

Squid

The Commission set the total allowable catch limit for the exploratory jig fishery for *Martialia hyadesi* for the 2003/2004 fishing season at 2,500 tons.

Krill

The Commission carried forward the precautionary catch limits for krill in Statistical Area 48 at 4.0 million tons overall and, as divided by subareas, at 1.008 million tons in Subarea 48.1, 1.104 million tons in Subarea 48.2, 1.056 million tons in Subarea 48.3, and 0.832 million tons in Subarea 48.4.

Bycatch

The Commission revised the limitations on bycatch in new and exploratory fisheries in Statistical Division 58.5.2 for the 2003/2004 season.

The Commission also revised the bycatch limits in all new and exploratory fisheries for the 2003/2004 season in all areas containing SSRUs (Statistical Subareas 48.6, 88.1 and 88.2, and Statistical Subdivisions 58.4.2, 58.4.3a, 58.4.3b) for all *Macrourus*, skates and rays, and other species.

Authority: 16 U.S.C. 2431 *et seq.*

Dated: March 1, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs

[FR Doc. 04–4870 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011304C]

Taking of Marine Mammals Incidental to Specified Activities; On-Ice Seismic Operations in the Beaufort 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 NMFS has issued an Incidental Harassment Authorization (IHA) to take marine mammals by harassment incidental to conducting on-ice seismic operations from Cape Halkett to Oliktok Point in the Beaufort Sea to ConocoPhillips Alaska, Inc. (CPA).

DATES: Effective from February 27, 2004, through February 26, 2005.

ADDRESSES: A copy of the IHA and the application are available by writing to Mr. P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Small__Take/smalltake__info.htm#applications*

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

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

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

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

Summary of Request

On November 12, 2003, NMFS received an application from CPA for the taking, by harassment, of two species of marine mammals incidental to conducting an on-ice seismic survey program. As presently scheduled, the seismic operations will be conducted at Cape Halkett to Oliktok Point to approximately 20 nautical miles offshore in the Beaufort Sea in Alaska.

The purpose of the project is to gather information about the subsurface of the earth by measuring acoustic waves, which are generated on or near the surface. The acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts.

Description of the Activity

The seismic surveys use the ''reflection'' method of data acquisition. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth, including sea ice and water, as well as sub-sea geologic formations, and then uses ground sensors to record the reflected energy transmitted back to the surface. When acoustic energy is generated, compression and shear waves form and travel in and on the earth. The compression and shear waves are affected by the geological formations of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast. Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. At least 1.2 m (4 ft) of sea ice is required to support the various equipment and vehicles used to transport seismic equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with wheeled vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with tracked vehicles are typically limited by heavy snow cover and may require trail clearance beforehand.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line and begin recording data. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles. In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g. 67 m, or 220 ft, in most applications) and repeats the process. In a typical 16– to 18–hour day, a surveys will complete 6–16 km (4 to 10 linear miles) in 2–dimensional seismic operations and 24

to 64 km (15 to 40 linear miles) in a 3–dimensional seismic operation.

Comments and Responses

On January 26, 2004 (69 FR 3564), NMFS published a notice of receipt and a 30–day public comment period was provided on the application and proposed authorization. That notice described the activity and anticipated effects on marine mammals. No comments were received on this proposed activity.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996, 2001). A detailed description of the seismic survey activities and its associated marine mammals can be found in the CPA application and a number of documents referenced in the CPA application (see **ADDRESSES**), and is not repeated here. Two marine mammal species are known to occur within the proposed study area and are included in this application: the ringed seal (*Phoca hispida*) and the bearded seal (*Erignathus barbatus*). Ringed seals are year-round residents in the Beaufort Sea. The worldwide population is estimated to be between 6 and 7 million seals (Stirling and Calvert, 1979). The Alaska stock of the Bering-Chukchi-Beaufort area is estimated at 1 to 1.5 (Frost 1985) or 3.3 to 3.6 million seals (Frost *et al.* 1988). Although there are no recent population estimates in the Beaufort Sea, in 1999, Bengston *et al.* (2000) conducted aerial surveys from Barrow south to Shismaref in a portion of the Chukchi Sea and estimated the number of animals to be 245,048. The NMFS 2001 Stock Assessment Report states that there are at least as many ringed seals in the Beaufort Sea.

Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Papov 1976, Burns 1981). Reliable estimates of bearded seal abundance in Alaska are unavailable. However, since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will rarely be encountered during seismic operations. Additional information on these species is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

Potential Effects on Marine Mammals

Incidental take is anticipated to result from short-term disturbances by noise and physical activity associated with on-ice seismic operations. These operations have the potential to disturb and temporarily displace some seals. Pup mortality could occur if any of these animals were nursing and displacement was protracted. However, it is unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities and the typical movement patterns of ringed sea pups among different holes. Seals also use as many as four lairs spaced as far as 3437 m (11276 ft) apart. In addition, seals have multiple breathing holes. Pups may use more holes than adults, but the holes are generally closer together. This indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given those considerations, combined with the small proportion of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the ringed and bearded seal populations.

In the winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

Please see the **Federal Register** notice from the 2003 CPA activities (68 FR 14401, March 25, 2003) and the **Federal Register** notice of receipt of application for the 2004 CPA activities (69 FR 3564, January 26, 2004) for more information regarding the potential effects on marine mammals during on-ice seismic operations.

Potential Effects on Subsistence

Residents of the village of Nuiqsut are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, in more recent years most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). The most important area for Nuiqsut hunters is off the Colville River Delta, between Fish Creek and Pingok Island, which corresponds to approximately the eastern half to the activity area. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns may be reflected through the harvest data collected in 1992, when Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Harvest data for 1994 and 1995 show 17 of 23 ringed seals were taken from June to August, while there was no record of bearded seals being harvested during these years (Brower and Opie, 1997). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

Based on harvest patterns and other factors, on-ice seismic operations in the activity area are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because:

(1) Operations would end before the spring ice breakup, after which subsistence hunters harvest most of their seals.

(2) Operations would temporarily displace relatively few seals, since most of the habitat in the activity area is marginal to poor and supports relatively low densities of seals during winter. Displaced seals would likely move a short distance and remain in the area for potential harvest by native hunters (Frost and Lowry, 1988; Kelly *et al.*, 1988).

(3) The area where seismic operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

(4) To the maximum extent practicable, offshore vibroseis activities in Harrison Bay would progress in a westward direction and from deeper water shoreward to minimize disturbance to any subsistence hunting that may occur during seismic operations. If subsistence hunting occurred during winter, it would primarily be in the eastern half of Harrison Bay.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, all activities will be conducted as far as practicable from any observed ringed seal structure, and crews will be required to avoid hunters and the locations of any seals being hunted in the activity area, whenever possible. Finally, CPA will consult with

subsistence hunters of Nuiqsut and provide the community, the North Slope Borough, and the Inupiat Community of the North Slope with information about its planned activities (timing and extent) before initiating any on-ice seismic activities.

Mitigation

The following mitigation measures will be implemented: (1) All activities will be conducted as far as practicable from any observed ringed or bearded seal lair and no energy source will be placed over a ringed or bearded seal lair; (2) only vibrator-type energy-source equipment shown to have similar or lesser effects will be used; (3) CPA will provide training for the seismic crews so they can recognize potential areas of ringed seal lairs and adjust the seismic operations accordingly; and (4) monitoring will take place, as described below.

CPA will also continue to work with NMFS, other Federal agencies, the State of Alaska, Native communities of Barrow and Nuiqsut, and the Inupiat Community of the Arctic Slope (ICAS) to assess measures to further minimize any impact from seismic activity. A Plan of Cooperation will be developed between CPA and Nuiqsut to ensure that seismic activities do not interfere with subsistence harvest of ringed or bearded seals.

Marine Mammal Monitoring

Ringed seal pupping occurs in lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys after March 20, 2004, CPA must either use trained dogs to survey the entire area for seal structures potentially affected by vibroseis and surveys for seal structures will be conducted to a distance of at least 150 m (492 ft) from the outer edges of the vibroseis patch, or CPA must use trained dogs to survey a subsample of the area potentially affected by vibroseis and surveys for seal structures will be conducted to a distance of at least 150 m (492 ft) from the outer edges of the vibroseis patch. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by a Global Positioning System (GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of the route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs locating seal structures. The survey will be conducted in only the portions of the activity area where water depths exceed 3 m (9.8 ft). Few, if any, seals inhabit ice-covered waters below 3 m (9.8 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water. If trained dogs are not available, potential habitat will be identified by trained marine mammal biologists based on the characteristics of the ice (i.e., deformation and cracks) and avoided by vibroseis operations.

The impact of take, while anticipated to be negligible, will be assessed by conducting a second seal structure survey immediately after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snowmachines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating take. Take estimates will be determined by using observed densities of seal on ice reported by Moulton *et al.* (2001) for the Northstar project, which is approximately 37 km (20 nm) from the eastern edge of the proposed activity area.

In the event that seismic surveys can be completed in that portion of the activity area ≥ 3 m (9.8 ft) before mid-March, no field surveys would be conducted of seal structures. Under this scenario, surveys would be completed before pups are born and disturbance would be negligible. Therefore, take estimates would be determined for only that portion of the activity area exposed to seismic surveys after March 20, which would be in water 3 m (9.8 ft) or less deep. Take for this area would be estimated by using the observed density (13/100 km^2) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 9.8 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This would be an overestimation requiring a substantial downward adjustment to reflect the actual take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and the Moulton *et al.* (2001) estimate includes all seals. This monitoring program was reviewed at the fall 2002 on-ice meeting sponsored by NMFS' National Marine Mammal Laboratory in Seattle and found acceptable.

Reporting

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an authorization under section 101(a)(5)(D) of the MMPA.

National Environmental Policy Act (NEPA)

The information provided in the 1998 Environmental Assessment (EA) for winter seismic activities led NOAA Fisheries to conclude that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. The proposed action discussed in this document is identical to the 1998 action, except that it is only one year in duration. A reference search has indicated that no significant new scientific information or analyses have been developed in the past several years. Accordingly, this action is categorically excluded from further review under NOAA Administrative Order 216–6.

Conclusions

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible for the following reasons:

(1) The activity area supports a small proportion (<1 percent) of the ringed and bearded seal populations in the Beaufort Sea.

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Over 60 percent of the activity area is near shore and/or in water less than 3 m (9.8 ft) deep, which is generally considered poor seal habitat. Moulton *et al.* (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 9.8 ft)deep.

(3) Seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous, for reasons of safety and because of normal operational constraints.

(4) Many of the on-ice seismic lines and connecting ice roads will be laid out and explored during January and February, when many ringed seals are

still transient, and considerably before the spring pupping season.

(5) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(6) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.*, 2001).

(7) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link et al. (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence this patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and populations dynamics.

(8) In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, CPA believes the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. NMFS has determined, based on information in the application and EA, that these changes in behavior will have no more than a negligible impact on the affected species or stocks of ringed and bearded seals (NMFS, 1998). Also, the potential effects of the proposed on-ice seismic operations during 2004 are unlikely to have an unmitigable adverse impact on subsistence uses of these two species.

Authorization

NMFS has issued an IHA to take marine mammals, by harassment, incidental to conducting seismic surveys at Cape Halkett to Oliktok Point in the Beaufort Sea in Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has determined that the activity would result in only the harassment of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Dated: February 27, 2004.

P. Michael Payne,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–4874 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122001A]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting on March 23–25, 2004, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, March 23, 2004 beginning at 9:00 a.m. and on Wednesday and Thursday, March 24 and 25, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Tavern on the Harbor, 30 Western Avenue, Gloucester, MA, 01930; telephone (978)283–4200. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, March 23, 2004

Following introductions, the Council will receive reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. During the Herring Committee report to follow, the committee chairman will review the range of alternatives under consideration for inclusion in Amendment 1 to the Herring Fishery Management Plan (FMP). The Council will review recommendations from the Herring Committee, as well as recommendations from the Herring Advisory Panel and Plan Development Team. Alternatives under consideration may address management area boundaries, area-specific Total Allowable Catches (TACs), TAC set-asides and in-season adjustments, a limited access program, a quota allocation and/or days-at-sea program, measures to address fixed gear fisheries, and essential fish habitat and bycatch.

Wednesday, March 24, 2004

During the Wednesday session, the Council will review and possibly approve positions concerning re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act. Council staff will then summarize the results of the scoping meetings recently convened in anticipation of the development of an Omnibus Essential Fish Habitat Amendment. The Council also will discuss and approve comments on an Advanced Notice of Proposed Rulemaking concerning possible changes to NOAA Fisheries Essential Fish Habitat Guidelines. The Council will use the remainder of the day to consider final action on Framework Adjustment 40 to the Northeast Multispecies FMP. The framework includes management alternatives for

the use of ''B'' days-at-sea as discussed in Amendment 13 to the FMP. B days are among the effort controls included in the amendment which has not yet been approved by the Secretary of Commerce.

Thursday, March 25, 2004

On Thursday, the Council's Research Steering Committee will report on and ask for approval of a policy that addresses the review and use of new research in the fishery management process. The Council will then review and intends to approve comments on the proposed rule to implement Amendment 10 to the Atlantic Sea Scallop FMP. Following this agenda item the rest of the day will be spent discussing potential improvements to Council process as it concerns committee organization and decision-making, as well as issues related to fleet structure and over-capitalization issues in the groundfish fishery. Any other outstanding business will be addressed at the end of the day.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 1, 2004.

Peter Fricke,

Acting Director, Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–4873 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022604A]

Endangered Species; Files No. 1472 and No. 1473

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Maritime Aquarium in Norwalk (Ellen Riker, principle investigator), 10 North Water Street, South Norwalk, Connecticut 06854 and the Virginia Living Museum (Lory Scott, principle investigator), 524 J. Clyde Morris Blvd., Newport News, Virginia 23601, have both applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of enhancement through educational display.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 5, 2004.

ADDRESSES:

The applications 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

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281-9200; fax (978)281–9371.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1472 and File No. 1473.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 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).

The Maritime Aquarium in Norwalk and the Virginia Living Museum both propose to receive and use 50 individual, captive-bred, non-releaseable shortnose sturgeon for educational display exhibits. These proposed projects of displaying endangered cultured shortnose sturgeon responds directly to a recommendation of the NMFS recovery outline for this species. In addition, the facilities would formulate public education programs and exhibits to increase awareness of the shortnose sturgeon and its status. These proposed projects would educate the public on shortnose sturgeon life history and the reasons for its declining numbers.

Written comments or requests for a public hearing on this application should be mailed 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 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.

Dated: February 27, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–4872 Filed 3–3–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0006]

Federal Acquisition Regulation; Information Collection; Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0006).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning subcontracting plans/subcontracting reporting for individual contracts (Standard Form 294). The clearance currently expires on June 30, 2004.

Public comments are particularly invited on: Whether this collection of

information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0006, Subcontracting Plans/Subcontracting Reporting for Individual Contracts (Standard Form 294), in all correspondence.

DATES: Submit comments on or before May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Acquisition Policy, GSA (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Federal Acquisition Regulation 19.702 contractors receiving a contract for more than the simplified acquisition threshold agree to have small business, small disadvantaged business, and women-owned small business, HUBZone small business, veteran-owned small business and service-disabled veteran-owned small business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for the above named concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on Standard Form 294, Subcontracting Report for Individual Contracts.

B. Annual Reporting Burden

Respondents: 4,253.
Responses Per Respondent: 3.44.
Total Responses: 14,631.
Hours Per Response: 50.52.
Total Burden Hours: 739,225.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0006, Subcontracting Plans/Subcontracting Reporting for Individual Contracts (Standard Form 294), in all correspondence.

Dated: February 27, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 04–4838 Filed 3–3–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Information Technology Advisory Committee (PITAC)

ACTION: Notice of open meeting.

SUMMARY: This PITAC meeting will focus on the U.S. Government investment in networking and information technology research and development with some specific applications. In the morning, there will be a report by the PITAC Health and IT Subcommittee on its draft findings and recommendations. The afternoon session will focus on Cyber Security Subcommittee issues. A final agenda will be posted on the PITAC Web site (*http://www.nitrd.gov/pitac/*) approximately two weeks before the meeting.

DATES: Tuesday, April 13, 2004, 9:30 a.m. to 5 p.m.

ADDRESSES: The Washington Hotel, The Washington Room (Ballroom); 515 15th Street, NW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION: The public may attend the meeting in person at the above address or on-line via the Internet. To participate on-line, you must contact the National Coordination Office for Information Technology Research and Development (ITRD) at the address below to register and receive instructions.

Members of the public are invited to participate by (1) submitting written statements to the PITAC at *pitac-comments@nitrd.gov* and (2) giving a brief (three minutes or less) oral statement during the 30 minute public comment period on the meeting agenda.

FOR FURTHER INFORMATION CONTACT: The NCO/ITRD at 703–292–4873 or by e-mail at *pitac-comments@nitrd.gov.*

Dated: February 26, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–4789 Filed 3–3–04; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Aerial Refueling Requirements will meet in closed session on March 24, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will evaluate current aerial refueling capability and future Department of Defense (DoD) aerial refueling requirements. The Task Force will assess current and future requirements with respect to both legacy systems and missions, and take into account proposed future systems and capabilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Specifically, using best estimates of requirements for 2010, 2020, and 2030, the Task Force will assess the following options with respect to DoD aerial refueling capability: (1) Retain the requisite number of assets to maintain current capability; (2) perform service life extension on the requisite number of existing aircraft; (3) acquire new refueling capabilities; and (4) evaluate other methods to address refueling needs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. II). it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: February 27, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–4787 Filed 3–3–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Mobility will meet in closed session on April 7–8, 2004, in Arlington, VA. This Task Force will identify the acquisition issues in improving our strategic mobility capabilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review: The part transport plays in our present-day military capability—the technical strengths and weaknesses the operational opportunities and constraints; the possible advantage of better alignment of current assets with those in production and those to be delivered in the very near future; how basing and deployment strategies—CONUS-basing, prepositioning (ashore or afloat), and seabasing—drive our mobility effectiveness; the possible advantages available from new transport technologies and systems whose expected IOC dates are either short term (~12 years) or, separately, the long term (~25 years).

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law #92–463, as amended (5 U.S.C. app. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: February 27, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–4788 Filed 3–3–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patents and Provisional Patent Concerning Apparatus and Method for Automated Biomonitoring of Water Quality

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with CFR 404.6 and 404.7, announcement is made of the availability for licensing of the U.S. Patents concerning ''Apparatus and Method for Automated Biomonitoring of Water Quality'' listed under **SUPPLEMENTARY INFORMATION**. Foreign rights are also available. The inventions listed have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: 1. *U.S. Patent No.:* 6,058,763. Foreign rights are also available (PCT/US98/04870).

Title: Apparatus and Method for Automated Biomonitoring of Water Quality.

Issue Date: May 9, 2000.

Description: The present invention relates generally to an apparatus and method for monitoring water quality. More particularly, the present invention relates to an apparatus and method for monitoring water quality using the ventilatory behavior and body movement of aquatic organisms.

2. *U.S. Patent No.:* 6,393,899, which is a continuation-in-part of U.S. Patent 6,058,763, above.

Title: An Apparatus and Method for Automated Biomonitoring of Water Quality.

Issue Date: May 28, 2002.

Description: See above.

3. *U.S. Provisional Patent No.:* 60/444,202. Foreign rights are also available.

Filing Date: February 3, 2003.

Description: This invention provides a portable means to monitor for developing toxic conditions in water. This device reduces to practice the miniaturization of the current patents 6,058,763 and 6,393,899.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 04–4878 Filed 3–3–04; 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 for Proposed Disposal and Reuse of Tracts 32, 33, 34, 35, 36, 37, 47, 61, 62, and the Southern Portion of Tract 24 at the Former Cornhusker Army Ammunition Plant Located in Hall County, NE

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: This Draft Environmental Impact Statement (DEIS) will address potential impacts from the proposed disposal and reuse of Cornhusker Army Ammunition Plant (CHAAP) properties. Two-thirds of the former ammunition plant has already been disposed of in recent years. The CHAAP is no longer needed by the United States Army for the nation's defense, and thus can be returned to the private sector and/or non-Federal government ownership, and to Hall County tax rolls, in keeping with the intent of Public Law 103–337 and the recommendations of the CHAAP Reuse Committee as expressed the 1997 *CHAAP Comprehensive Reuse Plan.*

FOR FURTHER INFORMATION CONTACT: For additional information on the National Environmental Policy Act (NEPA) process, or to be added to the mailing list, contact Mr. Randal Sellers, CENWO–PM–AE, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, NE 68102, telephone (402) 221–3054, or e-mail: *randy.p.sellers@usace.army.mil.* For additional information on CHAAP activities, contact the Project Manager, Mr. Joseph Laird, CENWO–PM–M, U.S. Army Corps of Engineers, 106 South 15th Street, Omaha, NE 68102, telephone (402) 221–3846, or e-mail: *joseph.f.laird@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This DEIS will examine disposal and reuse of ten tracts located in areas zoned by the CHAAP Reuse Committee for industrial use (industry/agriculture in the Comprehensive Reuse Plan). These tracts were the site of the CHAAP's

production lines when the ammunition plant was active. At the present time, a potential reuse proposed for these tracts is sale to the Nebraska Public Power District for the possible construction and operation of a coal-burning power plant, which may eventually contain two units at 400 megawatts (MW) generating capacity each, for a total of 800 MW of generating capacity.

The DEIS will analyze potential direct and indirect impacts of disposal and the industrial reuse of the ten tracts, utilizing the construction and operation of a coal-burning power plant as an example of a potential industrial reuse. Topics to be addressed include potential impacts on air, water, soils, wildlife, vegetation, noise, recreation, cultural/historic resources, land use, transportation, aesthetics, as well as socioeconomic impacts—both beneficial and adverse—on the surrounding community. The DEIS will also briefly describe impacts from potential reconnected actions, like mining and transport of the coal to be used in the power plant, and cumulative impacts, long-term effects to the community, region, and nation from a number of actions, events, and trends, to which the proposed action may contribute incrementally.

In addition, the DEIS will examine the No Action Alternative, under which no sale and reuse would occur and the subject tracts would remain in the possession of the Army. Under this alternative, gradual demolition of structures and cleanup of contaminated groundwater would continue.

The Corps invites the participation of interested and affected Federal, state, and local agencies, Indian Tribes, and other private organizations and parties in helping determine the scope of the DEIS. A public information and scoping meeting will be held on March 11, 2004 at the Mid-Town Holiday Inn, located at 2503 South Locust Street, Grand Island, Nebraska 68801. That meeting will begin at 6:30 p.m. and end at 8:30 p.m. This meeting will be announced in the local Grand Island media. In addition, the Corps will hold an informational meeting for interested agencies prior to the public scoping meeting. Representatives of the Corps will be available to discuss the proposed action, issues, environmental concerns, and the EIS process at both meetings. This Notice will also serve as an additional scoping method. Persons who may be interested in or affected by the proposed action/DEIS are invited to participate in the scoping process by responding to this Notice with written comments. The scoping process will help define problems and determine which issues are to be addressed in the DEIS. Written comments should be postmarked no later than April 7, 2004.

It is expected that the DEIS will be made available to the public by June 2004.

Dated: February 19, 2004.

Candace M. Gorton,

Chief, Environmental, Economics and Cultural Resource Section, Planning Branch.

[FR Doc. 04–4880 Filed 3–3–04; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On February 27, 2004, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 9306, Column 1) for the information collection, ''What Works Clearinghouse Database Forms and Customer Survey''. A second notice with this title also appeared on Page 9306, Column 3. This notice is incorrect. Please disregard it.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*

Dated: March 1, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–4852 Filed 3–3–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–715–001, FERC Form 715]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

March 1, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission is in receipt of comments from two entities in response to an earlier **Federal Register** notice of September 18, 2003 (68 FR 54722), and has responded to the comments in its submission to OMB.

DATES: Comments on the collection of information are due by March 31, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–715–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 715 ''Annual Transmission Planning and Evaluation Report.''

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* 1902–0171.

The Commission is now requesting that OMB approve and reinstate with a three-year extension of the expiration date, with no changes to the information collection requirements. However, the Commission will conduct a pilot allowing as an option the electronic submission of maps in lieu of paper. The Commission believes this will create greater efficiency and clarity of data when complying with this section of the information collection requirements. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 213 of the Federal Power Act. Section 213(b) requires the Commission to collect annually from transmitting utilities sufficient information about their transmission systems to inform transmission customers, State and Federal regulatory authorities of available capacity and constraints. Form 715 also supports the Commission's expanded responsibilities under sections 211, 212, 304, 307(a), 309 and 311 of the Federal Power Act as amended, for reviewing reliability issues, market structure relationships, for rate and other regulatory proceedings.

In response to the events of September 11, 2001, the Commission took several steps to identify and limit access to information concerning the nation's energy infrastructure. In Order No. 630 (68 FR 9857, March 2, 2003, FERC Statutes and Regulations ¶ 31,140, at p. 30,261.) the Commission established procedures for gaining access to critical energy infrastructure information, information it defined as ''Information about proposed or existing critical infrastructure that: (i) Relates to the production, generation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C.; (iv) does not simply give the location of the critical infrastructure.'' (67 FR 58000, FERC Statutes and Regulations ¶ 32,564, at p. 34.548.) The information contained in the FERC Form 715 was found to meet this definition and therefore classified as CEII with restricted access to the public. The Commission implements the filing requirements in the Code of Regulations (CFR) under 18 CFR parts 141.300.

5. *Respondent Description:* The respondent universe currently comprises 183 companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 29,280 total hours, 183 respondents (average per year), 1 response per respondent, and 160 hours per response (average).

7. *Estimated Cost Burden to respondents:* 29,280 hours/2080 hours per years × $107,185 per year = $1,508,835. The cost per respondent is equal to $8,245.

Statutory Authority: Section 213(b), Federal Power Act (FPA), 16 U.S.C. 824l.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–461 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EC04–62–000, et al.]

Black River Power, LLC, et al.; Electric Rate and Corporate Filings

February 27, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Black River Power, LLC, Carlyle/Riverstone Global Energy and Power Fund II, L.P.

[Docket No. EC04–62–000]

Take notice that on February 26, 2004, Black River Power, LLC and Carlyle/Riverstone Global Energy and Power Fund II, L.P. submitted a Notice of Withdrawal of their February 3, 2004, application in the above-referenced proceeding.

Comment Date: March 8, 2004.

2. El Paso Electric Company

[Docket No. EL02–113–005]

Take notice that on January 30, 2004, El Paso Electric Company (EPE), submitted for filing a compliance filing pursuant to the Commission's Letter Order issued October 23, 2003. 105 FERC ¶ 61,107.

Comment Date: March 8, 2004.

3. American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company

[Docket No. EL03–212–009]

Take notice that on February 25, 2004, American Electric Power Service Corporation (AEP), as well as Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) on behalf of Appalachian Power Service Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company and Dayton Power and Light Company (DP&L) filed revisions to their respective open access transmission tariffs (OATTs) in accordance with changes made by the Commission's order issued in Docket Nos. EL02–111–004 and EL03–212–002, on February 6, 2004, Midwest Independent Transmission System Operator, *et al.*, 106 FERC ¶ 61,106 (2004).

AEP, ComEd and DP&L state that they have served copies of this filing on all parties on the Commission's service list for this proceeding, as well as on state public utility commissions having jurisdiction over the companies.

Comment Date: April 1, 2004.

4. California Independent System Operator Corporation

[Docket Nos. ER02–1656–017 and ER02–1656–018]

As announced in the Notice of Technical Conference issued on February 6, 2004, the Commission Staff will convene a technical conference on March 3–5, 2004 in San Francisco, California, to discuss with State representatives and market participants in California various substantive issues related to the California Independent System Operator's (CAISO) Revised MD02 proposal, including the flexible offer obligation proposal, the residual unit commitment process, pricing for constrained-output generators, marginal losses, ancillary services, and market power mitigation issues.

The conference will focus on the issue areas identified in the agenda, which is appended to this notice. With respect to

the issues on the conference agenda, which were previously discussed at the January 28–29, 2004, technical conference, the CAISO is expected to present its proposals, as filed on February 24, 2004, in the above-captioned dockets. The CAISO's presentations will be followed by an open discussion amongst all participants. The discussion of the topics related to the market power mitigation issues will begin with a short presentation by the Commission Staff to frame the issue, followed by an open discussion amongst all participants. Participants are encouraged to be prepared to discuss the issues substantively.

For more information about the conference, please contact: Olga Kolotushkina at (202) 502–6024 or at *olga.kolotushkina@ferc.gov*.

5. New York Independent System Operator, Inc.

[Docket Nos. ER03–552–007 and ER03–984–005]

Take notice that on February 24, 2004, the New York Independent System Operator, Inc. (NYISO) submitted responses to the Commission's Data Requests, dated February 2, 2004, regarding proposed creditworthiness requirements for customers participating in the NYISO-administered markets.

NYISO states that it has served a copy of this filing upon all parties named on the official service list for this proceeding.

Comment Date: March 16, 2004.

6. DeSoto County Generating Co., LLC, et al.

[Docket No. ER03–1383–001]

Take notice that, on February 24, 2004, Progress Energy, Inc. (Progress Energy) submitted for filing on behalf of various Progress Energy subsidiaries a status report in compliance with Ordering Paragraph M of the Commission's Order issued November 24, 2003, in Docket No. ER03–1383–000, 105 FERC ¶ 61,245 (2003).

Progress Energy states that the filing was served on the official service list in Docket No. ER03–1383–000, the Florida Public Service Commission and the North Carolina Public Utilities Commission.

Comment Date: March 16, 2004.

7. Central Hudson Gas & Electric Corporation

[Docket No. ER04–346–000]

Take notice that on February 18, 2004, Central Hudson Gas & Electric Corporation (Central Hudson) submitted for filing a Notice of Withdrawal of FERC Rate Schedule No. 205, in Docket No. ER04–346–000, filed December 30, 2003. Central Hudson states that it is withdrawing the referenced filing because the subject agreement is currently not under the Commission's jurisdiction.

Comment Date: March 9, 2004.

8. Southern California Edison Company

[Docket No. ER04–435–002]

Take notice that on February 25, 2004, Southern California Edison Company (SCE) tendered for filing revisions to its Wholesale Distribution Access Tariff (WDAT) in compliance with Commission's Order No. 2003, Standardization of Generator Interconnection Agreements and Procedures.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation, the California Electricity Oversight Board, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and the Cities of Anaheim, Azusa, Banning, Riverside, and Vernon, California, and any persons on the Service List for this proceeding.

Comment Date: March 17, 2004.

9. Diverse Power Incorporated

[Docket No. ER04–444–001]

Take notice that on February 12, 2004, Diverse Power Incorporated (Diverse) submitted its proposed Revised Tariff Sheet No. 1 of its Original FERC Rate Schedule No. 1. The revised tariff sheet is being filed to reflect a change in name from Troup Electric Membership Corp. to Diverse Power Incorporated.

Comment Date: March 8, 2004.

10. Diverse Power Incorporated

[Docket No. ER04–555–000]

Take notice that on February 17, 2004, the Commission issued a ''Notice of Filing'' in Docket No. ER04–555–000. This notice was issued in error and is hereby rescinded.

11. Southwest Power Pool, Inc.

[Docket No. ER04–579–000]

Take notice that on February 24, 2004, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources Generation Service d/b/a Westar (Westar). SPP seeks an effective date of June 1, 2004, for the service agreement.

SPP states that Westar was served with a copy of this filing.

Comment Date: March 16, 2004.

12. PJM Interconnection, L.L.C.

[Docket No. ER04–580–000]

Take notice that on February 24, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed construction service agreement (CSA) among PJM, Bethesda Triangle, LLC, and Potomac Electric Power Company. PJM requests a waiver of the Commission's 60-day notice requirement to permit a February 12, 2004, effective date for the CSA.

PJM states that copies of this filing were served upon the parties to the agreements and the State regulatory commissions within the PJM region.

Comment Date: March 16, 2004.

13. American Electric Power Service Corporation

[Docket No. ER04–581–000]

Take notice that on February 24, 2004, AEP Service Corporation (AEPSC) on behalf of Indiana Michigan Power Company (I&M), tendered for filing a revised Repair and Maintenance Agreement between I&M and Wabash Valley Power Association (O&M Agreement) designated agreement as Eight Revised I&M FERC Rate Schedule No. 81. AEPSC requests waiver of notice to permit the new O&M Agreement to be effective on/or after March 1, 2004.

AEP states that a copy of the filing was served upon the Parties and the State utility regulatory commissions of Indiana and Michigan.

Comment Date: March 16, 2004.

14. Wilbur Power LLC

[Docket Nos. QF83–168–007 and EL04–86–000]

Take notice that on February 26, 2004, Wilbur Power LLC (Wilbur Power), tendered for filing a Request for Limited Waiver of Qualifying Cogeneration Operating and Efficiency Standards, Status Report, and Request for Expedited Consideration.

Comment Date: March 18, 2004.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–457 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

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Linda Mitry,

Acting Secretary.

[FR Doc. E4–458 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04–6–000]

Questar Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for Questar's Proposed Southern System Expansion Project and Request for Comments on Environmental Issues

February 27, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Questar Pipeline Company's (Questar) proposed Southern System Expansion Project. This notice announces the opening of the scoping process we [1] will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be evaluated in the EA. The Commission will use the EA in its decisionmaking process to determine whether to authorize the project. Please note that the scoping period will close on April 7, 2004.

The FERC will be the lead Federal agency in the preparation of the EA which will satisfy the requirements of the National Environmental Policy Act (NEPA). The Southern System Expansion Project is in the preliminary design stage. At this time no formal application has been filed with the FERC. For this project, the FERC staff is initiating its NEPA review prior to receiving the application. The purpose of our NEPA Pre-Filing Process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF04–6–000) has been established to place information filed by Questar, and related documents issued by the Commission, into the public record.[2] Once a formal application is filed with

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

the FERC, a new docket number will be established.

This notice is being sent to landowners; Federal, State, and local government agencies; Indian tribes; elected officials; environmental and public interest groups; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern. With this notice, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should send a letter describing the extent to which they want to be involved. Follow the instructions for filing comments provided below.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If they are, the company would seek to negotiate a mutually acceptable agreement. However, if the project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with State law.

Summary of the Proposed Project

Questar proposes to expand its natural gas system to add an additional 102,000 dekatherms per day of firm transportation capacity. More specifically, Questar requests Commission authorization to:

- Construct and operate approximately 18.4 miles of 24-inch-diameter pipeline near the city of Price in Carbon County, Utah. Approximately nine miles of the proposed pipeline would loop [3] Questar's existing Main Line (M.L.) No. 40 and the remaining nine miles would follow other existing utility rights-of-way;
- Construct and operate two new compressor stations. The Water Canyon Compressor Station, with approximately 9,400 nominal horsepower (hp) of compression, would be constructed adjacent to Questar's M.L. No. 40 in Duchesne County, Utah. The Thistle Creek Compressor Station, with approximately 5,800 nominal hp of compression, would be constructed adjacent to Questar's M.L. No. 41 in Utah County, Utah; and
- Modifications within the existing fenced yards of Questar's Oak Spring Compressor Station located in Carbon County, Utah and the Greasewood Compressor Station located in Rio Blanco County, Colorado.

A map depicting the proposed pipeline route and compressor stations is provided in appendix 1.[4]

Questar proposes to place the project in service by October 2005. To achieve this in-service date, Questar intends to request approval to begin construction of the pipeline facilities in May 2005.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address issues and concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues and reasonable alternatives. By this notice, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EA. All scoping comments received will be considered during the preparation of the EA. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Our independent analysis of the issues will be included in an EA. The EA will be mailed to Federal, State, and local government agencies; Indian tribes; elected officials; environmental and public interest groups; affected landowners; other interested parties; local libraries and newspapers; and the Commission's official service list for this proceeding. Depending on the response to this notice and the nature of issues raised during the review process, a 30-day comment period may be allotted for review of the EA. We will consider all comments on the EA before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, reasonable alternatives (including alternative compressor station sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before April 7, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to:

Magalie R. Salas, Secretary,
Federal Energy Regulatory Commission,
888 First St., NE., Room 1A,
Washington, DC 20426;

- Label one copy of your comments for the attention of Gas Branch 3, DG2E; and
- Reference Docket No. PF04–6–000 on the original and both copies.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission encourages electronic filing of comments. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create a free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Intervention

When Questar files its application for authorization to construct the proposed pipeline, the Commission will publish notice of the application in the **Federal Register** and establish a deadline for interested persons to intervene in the proceeding. Because the NEPA Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission. You do not need intervenor status to have your environmental comments considered.

[3] A pipeline ''loop'' is a segment of pipe installed adjacent to an existing pipeline and connected to the existing pipeline at both ends. A loop increases the amount of gas that can move through that portion of the system.

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site *http://www.ferc.gov* at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at 202.502.8371. For instructions on connecting to eLibrary, refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *ferconlinesupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is also available for viewing on the FERC Internet website. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Information about the project is also available from Questar. Questar has established a single point of contact for the project. The contact is Mr. David Ingleby, Supervisor, Property and Right-of-Way, and can be reached by phone at 1–800–366–8532 or e-mail at *David.Ingleby@Questar.com*. You may also access Questar's Southern System Expansion Project Web site at *www.questarssxp.com*.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–459 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 289–013]

Louisville Gas and Electric Company (LG&E); Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

February 27, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–289–013.

c. *Date filed:* October 7, 2003.

d. *Applicant:* Louisville Gas and Electric Company (LG&E).

e. *Name of Project:* Ohio Falls Hydroelectric Project.

f. *Location:* On the Ohio River, in Jefferson County, Kentucky. This project is located at the U.S. Army Corp of Engineer's McAlpine Locks and Dam Project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Linda S. Portasik, Senior Corporate Attorney, Louisville Gas and Electric Company, 220 West Main Street, Louisville, Kentucky 40202, (502) 627–2557.

i. *FERC Contact:* John Costello, *john.costello@ferc.gov*, (202) 502–6119.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. The Commission encourages electronic filings.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The Ohio Falls Hydroelectric Station consists of the following existing facilities: (a) A concrete powerhouse containing eight-10,040 kW generating units, located at the U.S. Army Corp of Engineer's McAlpine Locks and Dam Project; (b) a concrete headworks section, 632 feet long and 2 feet wide, built integrally with the powerhouse; (c) an office and electric gallery building; (d) a 69 kV transmission line designated as line 6608 to the Canal substation; (e) an access road, (f) a 266.6-foot long swing bridge over McAlpine Locks for access; (g) one half mile of railroad tracks; and (h) appurtenant facilities. The project facilities are owned by LG&E.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''E Library'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural Schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow 30 days for entities to comment on the EA, and will take into

consideration all comments received on the EA before final action is taken on the license application. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Action	Date
Issue Scoping Document	July 2004.
Notice Application Ready for Environmental Assessment.	November 2004.
Notice Availability of EA	February 2005.
Ready for Commission Decision on Application.	October 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–455 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 27, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original minor license.

b. *Project No.:* 12449–000.

c. *Date Filed:* February 28, 2003.

d. *Applicant:* Neshkoro Power Associates, LLC.

e. *Name of Project:* Big Falls Milldam Hydroelectric Project.

f. *Location:* On the Little Wolf River (north branch), near the Village of Big Falls, in Waupaca County, Wisconsin. The project does not affect any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960, (902) 293–4628 ext. 11.

i. *FERC Contact:* Timothy Konnert, *timothy.konnert@ferc.gov*, or (202) 502–6359.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The existing Big Falls Milldam Hydroelectric Project consists of the following facilities: (1) A 256-foot-long by 18-foot-high dam, topped with a 76-foot-long fixed crest ogee with 6-inch flashboards and one 16-foot-wide Taintor gate; (2) a 23.27-acre reservoir (Big Falls Flowage) with a negligible gross storage capacity at a normal elevation of 901.65 feet Mean Sea Level; (3) a 7-foot-diameter by 175-foot-long penstock leading to; (4) a powerhouse containing one, vertical-shaft Francis turbine generator with an installed generating capacity of 350 kilowatts (kW), producing a total of 1,513,514 kilowatt-hours (kWh) annually, and (5) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. To view upcoming FERC events, go to *http://www.ferc.gov* and click on ''View Entire Calendar.''

n. All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedures Schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item k above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA—June 2004.

Ready for Commission decision on the application—August 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–456 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 27, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original minor license.

b. *Project No.:* 12449–000.

c. *Date Filed:* February 28, 2003.

d. *Applicant:* Neshkoro Power Associates, LLC.

e. *Name of Project:* Big Falls Milldam Hydroelectric Project.

f. *Location:* On the Little Wolf River (north branch), near the Village of Big Falls, in Waupaca County, Wisconsin. The project does not affect any Federal lands.

g. *Filed Pursuant to:* Federal Power Act,16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles Alsberg, North American Hydro, Inc., P.O. Box 167, Neshkoro, Wisconsin 54960, (902) 293–4628 ext. 11.

i. *FERC Contact:* Timothy Konnert, *timothy.konnert@ferc.gov*, or (202) 502–6359.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The existing Big Falls Milldam Hydroelectric Project consists of the following facilities: (1) A 256-foot-long by 18-foot-high dam, topped with a 76-foot-long fixed crest ogee with 6-inch flashboards and one 16-foot-wide Taintor gate; (2) a 23.27-acre reservoir (Big Falls Flowage) with a negligible gross storage capacity at a normal elevation of 901.65 feet Mean Sea Level; (3) a 7-foot-diameter by 175-foot-long penstock leading to; (4) a powerhouse containing one, vertical-shaft Francis turbine generator with an installed generating capacity of 350 kilowatts (kW), producing a total of 1,513,514 kilowatt-hours (kWh) annually, and (5) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. To view upcoming FERC events, go to *http://www.ferc.gov* and click on ''View Entire Calendar.''

n. All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. *Procedures Schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item k above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA—June 2004.

Ready for Commission decision on the application—August 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–460 Filed 3–3–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0034; FRL–7631–8]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing, EPA ICR Number 1611.05, OMB Number 2060–0327

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Under OMB regulations, the Agency may

continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 5, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0034, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center (ECDIC), Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC. 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 *FR* 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0034, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www/epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing (40 CFR part 63, subpart N), EPA ICR Number 1611.05, OMB Control Number 2060–0327.

Abstract: The national emission standards for hazardous air pollutants (NESHAP) using maximum achievable control technology (MACT) for control of chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks were proposed on December 16, 1993 and promulgated on January 25, 1995.

In general, all NESHAP–MACT standards require initial notifications, performance tests, and periodic reports. Respondents that are not required to conduct an initial performance test (*i.e.*, decorative chromium electroplating or chromium anodizing operations that use a wetting agent and meet the surface tension limit required by the rule, and decorative chromium electroplating operations that use a trivalent chromium bath) are required to notify the Administrator of the initial compliance status of the source. Owners or operators are also required to maintain records of a source's operations including the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The types of reports required by these standards include initial compliance status reports. Periodic reports required by this standard include annual compliance status reports for area sources and semiannual compliance status reports for major sources, unless an exceedance has occurred which requires sources to submit such reports on a more frequent basis. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP–MACT standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 83 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Operators of hard chromium electroplating, decorative chromium electroplating, and chromium anodizing facilities/chromium electroplating or chromium anodizing tanks.

Estimated Number of Respondents: 5,020.

Frequency of Response: Initially, annually, semiannually, and quarterly.

Estimated Total Annual Hour Burden: 495,774 hours.

Estimated Total Annual Costs: $106,662,892 which accounts for annual O&M costs of $75,300,000 only since there are no annualized capital/startup costs associated with this ICR, as well as Respondent Labor costs of $31,362,892.

Changes in the Estimates: There is a decrease of 20,412 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in labor hours is

the result of changing the percentage from 10 percent to 5 percent to calculate the management person-hours since we believe this is a more accurate estimate.

Dated: February 25, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–4824 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7630–7]

Request for Wetlands Project Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of proposals.

SUMMARY: EPA Region 6 is soliciting proposals from State agencies, local governments, and Tribes interested in applying for Federal assistance for the State/Tribal/Local Government Wetlands Protection Development Grant Program under the Clean Water Act section 104(b)(3), 33 U.S.C.1254(b)(3) in the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. This solicitation notice distributes EPA Region 6 requirements. For the FY 04 National Wetlands Guidance please see the **Federal Register** 69 FR 6284, February 10, 2004 or the national Web site at *http://www.epa.gov/owow/wetlands/grantguidelines*.

DATES: Proposals must be postmarked by May 3, 2004, for acceptance. No exceptions will be made. Once the proposal is approved for further funding consideration, applicants will be notified to submit a formal application.

ADDRESSES: Send proposals with a cover sheet (included in this guidance) to: Tyrone Hoskins, State/tribal Programs Section (6WQ–AT), EPA Region 6; 1445 Ross Avenue Suite 1200; Dallas, TX 75202–2733. This solicitation notice may also be found at the Assistance Program Branch—State/tribal Programs Section Web site: *http://www.epa.gov/earth1r6/6wq/at/wetlands/index.htm*.

FOR FURTHER INFORMATION CONTACT: Tyrone Hoskins, State/tribal Programs Section EPA Region 6, 1445 Ross Avenue Suite 1200; Dallas, TX 75202–2733, telephone: (214) 665–7375, fax: (214) 665–6490, e-mail: *hoskins.tyrone@epa.gov*.

SUPPLEMENTARY INFORMATION: Federal Agency Name: Region 6 Environmental Protection Agency Water Division.

Funding Opportunity Title: Wetland Program Development Grants.

Announcement Type: Notice.

Catalog of Domestic Assistance Number: 66.461.

Overview

The goals of the Environmental Protection Agency's (EPA's) wetland program include increasing the quantity and quality of wetlands in the U.S. by conserving and restoring wetland acreage and improving wetland health. In pursuing these goals, EPA seeks to build the capacity of all levels of government to develop and implement effective, comprehensive programs for wetland protection and management. The six program areas central to achieving these goals are: regulation, monitoring and assessment, restoration, wetland water quality and watershed management, public-private partnerships, and coordination among agencies with wetland or wetland-related programs.

The Wetland Program Development Grants (WPDGs), initiated in FY90, provide States, Tribes, local governments (S/T/LGs), interstate associations, intertribal consortia, and national non-profit, non-governmental organizations (hereafter referred to as applicants or recipients) an opportunity to carry out projects to develop and refine comprehensive wetland programs. WPDGs provide eligible applicants an opportunity to conduct projects that promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution.

While WPDGs can continue to be used by recipients to build and refine any element of a comprehensive wetland program, emphasis through the competition process will be given to funding projects that address these six areas as identified by EPA: (1) Wetland and stream restoration; (2) protecting at risk waters; (3) watershed planning; (4) hydrogeomorphic assessment; (5) wetlands monitoring strategy; and (6) community environmental stewardship. States, Tribes, local governments (S/T/LGs), interstate associations, intertribal consortia are eligible to apply. Local/regional chapters/affiliations of a nonprofit organization are not eligible for WPDGs.

Interest in the grant program has continued to grow over the years and Congress has appropriated $15 million annually to support the wetland grant program. Since the Wetland Grant Development Program started in FY90, grant funds are awarded on a competitive basis to support development of State and Tribal wetland programs.

The statutory authority for WPDGs is section 104(b)(3) of the Clean Water Act (CWA). Section 104(b)(3) of the CWA restricts the use of these grants to developing and refining wetland management programs by conducting or promoting the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. These competed grants may not be used for the operational support of wetland programs unless it is included in a Performance Partnership Grant (PPG). States and Tribes may not use WPDG funds for implementation of a wetlands program. However, funds available for WPDG grants may be combined in a PPG which may, in certain circumstances, provide the authorization to undertake implementation activities. For further information, see the final rules on Environmental Program Grants for State, Interstate, and local government agencies at 40 CFR part 35, subpart A and Tribes at 40 CFR part 35, subpart B. All projects funded through this program must contribute to the overall development and improvement of S/T/LG wetland programs. Grant applicants must demonstrate that their proposed project integrates with S/T/LG wetland programs.

I. Funding Opportunity Description

The EPA Wetlands Program will award Wetland Program Development Grants to assist States, tribes, and local governments with developing new wetland programs or refining existing wetland programs, and NOT for operational support of wetland programs. Reviewers will pay special attention to the project's longevity and self-sustaining ability. Additional consideration may be given to implementation projects that actually demonstrate protection, restoration or enhancement of wetlands. If a proposal does not meet EPA priorities, the proposal will not be ranked. An applicant should choose the priority which is suitable for their proposed project. EPA will use the selected priority for the evaluation of the proposed project with criteria specific to that priority. Each of the following priorities must also include an outreach component:

1. Wetland and stream restoration: EPA is interested in partnering with state, tribal, and local governments in the area of wetland and stream restoration. Projects should focus on

demonstration of new methods, innovative procedures and new partnerships that lead to advances in restoration technology of wetlands and streams. Support for training of personnel is possible with the demonstration project resulting as a part of the training. Grant funds cannot be used to purchase property. Project areas should not be within a mitigation bank.

2. At Risk Waters: Since the Supreme Court ruling on ''isolated'' *waters in the Solid Waste Agency of Northern Cook County (SWANCC)* vs. *Corps of Engineers* case there has been a growing regulatory uncertainty as to the extent of protection of isolated waters and what role the State and Tribes play in protection of such resources. EPA is specifically interested in assisting states and tribes in developing programs that address protection of waters no longer under federal jurisdiction.

3. Watershed Planning: EPA is interested in assisting states, tribes, and local governments in watershed approaches that work to integrate wetlands into a Watershed (Ecosystem) Approach to protect resources, prevent pollution, achieve sustainable environmental goals, and meet other objectives important to the community. Although watershed approaches may vary in terms of specific objectives, priorities, elements, timing and resources, they should be based on partnerships, geographic focus, sound management techniques, science and data. Applicants must identify any funding that has been used to address watershed planning and include an implementation phase of plan.

4. Hydrogeomorphic (HGM) Assessment: For States and Tribes incorporating wetlands into their water by the Clean Water Act, EPA guidance recommends the development of functional assessment or other biological methodology models to classify wetlands. The Hydrogeomorphic (HGM) Approach could be easily used to identify the types of wetlands common to any State and in the designation of beneficial uses for wetlands.

HGM model development continues to be a high priority with EPA. As such, Region 6 will continue target the development of HGM models for regulatory and planning purposes. Region 6 is also interested in a state and/or tribe hosting training on the HGM guide book development in FY04.

5. Wetlands Monitoring Strategy: EPA has requested that each State and Tribe develop a comprehensive monitoring program strategy that addresses all waters, including streams, rivers, lakes, the Great Lakes, reservoirs, estuaries, coastal areas, wetlands, and groundwater (*see http://www.epa.gov/owow/monitoring/elements/* for more information). One of the goals of this strategy is to move toward meeting the reporting requirements of CWA § 305(b), that is, to provide ''an analysis of the extent to which all navigable waters'provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife * * *'' EPA encourages to work across programmatic and agency lines to incorporate various monitoring plans and approaches into this comprehensive strategy. Included in this effort should be the integration of wetland monitoring plans into the water quality monitoring strategy.

6. Community Environmental Stewardship (Urban Sprawl): EPA has identified the need for a focus on stream and wetland protection in rapidly developing urban areas. Measures such as training, educational programs, public-planning efforts, demonstration of bioengineering as an alternative to traditional methods and resource preservation of streams and wetlands are targeted for funding and technical assistance.

II. Award Information

- Region 6 estimates $1.3 million funding level for FY 2004.
- The amount and number of awards will vary according to the number of proposals selected.
- Wetland funds will be awarded in the form of Cooperative Agreements. Cooperative Agreements require substantial EPA involvement. Quarterly reports will be required as well as annual performance evaluations.
- The available funds cannot be used for renewal or supplementation of existing projects.
- The average award for FY 2003 was $129,000.
- State, Tribe, or local government must provide a 25 percent (25%) match of the total costs of the project.
- 15 percent (15%) of funding allocation will be targeted to support local and tribal initiatives.
- Anticipated start dates for FY 2004 projects will be September 01, 2004.
- Project performance periods will be between 12 months and 48 months.

III. Eligibility Information

Failure to submit the requested information by the corresponding dates will result in the elimination of the project from consideration for funding. Applicants with poor past performance records on wetlands projects will not be considered for these funds. Funds are available specifically to assist State, tribal, and local government agencies in wetland protection efforts. Projects must clearly demonstrate a direct link to increase in the State's, tribe's, or local government's ability to protect, restore, and/or manage its wetland resources. EPA will provide 75% of the total cost of the selected projects. The recipient will be responsible for the remaining 25% (match). Federal funds cannot be used as matching funds (except Bureau of Indian Affairs 638 funds).

IV. Application and Submission Information

This announcement contains all of the information needed to apply for the available funds. The FY 2004 EPA Wetlands Solicitation Notice can also be viewed at the following Web site: *http://www.epa.gov/earth1r6/6wq/at/sttribal.htm*. Applications are not requested at this time. If a proposal is identified as having particular merit, then EPA will request a formal, completed grant application and a detailed workplan.

Important Dates to Note

May 3, 2004—Proposals must be POSTMARKED by this date, or they will not be accepted. Certified mail is recommended, and keep documentation.

June 2, 2004—Letters are sent requesting formal applications from selected proposals.

July 2, 2004—Formal applications must be POSTMARKED by this date, or they will not be accepted. Certified mail is recommended, and keep documentation.

July 19, 2004—Awarding of grants and Congressional notification to grantees *(See note below)

Note: The Headquarters Office of Congressional and Legislative Affairs notifies the congressional delegation when a grant is awarded in a Region 6 State/Congressional district. Each grant is held for five (5) working days after signature to allow the congressional delegation time to make an announcement, if so desired. Headquarters has asked that requests for waivers of the five-day notification period no longer be made. Therefore, this five-day congressional hold is built into the grant cycle process.

Guidelines for Proposals

A proposal is different from a work plan. Pre-proposal assistance is available through April 19, 2004. Please contact Ms. Wanda Boyd at 214–665–6696 or Richard Prather at 214–665–8333 to arrange for pre-proposal assistance. If you are unsure of any section or criteria, please call Region 6 BEFORE you submit your package. Keep in mind this is a competitive process, and adherence to the proposal guidelines is part of the selection

criteria. The proposal should contain the following information, with a maximum of five (5) one sided pages:

1. All Proposals must utilize the standard Wetlands Proposal Cover Sheet which can be found at the following Web site: *http://www.epa.gov/earth1r6/6wq/at/sttribal.htm*.

2. Title;

3. Identify which priority your proposal addresses.

4. Introduction with brief background, goals, and objectives;

5. Overview of project, listing each task and deliverable. Give specific information concerning the task, explaining how it will be accomplished, how it relates to the overall project, and how the progress will be monitored;

6. A location map and a project site map/drawing (these will not count against the five page limit);

7. Any use of contractors must be included and explained. Guidance precludes greater than a 50% pass through to contractors, and specifies significant involvement of grant recipient.

8. Proposed costs, broken down by task, including contractor's costs by task;

9. Identify measures of success, including clear milestones with expected dates. Include the number of wetland acres affected by project;

10. Include a public participation element (40 CFR part 25) in the proposal which reflects how public participation will be provided, encouraged, and assisted. Include a full description of its interagency and public participation process. This process should go beyond the input stage and include information and methods of sharing throughout the project period;

11. There should be concrete demonstration of coordination/partnership among various agencies. This can be accomplished in various ways, including a written agreement with agencies outlining responsibilities and commitment to the project; and,

12. Region 6 requires a 25% match of the total project cost. The proposal needs to show the Federal assistance amount you are requesting from EPA, 25% minimum agency match, and the total amount for the project. Use the following formula: Requested EPA amount divided by 75% equals the total amount for the project. Subtract the EPA amount from the total, and that is the minimum, required match. Your match may exceed 25%. (Example: EPA amount $50,000; project total is $66,667; required 25% match is $16,667).

13. Explain if your agency has a Quality Management Plan (QMP) approved by EPA. If your project contains environmental measurements, a QMP must be approved before any money can be awarded.

14. Identify if there are any known threatened or endangered species and/or cultural resource concerns.

V. Proposal Review Information

An applicant should choose the priority which is suitable for their proposed project. EPA will use the selected priority for the evaluation of the proposed project with criteria specific to that priority. Each priority has criteria with associated points, with an opportunity for comments. The points of each reviewer for each proposal are totaled, comments are added, then each proposal is given an average. The Committee meets to discuss each proposal and review the results of scoring. The proposals with the highest ranking, up to the estimated amount of funding, are selected. The selection of a proposal does not necessarily mean that the requested amount will be offered. The Wetlands Team will review the workplan and budget may subsequently request that the amount of work and/or the budget be revised. Upon approval of management, formal applications are then requested from the selected applicants.

Each of the priorities will also include an outreach component that will have criteria for the outreach component as part of the evaluation. These outreach criteria of the six priorities are listed below.

Outreach Requirements To Be Included Within Each Priority (15 points)

Successful outreach programs should include, but not be limited to: development of innovative, hands-on, interactive tools and exercises; workshops; new publications; public awareness videos on topics such as wetlands and riparian areas which are not generally well understood; watershed-based and community-based education for all ages. Low priority will be given to projects which are predominantly reprinting of publications, and projects which are redundant of past activities and do not further public understanding of wetlands, watersheds, streams, and riparian areas.

EPA is interested in continued success with environmental outreach and environmental education (EE) programs which raise awareness of human impacts on the environment, and corrective measures which address those impacts. Project proposals consistent with the above six technical and regulatory priorities are expected to have well developed outreach components, five criteria, 3 points each, 15% of total score:

1. This project actively engages a wide range of partners (individuals, business, non-governmental organizations, government) in the affected community/target audience which represent diverse interests.

2. The outreach plan/activities provide efficient delivery of the project goals/mission/outcomes to the affected area/community.

3. The tools/materials/media developed or used in this project effectively convey information/education to a well targeted audience, and are easily adapted/reproduced for use in related projects/programs.

4. This project has measures of outreach/EE success that are realistic, and will clearly demonstrate attainment of goals presented in the project proposal.

5. Activities/tools/materials/ used for outreach in this project are developed/obtained in a cost-effective manner.

Priority

1. *Wetland and stream restoration:* EPA is interested in partnering with state, tribal, and local governments in the area of wetland and stream restoration. Projects should focus on demonstration of new methods, innovative procedures and new partnerships that lead to advances in restoration technology of wetlands and streams are sought. A monitoring component must be incorporated into the workplan. Support for training of personnel is possible with the demonstration project resulting as a part of the training. Grant funds cannot be used to purchase property. Project areas should not be within a preapproved mitigation bank.

Criteria: (85 points).

1. Does the proposal demonstrate significant environmental results and is self-sustaining, naturally functioning wetland or riparian area?

2. What type of restoration is proposed? What will be the on ground activities that will result in a change to the landscape?

3. What is the size of the area being proposed?

4. Will the project result in the protection or preservation of wetland habitat for a threatened or endangered species?

5. Will the project demonstrate new innovative ways to restore wetlands or streams?

6. Will the project include a training component?

7. Stream restoration projects require a minimum of three years of post-restoration monitoring.

Priority

2. At Risk Waters: Since the Supreme Court ruling on ''isolated'' waters in the SWANCC case there has been a growing regulatory uncertainty as to the extent of protection of isolated waters and what role the State and Tribes play in protection of such resources. EPA is specifically interested in assisting states and tribes in developing programs that address protection of waters no longer under federal jurisdiction.

Criteria: (85 points).

1. Will the proposal assist states, tribes and local governments in protecting, restoring and or enhancing ''waters at risk''?

2. Does the proposal address impact assessment—direct and indirect effects to wetlands?

3. Is there a focus on particularly vulnerable areas and/or resources within the state? How are these areas determined?

4. Where does the authority to protect vulnerable areas come from—statute, regulation, policy? Will the protective measures come from voluntary participation?

5. Is the project achievable and does it have sustainable long term benefits?

Priority

3. *Watershed Planning:* EPA is interested in assisting states, tribes, and local governments in watershed approaches that work to integrate wetlands into a Watershed (Ecosystem) Approach to protect resources, prevent pollution, achieve sustainable environmental goals, and meet other objectives important to the community. Although watershed approaches may vary in terms of specific objectives, priorities, elements, timing and resources, they should be based on partnerships, geographic focus, sound management techniques, science and data. Applicants must identify any funding that has been used to address watershed planning and include an implementation phase of plan.

Criteria: (85 points).

To be eligible for funding the plan must contain a specific wetland and implementation component which will yield identifiable environmental improvements, *i.e.* acres of wetlands restored or preserved.

1. Will the project have achievable and have sustainable long term benefits?

2. Does the project implement wetlands improvements as a part of a broader, more comprehensive watershed plan?

3. Is the proposed project being developed and implemented by multiple partners in a new or existing group or alliance whose goal it is to address the various problems affecting water quality in a specific watershed?

4. Has the specific wetland(s) to be addressed been identified?

5. Has the implementation component been clearly described?

6. In light of the implementation component that has been described, has a realistic environmental improvement endpoint been identified?

7. Has the method(s) for identifying environmental improvement endpoints been clearly identified?

Priority

4. *Hydrogeomorphic (HGM) Assessment:* For States incorporating wetlands into their water quality standards as required by the Clean Water Act, EPA guidance recommends the development of functional assessment or other biological methodology models to classify wetlands. The Hydrogeomorphic (HGM) Approach could be easily used to identify the types of wetlands common to any State and in the designation of beneficial uses for wetlands.

HGM model development continues to be a high priority with the EPA HQ. As such, EPA will continue to target the development of HGM models for regulatory and planning purposes. EPA is also interested in a state and/or tribe hosting training on the HGM guide book development in FY04.

Criteria: (85 points).

1. Will the project result in, or contribute to, the development of a statewide wetland monitoring plan or strategy for incorporation into a State's or Tribe's comprehensive water quality monitoring strategy?

2. Does the project include a process and/or procedures for developing an assessment method? Are there reference wetlands or areas being used in the process?

3. Is the assessment tool transferrable to other wetland types?

4. Will the classification of functional wetland processes/systems utilized in the HGM model development assist the State/Tribe in designating functional wetland classifications/uses in wetland water quality standards, wetland monitoring strategies, in the regulatory program, or long-term restoration projects?

5. Does the project include training of staff, which would result in enhanced environmental protection of wetlands?

Priority

5. Community Environmental Stewardship (Urban Sprawl): EPA has identified the need for a focus on stream and wetland protection in rapidly developing urban areas. Measures such as training, educational programs, public-planning efforts, demonstration of bioengineering as alternative to traditional methods and resource preservation of streams and wetlands are targeted for funding and technical assistance.

Criteria: (85 points).

All planning and training efforts must include implementation measures (demonstration project) to be eligible for funding.

1. Will the project implement a part of the State or Tribal Wetlands conservation plan?

2. Does project have a plan to measure long term success (monitoring plan)?

3. Is the project using alternative techniques to assess, restore, monitor stream and/or wetlands?

4. Has the specific stream and/or wetland(s) to be addressed been identified?

5. Has the implementation component been clearly described?

6. In light of the implementation component that has been described, has a realistic environmental improvement endpoint been identified? Is it adjustable for future growth?

7. Has the method(s) for identifying environmental improvement endpoints been clearly identified?

Priority

6. Wetlands Monitoring Strategy: EPA has requested that each State and Tribe develop a comprehensive monitoring program strategy that addresses all State waters, including streams, rivers, lakes, the Great Lakes, reservoirs, estuaries, coastal areas, wetlands, and groundwater. One of The goals of this strategy is to move States and Tribes toward meeting the reporting requirements of CWA § 305(b), that is, to provide ''an analysis of the extent to which all navigable waters * * * provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife * * *'' EPA encourages States and Tribes to work across programmatic and agency lines to incorporate various monitoring plans and approaches into this comprehensive strategy.

Criteria: (85 points).

1. Will the project result in, or contribute to, the development of a statewide wetland monitoring plan or strategy for incorporation into a State's or Tribe's comprehensive water quality monitoring strategy?

2. Does the proposal provide a commitment to develop a wetlands

monitoring plan or strategy that will incorporate all wetland types?

3. Is there evidence that partnerships with other agencies or organizations charged with conducting water quality monitoring have been made, or will be made, to adequately assure that the strategy will be integrated with the State's or tribe's comprehensive strategy?

4. There are 10 elements which should be included in a statewide monitoring program (*see http://www.epa.gov/owow/monitoring/elements/*). A monitoring strategy would be the first element and the following nine (9) elements are incorporated into the strategy. These strategies should be State or tribe specific, be designed from the monitoring capabilities each State or tribe already has, and incorporate a time frame, not to exceed 10 years, for completion of implementation of the strategy.

10 Elements of a Monitoring Program

1. Monitoring Program Strategy
2. Monitoring Objectives
3. Monitoring Design
4. Core and Supplemental Water Quality Indicators (*e.g.* biological community condition, wetland hydrogeomorphic settings and functions)
5. Quality Assurance
6. Data Management
7. Data Analysis/Assessment
8. Reporting
9. Programmatic Evaluation
10. General Support and Infrastructure Planning

5. Does the project proposal make a commitment to describe how the State or Tribe plans to address each of the remaining nine (9) elements, as appropriate, in its wetland monitoring strategy?

EPA Will Not Provide Funds for the Following

- Boardwalks, interpretive buildings or other like structures, walking paths, park amenities such as restrooms, parking lots, boat ramps.
- Any project that may negatively impact any threatened or endangered species.

VI. Award Administration Information for Competitive Process

A. Award Notices

All applicants will be notified by the Region 6 EPA Office on whether or not the applicant has been selected for funding. The notification is not an authorization to begin performance. A notice signed by the Management Division is the authorizing document to the applicant to begin performance.

B. Administrative and National Policy Requirements

The general award and administration process for all WPDGs is governed by regulations at 40 CFR part 30 (''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''), 40 CFR part 31 (''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local governments'') and 40 CFR part 35, subpart A (''Environmental Program Grants for State, interstate, and local government agencies'') and subpart B (''Environmental Program Grants for Tribes'').

C. Reporting

WPDGs are currently covered under the following EPA grant regulations: 40 CFR part 30 (non-profit organizations); 40 CFR part 31 (States, Tribes, interstate agencies, intertribal consortia and local governments) and 40 CFR part 35, subpart A (States, interstate agencies and local governments) and subpart B (Tribes and intertribal consortia). These regulations specify basic grant reporting requirements, including performance and financial reports (*see* 40 CFR 30.51, 30.52, 31.40, 31.41, 35.115, and 35.515.) Region 6 EPA will work closely with recipients to incorporate appropriate performance measures into each grant agreement consistent with 40 CFR 30.51, 31.40, 35.115, and 35.515. Quarterly reports will be required for all awarded projects.

VII. Agency Contact

Tyrone Hoskins, State/Tribal Programs Section (6WQ–AT), EPA Region 6; 1445 Ross Avenue; Dallas, TX 75202, Phone: 214–665–7187; E-mail: *hoskins.tyrone@epa.gov*.

VIII. Other Information

A. Quality Assurance/Quality Control (QA/QC)

QA/QC and peer review are sometimes applicable to these grants (*see* 40 CFR 30.54 and 40 CFR 31.45.) QA/QC requirements apply to the collection of environmental data. Environmental data are any measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology. Environmental data include information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. Applicants should allow sufficient time and resources for this process. EPA can assist applicants determine whether QA/QC is required for the proposed project. If QA/QC is required for the project, the applicant is encouraged to work with the appropriate EPA quality staff to determine the appropriate QA/QC practices for the project. If the applicant has an EPA-approved quality assurance project plan and it covers the project in the application, then they need only reference the plan in their application. Contact the appropriate Headquarters or Regional Office Wetland Grant Coordinator (See Section VII for Agency Contact information) for referral to an EPA quality staff.

B. Public Participation

EPA regulations require public participation in various Clean Water Act programs including grants (40 CFR part 25). Each applicant for EPA financial assistance shall include tasks for public participation in their project's work plan submitted in the grant application (40 CFR 25.11.) The project work plan should reflect how public participation will be provided for, assisted, and accomplished.

C. Annual Wetlands Meeting/Training

EPA encourages S/T/LGs to include travel plans for wetland personnel to attend at least one national wetland meeting in support of the project or for training each year (*e.g.*, National EPA, State, tribal, local wetland meeting or wetland monitoring workshops.) Applicants should account for travel plans and costs in the work plans and the project budget. EPA's Wetlands Program does not anticipate providing travel for State, tribal or local government staff to attend meetings other than through this grant program.

Dated: February 25, 2004.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 04–4825 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7631–9]

Science Advisory Board (SAB) Staff Office; Notification of Multiple Public Teleconference Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency Science Advisory Board (SAB) Staff Office announces upcoming

teleconferences of the following two Advisory Panels:

(1) *Advisory Council on Clean Air Compliance Analysis Special Council Panel for the Review of the Third 812 Analysis:* Public teleconference to finalize its advice on the Agency's draft analytical plan for that analysis.

(2) *SAB Multimedia, Multipathway, and Multireceptor Risk Assessment (SAB 3MRA) Modeling System Panel:* Public teleconference to allow the Panel to confirm that final changes to the draft report were made correctly.

DATES: The Special Council Panel for the Review of the Third 812 Analysis will hold a public teleconference on March 18, 2004, from 12 p.m. to 2 p.m. (eastern time).

The SAB Multimedia, Multipathway, and Multireceptor Risk Assessment (SAB 3MRA) Modeling System Panel will hold a public teleconference on March 18, 2004, from 1 p.m. to 3 p.m. (eastern time).

ADDRESSES: Participation in the meetings indicated above will be by teleconference only. Supplemental materials and an agenda for each meeting will be announced on the SAB Web site, *http://www.epa.gov/sab* prior to each teleconference.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call in number and access code to participate in either of the teleconferences, or who wish to submit written or brief oral comments (three minutes or less) must contact the appropriate Designated Federal Officer (DFO) listed below:

(1) For information regarding the Special Council Panel for the Review of the Third 812 Analysis please contact Dr. Angela Nugent, telephone/voice mail: (202) 564–4562, fax: (202) 501–0582, or e-mail: *nugent.angela@epa.gov.*

(2) For information regarding the SAB 3MRA Panel contact Ms. Kathleen White, telephone/voice mail: (202) 564–4559, fax: (202) 501–0582, or e-mail: *white.kathleen@epa.gov.* To reach a central number at the SAB Staff Office, please call via telephone (202) 564–4533, U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB and Council can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

The Special Council Panel for the Review of the Third 812 Analysis is holding a public teleconference for the Council to finalize a draft report advising the EPA on its plans for the Third 812 analysis. The overall charge to the Panel is to provide advice to the Agency regarding data and methods to be used for the Agency's planned analysis under section 312 of the Clean Air Act (CAA) of the impacts of the Clean Air Act (CAA) on the public health, economy, and environment. Background on the Committee and its charge was provided in 68 FR 7531–7534, February 14, 2004. More information regarding this advisory activity can be found at the SAB Web site at *http://www.epa.gov/science1/panels/scpanel812heesaqms.htm.*

The SAB 3MRA Panel is holding a public teleconference to confirm that final changes to its draft report were made correctly. Background on the SAB 3MRA Panel, and this review was provided in 68 FR 17797–17800, April 11, 2003. Additional meetings of the Panel were announced in 68 FR 46606–46607, August 6, 2003. More information regarding this review can be found at the SAB Web site at *http://www.epa.gov/sab/panels/SAB3MRAmspanel.html.*

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its teleconferences and meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, for teleconference meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by the DFO no later than noon eastern time five business days prior to each teleconference in order to reserve time on the teleconference agenda. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least seven business days prior to the teleconference date so that the comments may be made available to the committee or panel 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)).

Meeting Accommodations: Individuals requiring special accommodation to access these teleconferences, should contact the appropriate DFO at least five business days prior to the teleconference so that appropriate arrangements can be made.

Dated: February 26, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–4823 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7631–5]

Draft Total Maximum Daily Load (TMDL) for the Wabash River Watershed, Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces the availability of the EPA document identifying segments and associated pollutants of nitrates/nitrites, phosphorus, and Total Suspended Solids (TSS) in the Wabash River, in Mercer County, Ohio, and requests public comment.

The TMDL was developed to attain water quality standards and designated uses (Warmwater Habitat) established for the Wabash River, which is on the Ohio 2002 303(d) list. Segments and pollutants were listed and prioritized by the State for TMDL assessment, and aquatic life use and riparian habitat impairments were identified. TMDLs specify the maximum amount of a pollutant a waterbody can assimilate and still meet water quality standards. Based upon that maximum amount, TMDLs allocate both pollutant loads to sources and a margin of safety (MOS). In this way, the TMDL process links the development and implementation of control actions to the attainment and maintenance of water quality standards and designated uses. This TMDL was developed by EPA, Region 5, at the request of the State of Ohio. EPA is providing the public the opportunity to review its document in accordance with section 303(d) of the Clean Water Act (CWA), 33 U.S.C. 1313(d), and 40 CFR 130.7. EPA will consider public comments in its final document.

DATES: Comments on this document must be received in writing by March 27, 2004.

ADDRESSES: Hard copies are available at: Mercer County Library, 303 N. Main St., Celina, Ohio, and Coldwater Public Library, 305 W. Main St., Coldwater, Ohio.

Written comments may be submitted to: Jean Chruscicki (WW–16J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail Address: *chruscicki.jean@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Jean Chruscicki,Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 353–1435.

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

Dated: February 25, 2004.

Jo Lynn Traub,

Director, Water Division, EPA Region 5.

[FR Doc. 04–4826 Filed 3–3–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–540]

Announcement of Next Meeting Date and Agenda of Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the next meeting date and agenda of the Consumer Advisory Committee whose purpose is to make recommendations to the Federal Communications Commission (''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on Friday, March 26, 2004, from 9 a.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, 202–418–2809 (voice), 202–418–0179 (TTY) or e-mail: *cac@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice DA 04–540 released February 25, 2004. The Commission announced the next meeting date and meeting agenda of its Consumer Advisory Committee.

Purpose and Functions

The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

Meeting Agenda

At its March 26, 2004, meeting, the Committee will (1) consider recommendations of its Consumer Complaints, Outreach Education, and Participation Working Group regarding electronic access to the FCC; (2) receive briefings by FCC staff regarding bureau activities; (3) observe a demonstration of Voice over the Internet (VoIP) technology and receive an overview of the VoIP rulemaking proceeding; and (4) be briefed on the Quarterly Inquiries and Complaints report. The Committee will also discuss effective partnership strategies with representatives of State and local consumer affairs agencies. Time will be allotted between 10 a.m. and 12 p.m. for working group breakout sessions.

A copy of the February 25, 2004, public notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac.* Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac.*

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible format; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will be webcast with open captioning at *http://www.fcc.gov/cgb/cac.*Request other reasonable accommodations for people with disabilities as early as possible; please allow at least 5 days advance notice. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–4882 Filed 3–3–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2649]

Petitions for Reconsideration of Action in Docketed Proceedings

February 25, 2004.

Petitions for Reconsideration have been filed in the Commission's license transfer proceeding listed in this Public Notice. 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 March 19, 2004. 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 10 days after the time for filing oppositions have expired.

Subject: In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors (MB Docket No. 03–124); and The News Corporation Limited, Transferee, For Authority to Transfer Control.

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–4881 Filed 3–3–04; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, March 22, 2004, from 9 a.m. to 5 p.m.

ADDRESS: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION, CONTACT: Dr. Larry E. Fields, Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 719H, Washington, DC 20201; (202) 690–7694.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002, to replace the Chronic Fatigue Syndrome Coordinating Committee. CFSAC was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) The current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

The tentative agenda for this meeting is as follows:

9 a.m. Chairperson: Call to Order, Roll Call, Introductions, Minutes of the December 8th, 2003, Meeting, Opening Remarks, Discussion.

9:20 a.m. Executive Secretary: Summary of Public Comments, Policy and Procedure, Communications (Web site, listserv), Discussion.

9:35 a.m. Invited Guest Speakers: Dr. J. Terrell Hoffeld: The Scientific Review Process, Scientific Review Administrator, NIH, Discussion.

10:30 a.m. Break.

10:45 a.m. Organizational Updates: Patricia D. Fero; Wisconsin CFS Association, Inc.; K. Kimberly Kenney; CFIDS Association of America; Jill McLaughlin; National CFIDS Foundation, Inc.

11:15 a.m. *Ex Officio* Members: Requested follow-ups, Status of Departmental CFS-directed Efforts, Discussion.

11:30 a.m. Public Comment (Part I).

12 noon Lunch Break.

1 p.m. Dr. Roberto Patarca: CFS Education: Healthcare Providers, General Public, Physical Therapists, Others, Discussion.

3 p.m. Break.

3:15 CFS Miscellaneous Matters.

4 p.m. Public Comment (Part 2).

4:30 p.m. Wrap Up, Action Steps, Timelines, including dates of remaining FY 2004 meetings.

5 p.m. Adjournment.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Pre-registration is required for public comment by March 15, 2004. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to CFSAC members should submit materials to the Executive Secretary, CFSAC, whose contact information is listed above prior to close of business March 15, 2004.

Dated: February 26, 2004.

Larry E. Fields,

Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 04–4794 Filed 3–3–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Technical Assistance and Training for Immunization Coalitions and Immunization Information Dissemination

Announcement Type: New.

Funding Opportunity Number: 04085.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Application Deadline: May 3, 2004.

I. Funding Opportunity Description

Authority: Section 317(k)(1) of the Public Health Service Act (42 U.S.C. 247b(k)(1)).

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Technical Assistance and Training for Immunization Coalitions and Immunization Information Dissemination. The purpose of the program is to provide support for immunization coalitions and for the dissemination of immunization information to enhance the effectiveness of disease prevention programs that reduce the annual burden of vaccine preventable diseases. This program addresses the ''Healthy People 2010'' focus areas of Health Communications and Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Immunization Program (NIP): Reduce the number of indigenous cases of vaccine-preventable diseases; and ensure that two year-olds are appropriately vaccinated.

Activities: Awardee activities will enhance the ability of public and private sector organizations along with local, state, and national agencies to deliver programs that reduce the annual toll inflicted by vaccine preventable diseases. It is anticipated that up to two projects that support technical assistance and training for immunization coalitions and up to two projects that disseminate immunization information will be funded. Both types of projects need to have a national scope and focus. These projects will use proven and potentially promising or emerging coalition building and information dissemination methodologies and strategies to promote vaccination across the lifespan (*i.e.,* childhood, adolescent and adult immunization recommendations and best practices). Both program components shall foster cooperation, collaboration, and communication between public and private organizations, Federal government agencies, state and local health departments, NIP partners and grantees, and others in their efforts to increase immunization coverage and reduce vaccine-preventable diseases.

This announcement has two program categories—applicants may respond to a single category or to both categories. However, only one category can be

addressed in an application. Entities submitting proposals for both program components must submit two separate and complete applications—one application for the technical assistance and training component and a separate application for the information dissemination component.

Category I: Technical Assistance and Training for Immunization Coalitions

Awardee activities for this category are as follows:

- Support the development, operation, and/or evaluation of immunization coalitions including partnerships and community groups to enhance childhood, adolescent, and adult vaccination efforts at the local, regional, and national level through the development of immunization networks, partnership formation, and coalition building.
- Provide training and technical assistance in the areas of communication and health education strategies (*e.g.,* social marketing, health and risk communications, and media relations) in the support of immunization coalitions.
- Network with private providers and public health entities/organizations to identify and promote successful programs and effective immunization strategies and tactics, including case examples, educational materials, media strategies, minority and hard-to-reach outreach efforts, and public relations strategies and disseminate them to coalition members and others at the local, state, and national level.
- Support existing immunization coalitions by providing consultation on the implementation of successful strategies, policies, and programs designed to improve the disease prevention capacity and immunization program efforts of these groups.
- Provide immunization coalitions and others with technical assistance through the use of information transfer, skills building, technical consultation, technical services, and technology transfer to enhance the abilities of these coalitions to reduce vaccine-preventable diseases.
- Develop communication processes to ensure rapid, effective dialog across and among coalition constituencies.

Category II: Information Dissemination

Awardee activities for this category are as follows:

- Develop and distribute immunization information using print, electronic, video, and digital formats on technical immunization guidelines, recommendations, and information, that are effective and culturally and linguistically appropriate for target audience(s).
- Distribute appropriate, readable, and useful technical immunization guidelines, educational materials, and information about successful immunization programs to national, state, and local health care providers, advocacy groups, private providers, and public health organizations, including state and local health departments and other NIP partners.
- Develop systems to increase communication among immunization providers at all levels to insure the rapid and successful dialogue between immunization providers.
- Provide education on advances in the field of immunization to inform diverse health care professionals of advances in the science of vaccine preventable diseases in order to ensure a technically competent immunization workforce.
- Develop process and impact evaluation measures to assure the delivery of credible, science-based information in understandable and effective formats consistent with the needs of the target audiences.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- As appropriate, link funded applicants to a coordinated network of other NIP funded national organizations.
- Provide consultation and technical assistance in planning, implementing, and evaluating the activities of grantees. CDC may provide consultation both directly and indirectly through other partners, including health departments and contractors.
- Provide up-to-date scientific information on disease surveillance, immunization coverage, and vaccine technology, as well as risk communication, and findings from formative communications research.
- Assist in the design and implementation of program evaluation activities.
- Assist recipients in collaborating and exchanging information with State and local health departments, and other Federal agencies.
- Facilitate the transfer of successful program models and ''lessons learned'' through convening meetings of grantees and communication between project officers.
- Monitor the recipient's performance of program activities, and compliance with requirements.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $682,200.

Approximate Number of Awards: A maximum of two projects in Category I and two projects in Category II.

Approximate Average Award: ranging from $100,000 to $400,000.

Floor of Award Range: None.

Ceiling of Award Range: $500,000.

Anticipated Award Date: June 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governmental agents such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

In addition, to be eligible to apply, an organization must:

a. Have at least a three year record of providing similar technical assistance, services, or information dissemination about topics related to immunization in the United States, as demonstrated by

letters of support, agency annual reports, previous Memoranda of Agreement, or a listing of previous grants with a similar focus.

b. Be able to operate nationally, as demonstrated by language in its bi-laws or letters of incorporation, or a letter from the Board of Directors stating that the organization operates nationally.

c. Have at least a three year record of operating nationally, as demonstrated by the date on the bi-laws or letters of incorporation, agency annual reports, previous Memoranda of Agreement, or a listing of previous grants with a national focus.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 35. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Spacing: Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed here:

- Background and need
- Organizational history and capacity
- Program plan (including time phased, measurable objectives; methods or strategies; timelines; and staffing plan)
- Performance measures and evaluation plan
- Budget justification (will be counted in the stated page limit)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Proof of eligibility
- Curriculum Vitaes or Resumes
- Organizational Charts
- Letters of Support

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: May 3, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- These federal funds may not supplant or duplicate existing finding.
- The applicant must perform a substantial portion of the program activities and cannot serve merely as a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.
- These federal funds may not be used to support the cost of developing applications for other funding.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age. Awards will not allow reimbursement of pre-award costs.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04085, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element scored by the review panel.

Your application will be evaluated against the following criteria by an independent review group appointed by CDC:

a. *Program Plan (30 points):*

Category I Applications—Is the applicant's action plan to access and engage major agencies, private and public sector public health organizations, professional health associations, volunteer groups, and other organizations across the country feasible and appropriate? Does the applicant demonstrate their capability to successfully interact with these organizations to provide training and technical assistance and facilitate the sharing of information and ideas across a network of immunization coalitions?

Category II Applications—Does the applicant describe a feasible and appropriate action plan to identify immunization issues and new developments (*e.g.,* new recommendations), communicate with, and reach, targeted populations, translate technical immunization information into appropriate new formats, develop and disseminate effective immunization material and information, and establish and implement a national immunization information/dissemination network?

Category I and Category II Applications—Are stated objectives specific, realistic, and time-phased? Are the proposed methods (*i.e.* strategies and activities) feasible? Will the proposed methods accomplish the program goals? Are program priorities and timelines for implementation of program efforts appropriate?

b. *Organizational History and Capability (25 points):* Is the applicant's ability to accomplish stated goals and objectives demonstrated based on relevant past experience, a sound management structure, and staff qualifications? Are staff roles and responsibilities defined and appropriate? Has the applicant played a role as an international, national, or regional immunization entity? Are the applicant's past and current training and technical assistance experiences, knowledge, and expertise documented and relevant? Does the applicant demonstrate that they have the capacity to achieve stated goals and objectives—including developing culturally appropriate public health interventions? Applicants that have made previous noteworthy contributions to address life long immunization needs will be considered more significant.

Category I Applicants—Must have two years of demonstrated history in coalition development and training and technical assistance at the local, regional, or national level for the purpose of promoting public health initiatives; this experience must be documented in the proposal (use appendix if necessary).

Category II Applicants—Must have two years of demonstrated history of producing and disseminating written and electronic health or disease prevention information such as websites, newsletters, media kits, posters, brochures, or information sharing kits and document this experience in the proposal (use appendix if necessary).

Category I and Category II Applicants—Must have two years of documented history working with and accessing major agencies, private and public sector public health organizations, professional health associations, volunteer groups, and other organizations across the country, and demonstrate their capability to successfully interact with other organizations to promote immunization across the lifespan.

Must have at least two years experience working in all of the following areas: Childhood immunization, adolescent immunization, and adult immunization.

c. *Coordination and collaboration (20 points):* Does the applicant describe strategies to develop and maintain a national network of immunization coalitions or a national information sharing network? Does the applicant plan to coordinate these activities with state and local immunization programs, existing immunization coalitions, provider organizations, and other appropriate agencies? Does the applicant describe how it will avoid duplication of services and communicate with other NIP funded organizations? Does the applicant describe any formal or informal partners or contractors? Does the applicant provide letters of support or letters of intent to document this effort?

d. *Background and Need (15 points):* Does the applicant demonstrate an understanding of immunization-related topics and issues, including infant, childhood, and adult immunization recommendations, immunization barriers and strategies for addressing them, evidence-based communication and education strategies for communicating vaccine benefits and risks, and problems associated with under-immunization? Does the applicant demonstrate an understanding of the purpose of the cooperative agreement?

e. *Evaluation Plan (10 points):* Does the applicant describe methods to evaluate the proposed plan, including process and impact evaluation? Have quantitative and qualitative measures been identified for assessing the achievement of program objectives, determining the health effect on the population, and monitoring the implementation of proposed activities?

f. *Budget and Justification (not scored):* Is the proposed budget adequately justified, reasonable, and consistent with proposed project activities and this program announcement?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NIP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified by mail that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be

signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Description of progress made during the current budget period on program activities and objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Proposed Program Activities and measurable Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Kari Sapsis, Project Officer, 1600 Clifton Rd., MS E–05, Atlanta, GA 30333, Telephone: 404–639–8837, E-mail: *ksapsis@cdc.gov.*

For financial, grants management, or budget assistance, contact: Peaches Brown, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2738, E-mail: *prb0@cdc.gov.*

Dated: February 27, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–4808 Filed 3–3–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 19, 2004, from 9 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512397. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the following issues:

(1) Mechanisms to reduce the regulatory and inspection burden on facilities;

(2) Whether mammographic images obtained from reconstructed compressed digital data (lossless or lossy data compression) can be used for primary interpretation or storage;

(3) Whether images obtained from digitized film-screen mammograms can be used for primary interpretation or storage; and

(4) Revisions to Mammography Quality Standards Act (MQSA) compliance guidance.

The committee will also receive updates on recently approved alternative standards, full field digital mammography accreditation and certification, the inspection demonstration program, the status of MQSA reauthorization, and the new post inspection enforcement strategy.

The MQSA compliance guidance documents, which are in a question and answer format, are available to the public on the Internet at *http://www.fda.gov/cdrh/mammography.* This guidance is updated continually in response to questions that FDA receives from the public.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 5, 2004. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. on April 19, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 5, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: February 25, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–4786 Filed 3–3–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration and Food and Drug Administration Medical Device Industry Coalition Quality Systems Educational Forum: Production and Process Controls; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Southwest Region (SWR), Dallas District Office (DALDO), in collaboration with the FDA Medical Device Industry Coalition (FMDIC) is announcing a public workshop entitled ''Quality Systems Educational Forum: Production and Process Controls.'' This public workshop is intended to provide information about FDA's Medical Device Quality Systems Regulation (QSR) to the regulated industry, particularly small businesses.

Date and Time: The public workshop will be held on April 23, 2004, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the Crowne Plaza Dallas Market Center Hotel, 7050 I–35 Stemmons Freeway, Dallas, TX 75247. Directions to the facility are available at the FMDIC Web site at *http://www.fmdic.org.*[1]

Contact Person: David Arvelo or Sue Thomason, Food and Drug Administration, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952 or 214–253–4951, FAX: 214–253–4970, e-mail *oraswrsbr@ora.fda.gov*.

Registration: FMDIC has a $150 early registration fee. Early registration begins on February 1 and ends March 26, 2004. Registration is $175 from March 27 to April 9, 2004. To register online, please visit *http://www.fmdic.org/*. As an alternative, you may send registration information including name, title, firm name, address, telephone and fax numbers, and e-mail along with a check or money order for the appropriate amount payable to the FMDIC to Dr. William Hyman, Texas A&M University, Department of Biomedical Engineering, 3120 Tamu, College Station, TX 75843–3120. Course space will be filled in order of receipt of registration *with appropriate fees*. Seats are limited, please submit registration form as soon as possible. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site will be done on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $175 payable to the FMDIC. The registration fee will be used to offset expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials.

If you need special accommodations due to a disability, please contact David Arvelo or Sue Thomason at least 7 days in advance.

Transcripts: Transcripts of the public workshop will *not* be available due to the format of this workshop. Course handouts may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The workshop is being held in response to the interest in the topics discussed from small medical device manufacturers in the Dallas District area. FMDIC and FDA present this workshop to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is also consistent with the purposes of FDA's Regional Small Business Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

The goal of the workshop is to present information that will enable manufacturers and regulated industry to better comply with the Medical Device QSR. The following topics will be discussed at the workshop: (1) The production and process control subsystem of the QSR, (2) FDA 483 trends and applicable regulations, (3) the business friendly approach, (4) software validation, (5) process validation, (6) product acceptance including techniques and purchasing controls, and (7) device history records.

Dated: February 26, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–4785 Filed 3–3–04; 8:45 am]

BILLING CODE 4160–01–S

[1]FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 12, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, PhD, Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 26, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4795 Filed 3–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel SBIR—Discovery of New Chemical Probes.''

Date: March 10, 2004.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Office of Extramural Affairs, NIDA, 6101 Executive Boulevard, Room 220, Rockville, MD 20852.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

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. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 26, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4796 Filed 3–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Institute on Drug Abuse Special Emphasis Panel, March 10, 2004, 5 p.m. to March 10, 2004, 7 p.m. Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on February 19, 2004, Vol. 69, Num. 33.

The meeting is cancelled because the grant application was withdrawn.

Dated: February 26, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4797 Filed 3–3–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Zap 70 Protein Expression in Chronic Lymphocytic Leukemia (CLL)

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: Notice.

SUMMARY: This is a notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Provisional Patent Appl. Serial No. 60/375,966 (DHHS ref. no. E–091–2002/0–US–01) filed April 25, 2002, U.S. Patent Appl. Serial No. 10/309,548 (DHHS ref. no. E–091–2002/0–US–02), and Canadian Patent Application No. 2413475, all entitled ''Zap 70 Expression as a Marker for Chronic Lymphocytic Leukemia (CLL)/Small Lymphocytic Lymphoma (CLL/SLL),'' to Cell Signaling Technology, Inc., of Beverly, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide. The field of use may be limited to the use of antibody based products to diagnose chronic lymphocytic leukemia, wherein the antibody based products are regulated.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before May 3, 2004 will be considered.

ADDRESSES: Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Catherine M. Joyce, Intellectual Property Management Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone 301–435–5031; Facsimile 301–402–0220; E-mail *joycec@mail.nih.gov.*

Technology Brief: The above-referenced patent(s)/patent application(s) relate to the discovery that detection of Zap70 expression can be used to diagnose chronic lymphocytic leukemia/small lymphocytic lymphoma (CLL/SLL). In particular, Zap70 expression can be used to distinguish between two subpopulations of CLL/SLL patients: (1) Patients who have stable or slowly progressing disease requiring late or no treatment or (2) patients who had progressive clinical course requiring early treatment.

SUPPLEMENTARY INFORMATION: The prospective exclusive 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 exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 26, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–4798 Filed 3–3–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Request for Applications for Access to Recovery (ATR) Grants (TI 04–009)

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice of request for applications for access to recovery (ATR) grants (TI 04–009).

SUMMARY: The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) is accepting applications for

fiscal year (FY) 2004 grants to implement voucher programs for substance abuse clinical treatment and recovery support services pursuant to sections 501 (d)(5) and 509 of the Public Health Service Act (42 U.S.C. sections 290aa(d)(5) and 290bb–2). This new program, called Access to Recovery (ATR), is part of a Presidential initiative to provide client choice among substance abuse clinical treatment and recovery support service providers, expand access to a comprehensive array of clinical treatment and recovery support options (including faith-based programmatic options), and increase substance abuse treatment capacity. Monitoring outcomes, tracking costs, and preventing waste, fraud and abuse to ensure accountability and effectiveness in the use of Federal funds are also important elements of the ATR program. Through the ATR grants, States, territories, the District of Columbia and tribal organizations (hereinafter collectively referred to as ''States'') will have flexibility in designing and implementing voucher programs to meet the needs of clients in the State. The key to successful implementation of the voucher programs supported by the ATR grants will be the relationship between the States and clients receiving services, to ensure that clients have a genuine, free, and independent choice among eligible providers. States are encouraged to support any mixture of clinical treatment and recovery support services that can be expected to achieve the program's goal of achieving cost-effective, successful outcomes for the largest number of people.

DATES: Applications are due on June 4, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on program issues, contact: Andrea Kopstein, Ph.D., M.P.H., SAMHSA/CSAT, 5600 Fishers Lane, Rockwall II, Suite 7–40, Rockville, MD 20857, Phone: (301) 443–3491, Fax: (301) 443–3543, E-Mail: *akopstei@samhsa.gov.*

For questions on grants management issues, contact: Kathleen Sample, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, Phone: (301) 443–9667, Fax: (301) 443–6468, E-mail: *ksample@samhsa.gov.*

SUPPLEMENTARY INFORMATION:

Date of Issuance: March 2004.

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Authority: Sections 501(d)(5) and 509 of the Public Health Service Act (42 U.S.C. sections 290aa(d)(5) and 290bb–2).

(Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243.)

I. Funding Opportunity Description

The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) is accepting applications for fiscal year (FY) 2004 grants to implement voucher programs for substance abuse clinical treatment and recovery support services pursuant to sections 501 (d)(5) and 509 of the Public Health Service Act (42 U.S.C. sections 290aa(d)(5) and 290bb–2). This new program, called Access to Recovery (ATR), is part of a Presidential initiative to provide client choice among substance abuse clinical treatment and recovery support service providers, expand access to a comprehensive array of clinical treatment and recovery support options (including faith-based programmatic options), and increase substance abuse treatment capacity. Monitoring outcomes, tracking costs, and preventing waste, fraud and abuse to ensure accountability and effectiveness in the use of Federal funds are also important elements of the ATR program. Through the ATR grants, States, territories, the District of Columbia and tribal organizations (hereinafter collectively referred to as ''States'') will have flexibility in designing and implementing voucher programs to meet the needs of clients in the State. The key to successful implementation of the voucher programs supported by the ATR grants will be the relationship between the States and clients receiving services, to ensure that clients have a genuine, free, and independent choice among eligible providers. States are encouraged to support any mixture of clinical treatment and recovery support services that can be expected to achieve the program's goal of achieving cost-effective, successful outcomes for the largest number of people.

In addition, States should propose innovative strategies for their ATR projects to accomplish the following:

- Ensure genuine, free, and independent client choice for substance abuse clinical treatment and recovery support services appropriate to the level of care needed by the client. For the purposes of this grant program, choice is defined as a client being able to choose from among two or more providers qualified to render the services needed by the client, among them at least one provider to which the client has no religious objection.
- Require all substance abuse assessment, clinical treatment, and recovery support services under this program be provided pursuant to a voucher or vouchers given to a client by a State or its designee. No funding shall be given directly to a provider through a grant or contract to provide any services under this program, including assessment.[1]

[1] Indirect funding means that individual, private choice, rather than the Government, determines which substance abuse service provider eventually receives the funds. With indirect funding, the individual in need of the service is given a voucher, coupon, certificate, or other means of free agency, such that he or she has the power to select for himself or herself from among eligible substance abuse service providers, whereupon the voucher (or other method of payment) may be ''redeemed'' for the service rendered. Under ''direct'' funding, the Government or an intermediate organization with the same duties as a governmental entity purchases the needed services directly from the substance abuse service provider. Under this scenario, there are no intervening steps in which the client's choice comes into play. The government or intermediate organization selects the provider from which the client will received services.

• Ensure each client receives an assessment for the appropriate level of services and is then provided a genuine, free, and independent choice among eligible providers, among them at least one provider to which the client has no religious objection.

• Use the grant funds to implement a system to provide vouchers to eligible clients to pay for assessment and other clinical treatment and recovery support services from a broad network of eligible providers, including organizations that have not previously received public funding. Eligible service providers for the voucher program may include the following: public and private, nonprofit, proprietary, as well as faith-based and community organizations, as approved by the State.

• Ensure that faith-based organizations otherwise eligible to participate in this program are not discriminated against on the basis of their religious character or affiliation.

• Maintain accountability by creating an incentive system for positive outcomes and taking active steps to prevent waste, fraud and abuse. (See Section VI–3 and Appendix C for reporting expectations under this program).

• Expand clinical treatment and recovery support services by leveraging use of all Federal funds, preventing cost shifting, and ensuring that these funds are used to supplement and not supplant current funding for substance abuse clinical treatment and recovery support services in the State.

SAMHSA is interested in supporting a range of models to implement substance abuse voucher programs, including:

• Full implementation of the program through a designated lead State or sub-State agency.

• Implementation of the program through public/private partnerships (*i.e.*, a contract between the State and a lead private entity to implement all or part of the program).

States may implement the program statewide or may target geographic areas of greatest need, specific populations in need, or areas/populations with a high degree of readiness to implement a voucher program. States may propose alternate models for consideration, as long as they conform to the expectations articulated above.

States are encouraged to minimize the funds used to cover both the direct and indirect costs of administration of the program, to develop a system to manage the program on the basis of reasonable costs, to develop a system to provide incentives to eligible providers with superior outcomes, and to include a broad range of stakeholders in planning and designing their proposal.

Appendix E provides a hypothetical example of a program that conforms to these expectations. States may wish to consult this appendix as a starting point for developing their ATR Grant applications.

Due to the unique nature of this grant program, SAMHSA recognizes that applicants may wish to entertain an array of program and administrative options. To respond, SAMHSA will make available both pre-application and post-award technical assistance to applicants and current and future providers of substance abuse clinical treatment and recovery support services under this program. Examples of topics for which technical assistance may be provided include, but are not limited to:

• Eligibility determinations for clinical treatment and recovery support services providers and for which service in the continuum of recovery will be included in the voucher reimbursement system.

• Eligibility determinations for clients, including management of a system for assessment and service determinations.

• Identifying and determining eligibility of new clinical treatment and recovery support service providers.

• Fiscal/cost accounting mechanisms that can track voucher implementation.

• Management of information systems to track performance and outcomes.

• Development of quality improvement activities, including technical assistance and training to attract, develop, and sustain new clinical treatment and recovery support service providers.

• Oversight of standards and fraud and abuse.

• Outreach to entities unknown to the State.

II. Award Information

1. Award Amount

It is expected that approximately $100 million will be available in fiscal year 2004 to fund up to approximately 15 awards in the Access to Recovery (ATR) program. No more than one grant award will be made to any State or Tribal Organization. Individual awards are expected to be up to $15,000,000 in total costs (direct and indirect) per year. Grants will be awarded for a period of 3 years. The actual award amount in any one year will depend on the availability of funds. Awards may be adjusted based on the number of individuals proposed to be treated successfully per year.[2]

Proposed budgets cannot exceed $15,000,000 in any year of the proposed project. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, timely submission of required data and reports, and a determination that continued funding of the award is in the best interest of the Government.

2. Funding Mechanism

The ATR awards will be made as grants to States that, in turn, must distribute funds to clients through vouchers.

III. Eligibility Information

1. Eligible Applicants

Eligibility for Access to Recovery (ATR) grants is limited to the immediate office of the Chief Executive (*e.g.*, Governor) in the States, Territories, District of Columbia; or the head of a Tribal Organization. (A ''Tribal Organization'' means the recognized governing body of any Indian tribe or any legally established organization of Indians, including urban Indian health boards, inter-tribal councils, or regional Indian health boards, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such an organization.) The Chief Executive of the State, Territory, or District of Columbia, or the head of the Tribal Organization must sign the application.

Eligibility is limited to the immediate office of these Chief Executives because only they have the authority to leverage funding across the State, implement the necessary policy changes, manage the fiscal responsibilities, and coordinate the range of programs necessary for successful implementation of the voucher programs to be funded through these grants.

No more than one application from any one Chief Executive or head of a Tribal Organization will be funded.

2. Cost Sharing

Cost sharing is not required in this program. However, grantees must use these funds to supplement, and not supplant, current funding for substance abuse clinical treatment and recovery support services within States.

[2] For purposes of this program, successful completion of an episode of paid treatment/recovery support is defined, at a minimum, as an individual having completed the major goals of his/her treatment plan and having submitted a minimum of four consecutive, randomly collected samples that are free from illegal drugs and alcohol. (This requirement does not apply to brief treatment interventions).

3. Other

Applications must comply with the following requirements, or they will be screened out and will not be reviewed:

- Use of the PHS 5161–1 application;
- Application submission requirements in Section IV–3 of this document; and
- Formatting requirements provided in Section IV–2.4 of this document.

IV. Application and Submission Information

(To ensure that all submission requirements are met, a checklist is provided in Appendix F of this document.)

1. Address To Request Application Package

Applicants may request a complete application kit by calling SAMHSA's National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.

Applicants also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov.* Click on ''grant opportunities.''

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants.
- Standard terms and conditions for SAMHSA grants.
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, client and family participation, and evaluation).
- Enhanced instructions for completing the Public Health Service (PHS) 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. Applicants must use the PHS 5161–1. Applications not submitted on the PHS 5161–1 will be screened out and will not be reviewed.
- Request for Applications (RFA)—Includes instructions for the grant application. This document is the RFA.

Applicants must use both of the above documents in completing an application.

2.2 Required Application Components

To ensure equitable treatment, applications must be complete. For an application to be complete, it must include the required 10 application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

- *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants must provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants are required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, Dun and Bradstreet should be informed that the applicant is a public/private nonprofit organization preparing to submit a Federal grant application.]
- *Abstract*—The total abstract should not be longer than 35 lines. In the first five lines or less of the abstract, write a summary of the project that can be used in publications, reporting to Congress, or press releases if the project is funded.
- *Table of Contents*—Include page numbers for each of the major sections of the application and for each appendix.
- *Budget Form*—Use SF 424A, which is part of the PHS 5161–1. Complete Sections B, C, and E of the SF 424A.
- *Project Narrative and Supporting Documentation*—The Project Narrative describes the project. It consists of Sections A through D. Sections A through D together may not exceed 35 pages in length. More detailed instructions for completing each section of the Project Narrative are found in Section 2.3 below.

The Supporting Documentation provides additional information needed for review of the application. This supporting documentation should be included immediately following the Project Narrative in Sections E through G. There are no page limits for these sections, with the exception of Section F (Biographical Sketches/Job Descriptions).

- *Section E*—Budget Justification, Existing Resources, Other Support. Applicants must provide a narrative justification of the items included in the proposed budget, as well as a description of existing resources and other support expected for the proposed project. Proposed budgets cannot exceed $15 million per year.
- *Section F*—Biographical Sketches and Job Descriptions.
- Include biographical sketches for the Project Director and other key positions. Each sketch should be two pages or less. If a key staff person has not been hired yet, include a letter of commitment from the individual with a current biographical sketch.
- Include job descriptions for all key personnel. Each job descriptions should be no longer than one page in length.
- Sample biographical sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.
- *Section G*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Instructions for completing Section G of the application are provided in Section VIII–1 of this document.
- *Appendices 1 through 7*—Use only the appendices listed below. Do not submit more than 50 pages in total (excluding any data collection instruments and interview protocols) for all of the appendices combined. Do not use appendices to extend or replace any of the sections of the Project Narrative. Reviewers will not consider them.
- Appendix 1: Letters of Commitment/Support.
- Appendix 2: Data Collection Instruments/Interview Protocols.
- Appendix 3: Sample Consent Forms.
- Appendix 4: Non-Supplantation Letter.
- Appendix 5: Three-year Capacity Building Plan.
- Appendix 6: Three-year Data Collection and Implementation Plan.
- Appendix 7: Literature Citations.
- *Assurances*—Non-Construction Programs. Use SF 424B found in PHS 5161–1. Sign and date the form.
- *Certifications*—Use the ''Certifications'' forms found in PHS 5161–1. Sign and date the forms.
- *Disclosure of Lobbying Activities*—Use SF LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of information designed to support or defeat legislation pending before the Congress, State legislatures, or tribal councils. This includes ''grass roots'' lobbying, described as appeals to members of the public suggesting they contact their elected representatives to express support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

2.3. Project Narrative—Sections A Through D

Sections A through D are the Project Narrative of the application. These sections describe the project itself.

Sections A through D together may not exceed 35 pages in length.

Use the instructions below that have been tailored to this program to develop the project narrative. Do not use the ''Program Narrative'' instructions found on page 21 of the PHS 5161.

Be sure to provide references for any literature cited in the application; include those references in Appendix 7 of the application.

• *Section A:* Need for Voucher Program

Describe the current substance abuse clinical treatment and recovery support system in the State (or sub-State target area, if appropriate), including the number of providers currently funded by the State, gaps in service delivery, and barriers to service access.

Describe the nature and prevalence of substance abuse problems in the State (or sub-State target area), and quantify the need for services, capacity of the service system to provide services, and the difference between the two.

Describe how a voucher program would help the State (or sub-State target area) address the difference between system capacity and service need, including how and by how much capacity would be increased for each year of the grant. Clearly state the number of clients who would be treated under the proposed program in each year of the grant.

In Appendix 4 of the application, provide a letter certifying the State will supplement, and not supplant, current funding for substance abuse clinical treatment and recovery support services.

• *Section B:* Proposed Approach

Describe the approach that will be used to develop or implement (depending on applicant level of readiness) the program in the State, including the following:

• Implementation model (*e.g.*, State, sub-State agency, public/private partnership or other model).

• Eligibility criteria for clients to receive vouchers for clinical treatment and recovery support services.

• Procedures/policies for screening, assessment, and level of care determinations to identify appropriate clinical treatment and recovery support services options and to place clients with the eligible provider of their choice. Describe the process to ensure that clients receive a comprehensive assessment, using an instrument that assesses need for clinical treatment and recovery support services (*see* Appendix A for a discussion of clinical treatment and recovery support services, and Appendix D for information on screening, assessment, and level of care determination). Describe the process to ensure that clients receive vouchers for the most appropriate services and are transitioned between services based on established criteria. (*See* Appendices D and E for more information and resources about criteria.) Describe steps to ensure that clients successfully enter clinical treatment and/or recovery support services following receipt of a voucher, regardless of where the client is seen for screening, assessment, and referral. Clearly state the number of clients who would be successfully treated under the proposed program.

• Eligibility criteria for provider organizations, including: (1) Standards for all eligible provider organizations and/or processes to ensure individuals receive appropriate services in safe settings from appropriate individuals, including plans to enforce those standards and processes; and (2) reporting requirements. (*See* Appendix C for SAMHSA's expectations regarding standards for States.)

• Method/process for designating providers as eligible participants in the voucher program and for maintaining an up-to-date, client friendly information service to ensure client choice is always available and clients are aware of their choices (*e.g.,* a website or 24-hour staffed help line).

• Method/process for measuring client satisfaction in management of the voucher program.

• Process to enable providers previously unable to compete effectively for Federal funds to participate in the Access to Recovery program (including some faith-based and community providers). Clearly state how many of such providers are expected to be designated under this program and the timeframe in which this will occur. Affirm that faith-based organizations that otherwise satisfy program requirements will not be discriminated against on the basis of religious character or affiliation.

• Unbundling of services, if the State intends to use this strategy to achieve the best outcomes at the lowest cost.

Describe how the proposed approach will increase capacity over the period of the voucher program, particularly capacity for recovery support services.

Provide a three-year plan for increasing capacity in Appendix 5 of the application. The plan must include specific milestones with target dates for their achievement and must identify the party(ies) responsible for achieving milestones.

Describe how the State will ensure that voucher recipients have genuine, free and independent choice among eligible clinical treatment and/or recovery service providers.

• *Section C:* Readiness To Implement a Voucher Program

Describe the timeframe by which the proposed voucher program would be fully operational.

Document which of the following capabilities the State *currently possesses* to implement the voucher program:

• Ability to make eligibility determinations for clients and providers.

• Ability to manage and monitor a voucher program.

• Ability to collect and report data (either through an existing or planned system).

• Ability to implement quality improvement activities including technical assistance and training.

• Ability to establish and implement standards for clinical treatment and/or recovery support service providers.

• Capability to conduct screening and assessment and issue vouchers for clinical treatment and recovery support services based on established criteria.

• Capability to provide a list of eligible providers for anyone to whom a voucher is issued.

Describe other organizations/entities partnering in the project, including their roles in implementing the voucher program. In Appendix 1 of the application, provide letters of commitment showing that identified partner organizations are ready and able to fulfill their roles.

Describe anticipated potential operational problems, if any, and propose feasible solutions to them. Examples include:

• Ensuring clients genuine, free, and independent choice of clinical treatment and/or recovery support providers in situations in which the range and number of providers are limited.

• Handling significant numbers of clients eligible for vouchers who may exceed the State's ability to fund vouchers, and ensuring that resources are appropriately allocated during the course of the year.

• Preventing potential conflict-of-interest among those conducting screening, assessment, level of care determination, and service provision.

Section D: Management, Staffing and Controlling Costs

Describe how the lead agency will manage the voucher program, including steps the State will take to ensure quality of care; prevent waste, fraud and abuse; and prevent supplantation of funds. Document how resources will be appropriately allocated throughout the project period to ensure against funding shortfalls.

Describe how the State will address provider performance issues through

both the process of determining provider eligibility and monitoring/oversight.

Describe how the lead agency will work with other agencies with roles and responsibilities related to implementing and administering the voucher program.

Describe the State's and other participating entities' experience managing other voucher-type programs (*e.g.*, Temporary Assistance for Needy Families (TANF), HUD/housing, daycare), if any, and discuss how these experiences will be applied to the proposed voucher program.

Describe qualifications of the key staff to effectively implement and manage the voucher program.

Document the ability or present a plan for developing the ability of the State to collect and report all necessary data on costs and outcomes to SAMHSA (see Appendix C for more information about data collection and reporting to monitor costs and outcomes).

Provide a detailed three-year data collection and implementation plan identifying key tasks/milestones, target dates, role and responsibilities, in Appendix 6 of the application.

Describe the process the State will use to regularly monitor implementation of the voucher program (including costs and outcomes) and make adjustments to the program (including the introduction of evidence-based practices) in order to achieve the intended outcomes in the most cost-effective manner. Specify how the State will create incentives for positive outcomes (*e.g.*, adjusting provider eligibility reimbursement based on such outcomes). The extent to which evidence supports abstinence from substance use is of the utmost importance in assessing provider performance.

Describe how the State will maintain direct and indirect costs of administration of the program to as low of a percentage of total expenditures as possible, preferably no more than 15% of total expenditures. Include a specific percentage of the total grant award that is intended to cover administrative costs, as defined in Appendix B.

Describe how the State will manage the program on the basis of reasonable costs. Include a justification if the applicant proposes to deviate from the cost ranges outlined in Appendix G.

2.4. Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

- Information provided must be sufficient for review.
- Text must be legible.
- Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
- Text in the Project Narrative cannot exceed six (6) lines per vertical inch.
- Paper must be white paper, 8.5 by 11.0 inches in size.
- To ensure equity among applications, the amount of space allowed for the Project Narrative (Sections A–D) cannot be exceeded.
- Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and by adhering to the page limit of 35 pages for the Project Narrative (Sections A–D).
- Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs, and footnotes) cannot exceed 58.5 square inches, multiplied by the page limit of 35 pages. This number represents the full page, less margins, multiplied by the total number of allowable pages.
- Space will be measured on the physical page. In determining compliance, space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative.
- The page limit for Appendices 1 through 7 cannot exceed 50 total pages (excluding data collection instruments and interview protocols).

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

- Pages should be typed single-spaced with one column per page.
- Pages should not be printed on both sides.
- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

3. Submission Dates and Times

The application must be received by June 4, 2004. Applications received after this date must have a proof-of-mailing date from the carrier dated at least one (1) week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

Applicants will be notified by postal mail that the application has been received.

Applications not received by the application deadline or postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review

Because eligibility for the ATR Grants is limited to the Chief Executive of the States, applicants for the ATR Grants Program are not required to comply with the requirements of Executive Order (EO) 12372.

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: Office of Management and Budget (OMB) Circular A–21.
- State, Local Governments and Indian Tribal Governments: OMB Circular A–87.
- Nonprofit Organizations: OMB Circular A–122.
- Appendix E Hospitals: 45 Code of Federal Regulations (CFR) Part 74.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Office of Program Services, Review Branch, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include the title of this program (Access to Recovery—Grants) and funding announcement number (TI 04–009) on the face page of the

application. If a phone number is needed for delivery, use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and two copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

Use a recognized commercial or governmental carrier. Hand-carried applications will not be accepted. Fax or e-mail applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Applications will be reviewed and scored using specific evaluation criteria.

The Project Narrative (Sections A–D), Supporting Documentation (Sections E–G), and Appendices 1–7 will be considered by reviewers in assessing the application.

A Peer Review Committee will assign a point value to the application for each evaluation criterion.

The number following each heading in the listing of evaluation criteria is the maximum number of points a review committee may assign to that section of the Project Narrative. Statements within each criterion are provided to invite the attention of applicants and reviewers to important areas within the criterion and are not individually scored.

Reviewers also will look for evidence of cultural competence in each section of the Project Narrative. The score received for each evaluation criterion will be based in part on how well cultural competence is addressed in the relevant sections of the Project Narrative.

The following evaluation criteria will be used by the Peer Review Committee:

• *Evaluation Criterion 1:* Extent to Which Proposed Project Meets ATR Goals (30 points).

Has the applicant provided feasible and timely plans to:

• Ensure voucher recipients have a genuine, free and independent choice among eligible clinical treatment and recovery support service options?

• Enable providers previously unable to compete effectively for Federal funds to participate in the Access to Recovery program (including some faith-based and community providers) and ensuring that faith-based organizations otherwise eligible to participate in the program are not discriminated against on the basis of religious character or affiliation?

• Increase capacity over the period of the voucher program, particularly for recovery support services?

• Monitor the operation and the effectiveness of the voucher program in their jurisdiction through the timely reporting of data?

• *Evaluation Criterion 2:* Proposed Approach (20 points).

• Has the applicant proposed a feasible, effective approach to developing a substance abuse voucher program that meets all Federal requirements described in Section 1 and addresses all instructions provided for completing the Project Narrative?

• *Evaluation Criterion 3:* Management, Staffing and Controlling Costs (25 points).

• Has the applicant proposed effective plans to manage the voucher program?

• Has the applicant proposed a method for managing provider performance through both its process of determining provider eligibility and its monitoring/oversight process?

• Have key staff been designated? Do they have the necessary skills, qualifications and experience to administer and manage the program?

• Has the applicant proposed a feasible, effective plan that minimizes the amount of funds used to cover both direct and indirect costs of administering the program?

• Has the applicant proposed a feasible, effective plan for managing the program on the basis of reasonable costs?

• Has the applicant proposed a feasible, effective plan for providing incentives to eligible providers with superior outcomes, particularly abstinence?

• Has the applicant proposed an effective strategy to adjust the program to achieve intended outcomes?

• Has the applicant proposed abstinence from substance use as the critically most important outcome to assess provider performance?

• Has the applicant demonstrated that resources will be appropriately allocated throughout the year and that the State will take effective steps to ensure quality of care; prevent waste, fraud and abuse; and prevent supplantation of funds?

• *Evaluation Criterion 4:* Readiness To Implement Voucher Program (15 points).

• Has the applicant demonstrated that the proposed voucher program can be fully operational in an appropriate timeframe?

• Are all participating organizations at the administrative and services levels ready and/or able to fulfill their roles in this program?

• Has the applicant adequately anticipated potential operational problems and proposed feasible solutions to them?

• Has the applicant demonstrated that an operational information management system is in place?

• Is the information management system capable of tracking outcomes and costs as described in Appendices C and G?

• *Evaluation Criterion 5:* Need for a Voucher Program (10 points).

• Has the applicant clearly documented the need for a voucher program and described the current substance clinical treatment and recovery support services system, using the instructions provided for Section A of the Project Narrative?

Note: Although the budget for the proposed project is not a review criterion, the Peer Review Committee will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review, Selection, and Award Process and Criteria

SAMHSA applications for this program are peer-reviewed according to the review criteria listed above. For those programs with an individual award of over $100,000, the Center for Substance Abuse Treatment National Advisory Council also must review applications.

Decisions to fund a grant are based on:

• Strengths and weaknesses of the application as identified by the Peer Review Committee and approved by the Center for Substance Abuse Treatment National Advisory Council.

• Availability of funds.

• Balance among the geographic regions of the United States, different models for implementing the voucher programs (see Program Requirements, in Section I.), and the use of effective approaches to address those with special needs (*e.g.*, homeless populations, people with co-occurring disorders, people living in rural areas, etc.).

• Evidence that funds will be distributed through a voucher mechanism that guarantees clients genuine, free, and independent choice among eligible clinical treatment and recovery support providers, among them at least one provider to which the client has no religious objection.

• Evidence that the applicant has addressed the standards for grantees outlined in Appendix C.

• Evidence the applicant will increase capacity for recovery support services.

In the event of a tie among applicant scores, the following method will be

used to break the tie: Scores on the criterion with the highest possible point value will be compared (Extent to Which Proposed Project Meets ATR Goals—30 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be compared, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After the application has been reviewed, applicants will receive a letter from SAMHSA through the postal mail that describes the general results of the review, including the score the application received.

If approved for funding, an applicant will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If not funded, applicants may re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

- Applicants must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site. For the SAMHSA web page, please use the following: *http://www.samhsa.gov/grants/2004/useful_info.aps*.
- Depending on the nature of the specific funding opportunity and/or the review of the proposed project itself, additional terms and conditions may be negotiated with the grantee prior to grant award. These may include, for example:
- Actions required to be in compliance with human subjects requirements;
- Requirements relating to participation in a cross-site evaluation; or
- Requirements to address problems identified in review of the application.
- Applicants will be held accountable for the information provided in the application relating to the capacity expansion proposed in the application. SAMHSA program officials will consider progress in meeting goals and objectives, as well as failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

3. Reporting Requirements

3.1 Progress and Financial Reports

On a quarterly basis, ATR Grantees must report financial and outcome data to SAMHSA. Financial data will monitor costs and ensure that funds are being used for appropriate and intended purposes. Outcome data will measure the success of clinical treatment and recovery support services and ultimately measure the success of the voucher program. SAMHSA will obtain OMB approval for the various reporting requirements and final requirements will be available only upon receipt of OMB approval.

By design, outcome data are consistent with performance domains that SAMHSA will implement to assess the accountability and performance of its discretionary and formula grant programs. In addition, these same will be used by SAMHSA to meet the reporting requirements of the Government Performance and Results Act (GPRA).

GPRA mandates accountability and performance-based management by Federal agencies, focusing on results or outcomes in evaluating the effectiveness of Federal activities and on measuring progress toward achieving national goals and objectives. All SAMHSA grantees must comply with GPRA data collection and reporting requirements.

ATR Grantees will be required to report data in seven specific domains, as follows:

- Abstinence from Drug/Alcohol Use.
- Employment/Education.
- Crime and Criminal Justice.
- Family and Living Conditions.
- Social Support.
- Service Access/Capacity.
- Retention in Clinical Treatment and/or Recover Support Services.

Data expectations for each domain are provided in Appendix C. The grantee's ability to demonstrate improvement in the domains listed above, particularly abstinence, will be a factor in determining grantee funding levels in years occurring after year one of the grant.

Applicants should be aware that SAMHSA may conduct a cross-site evaluation of the ATR program. If SAMHSA does conduct a cross-site evaluation, grantees will be required to provide performance data to the evaluator as well as to SAMHSA. In addition, it is possible the evaluation design may necessitate changes in the required data elements and/or timing of data collection or reporting. Grantees will be required to comply with any changes in data collection requirements.

3.2 Publications

If funded under this program, an applicant is required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded grant project that are accepted for publication.

In addition, SAMHSA requests that grantees:

- Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.
- Include acknowledgment of the SAMHSA grant program as the source of funding for the project.
- Include a disclaimer stating the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

For questions on program issues, contact: Andrea Kopstein, Ph.D., M.P.H., SAMHSA/CSAT, 5600 Fishers Lane, Rockwall II, Suite 7–40, Rockville, MD 20857, Phone: (301) 443–3491, Fax: (301) 443–3543, E-Mail: *akopstei@samhsa.gov*.

For questions on grants management issues, contact: Kathleen Sample, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, Phone: (301) 443–9667, Fax: (301) 443–6468, E-mail: *ksample@samhsa.gov.*

VIII. Other Information

1. SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

Applicants must describe their procedures relating to Confidentiality,

Participant Protection and the Protection of Human Subjects Regulations in Section H of the application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of the application may result in the delay of funding.

Confidentiality and Participant Protection:

All applicants *must* address each of the following elements relating to confidentiality and participant protection. The application must document how these requirements will be addressed or why they are not applicable.

Protect Clients and Staff From Potential Risks

- Identify and describe any foreseeable physical, medical, psychological, social, legal, or other risks or adverse affects.
- Discuss risks that are due either to participation in the project itself or to the evaluation activities.
- Describe the procedures that will be followed to minimize or protect participants against potential risks, including risks to confidentiality.
- Identify plans to provide help if there are adverse effects to participants.
- Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If other, alternative beneficial treatments will not be used, provide the reasons for not using them.

Fair Selection of Participants

- Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other groups.
- Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, or others who are likely to be vulnerable to HIV/AIDS.
- Explain the reasons for *including or excluding* participants.
- Explain how participants will be recruited and selected. Identify who will select participants.

Absence of Coercion

- Explain if client participation in the project is voluntary or required. Identify possible reasons why it may be required, for example, if court orders may require people to participate in this program.
- If the project plans to pay clients, state how clients will be awarded money or gifts.
- State how volunteer participants will be told that they may receive services even if they do not participate in the project.
- Explain how the project will ensure that a client receives a genuine and independent choice among eligible clinical treatment and recovery support services providers, even if required to participate in the program, for example, through a court order.
- Explain how the project will ensure that a client will be guaranteed the choice of an alternative service provider to which the client has no religious objection.

Data Collection

- Identify from whom data will be collected (*e.g.,* from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.,* school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.
- Identify what type of specimens (*e.g.,* urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.
- Provide in Appendix 2, ''Data Collection Instruments/Interview Protocols,'' copies of *all* available data collection instruments and interview protocols that the project plans to use.

Privacy and Confidentiality:

- Explain how privacy and confidentiality will be ensured. Include who will collect data and how it will be collected.
- Describe:
- How data collection instruments will be used.
- Where data will be stored.
- Who will or will not have access to information.
- How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

Adequate Consent Procedures:

- List what information will be given to clients who participate in the project, particularly information regarding the genuine and independent choice clients have among eligible providers. Include the type and purpose of their participation. Notice given to clients must, at a minimum, include:
- The client's right to a genuine, free, and independent choice among eligible providers, that includes the client's right to an alternative provider to which the client has no religious objection.
- A description of the data to be collected, how the data will be used, and how the data will be kept private.
- The client's right to leave the project at any time.
- Possible risks from participation in the project.
- Plans to protect clients from these risks.
- Explain how, if the client's participation in the voucher program is not voluntary (*e.g.,* is by court order), the client will still be provided genuine, free, and independent choice among eligible providers.
- Explain how consent will be elicited for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, *written* informed consent is necessary.

- Indicate if informed consent will be requested from participants or, in the case of minor children, from their parents or legal guardians. Describe how the consent will be documented. For example: Will consent forms be read? Will prospective participants be questioned to be sure they understand the forms? Will they be given copies of what they sign?
- Include sample consent forms in Appendix 3, ''Sample Consent Forms.'' If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases the project or its agents from liability for negligence.

- Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data.
- Additionally, if other consents will be used in the project (*e.g.,* consents to release information to others or gather information from others), provide a description of these consents. Will individuals who do not consent to

having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

Risk/Benefit Discussion:

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Applicants for the ATR Grants are not required to address Protection of Human Subjects Regulations (45 CFR Part 46). However, SAMHSA may choose in the future to conduct a cross-site evaluation of the ATR Grants. Such an evaluation could require grantees to comply with the Protection of Human Subjects Regulations, depending on the evaluation design. If SAMHSA does conduct a study that requires grantee compliance with the Protection of Human Subjects Regulations, SAMHSA will assist grantees in obtaining Institutional Review Board (IRB) approval for their projects.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov.* Applicants may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

Appendix A: Comprehensive Array of Clinical Treatment and Recovery Support Services

Overview

Research has established that there are many paths to recovery from alcohol and drug problems. Indeed, many resolve their alcohol and drug problems naturally, without any outside intervention. Others recover with the support of self-help groups such as Alcoholics Anonymous, and/or the faith community. Still others have found recovery through formal clinical treatment interventions. A variety of factors can influence which of these paths is taken successfully. For example, individuals with moderate problems and social support/stability are more apt to recover naturally or with minimal interventions. In contrast, people who seek treatment tend to have more serious problems.

To achieve the best outcomes at the lowest cost, SAMHSA encourages States to provide access to a comprehensive array of clinical treatment and recovery support services as described below. Both components—clinical treatment services and recovery support services—are appropriate for many, if not all, individuals who meet the DSM–IV diagnostic criteria for substance dependence. However, not all services and/or interventions are needed by every individual in treatment for or in recovery from substance dependence. Those who meet the diagnostic criteria for substance abuse may require a less comprehensive range of services. In addition, the array of services described below need not be provided by a single entity but can be provided by a consortium of addiction treatment, health, and human service providers.

This array is not specific to any particular philosophy of clinical treatment and recovery, modality, or setting. It is a generic framework within which potential applicants can conceptualize service arrays, service capabilities, and appropriate managerial and administrative processes, including evaluation.

Methods of implementing the components of this array, the staff who deliver each service, the manner and setting in which different services are delivered, etc., should be based on individual assessment and level of care determination that considers (1) the needs of the individual; (2) the extent to which there are clinical treatment services, recovery support services, health, human services, housing, criminal justice supervision, and labor training alternatives in the jurisdiction of authority; and (3) the extent of available resources and agencies linked through coordinated case management.

In many cases, it will be desirable to provide various components of the array simultaneously, with the emphasis changing throughout the clinical treatment and recovery process. For example, in the earlier, acute phase of clinical treatment, heavier emphasis may be placed on clinical treatment services; the emphasis may switch toward recovery support as individuals move through rehabilitation and enter a maintenance phase of clinical treatment and recovery. In some cases, recovery support services alone will suffice.

Examples of Clinical Treatment and Recovery Support Services

Clinical treatment services are provided by individuals who are licensed, certified, or otherwise credentialed to provide clinical treatment services in the State, often in settings that address specific treatment needs.

Recovery support services are typically provided by paid staff or volunteers familiar with how their communities can support people seeking to live free of alcohol and drugs, and are often peers of those seeking recovery.

Such services can include:

- Screening/assessment
- Brief intervention
- Treatment planning
- Detoxification
- Medical care
- Substance abuse education
- Individual counseling
- Group counseling
- Residential services
- Pharmacological interventions
- Co-occurring treatment services
- Family/marital counseling
- Family services, including marriage education, and parenting and child development services
- Pre-employment counseling
- Case management
- Relapse prevention
- Continuing care (including face-to-face and telephone-based continuing care counseling)
- Alcohol/drug testing
- Outreach
- Individual services coordination, providing linkages with other services (legal services, TANF, social services, food stamps, *etc.*)
- Recovery coaching (including stage-appropriate recovery education, assistance in recovery management, telephone monitoring, *etc.*)
- Family support and child care
- Transportation to and from treatment, recovery support activities, employment, *etc.*
- Supportive transitional drug-free housing services
- Self-help and support groups, such as 12-step groups, SMART Recovery, Women for Sobriety, *etc.*
- Spiritual support
- Employment coaching

Appendix B: Services Included as Administrative Expenses

- Eligibility determinations for clinical treatment and recovery services providers and for which services in the comprehensive array of clinical treatment and recovery support services will be included in the voucher reimbursement system.
- Management of a system for client eligibility determination and assessment for appropriate level of care.
- Identifying, screening, and determining eligibility for clinical treatment and recovery support services providers.
- Fiscal/cost accounting mechanisms that can track voucher implementation.
- Management of information systems for tracking outcomes and costs, including the costs of data collection and reporting.
- Development of quality improvement activities, including technical assistance and training to attract, develop, and sustain new clinical treatment and recovery support providers.
- Marketing of vouchers to client and provider organizations.
- Oversight of standards and fraud and abuse issues.

Appendix C: Standards for the Access to Recovery Program

States will be expected to administer the Access to Recovery (ATR) program in a manner consistent with good management practices. States will have flexibility in establishing standards appropriate and feasible for their service delivery system and target population. However, once States and Tribes have established standards for participating provider organizations, they are expected to enforce such standards.

In its application, the State should demonstrate how it intends to:

1. Ensure that clients receive a genuine, free, and independent choice among assessment, placement, clinical treatment, and recovery support services.

a. For purposes of this program, choice is defined as a client being able to select among at least two providers which are qualified to provide the services needed by the client, among them at least one provider to which the client has no religious objection.

2. Ensure that clients receive a clinical assessment and a level of care determination

from a qualified person and/or provider organization.

a. States should describe the qualifications they require of individuals and/or providers that perform assessments and level of care determinations.

b. States should describe steps they will take to prevent potential conflicts of interest among practitioners and/or provider organizations conducting screening, assessment and referral to clinical treatment and/or recovery support services.

3. Ensure that clients receive appropriate services from clinical treatment and recovery support programs.

a. To be eligible for voucher reimbursement, clinical treatment and recovery support programs should meet standards that are required by the State for other providers that provide the same type of services (*e.g.* residential, outpatient, family support services, *etc.*).

b. Each State should document the eligibility requirements and program standards the State intends to use for each of the services proposed to be reimbursed under the voucher program. Eligibility requirements and standards should be documented for services across the entire array of recovery, as described in Appendix A, including eligibility requirements and standards for clinical treatment services and recovery support services. (For example, the State should document its eligibility requirements and standards for specific types of providers such as residential, outpatient, methadone, recovery support services, etc.) In the case of services for which no standards currently exist, the State must describe the process to be used to ensure that individuals receive appropriate services in safe settings from appropriate individuals. States must also describe how they intend to monitor compliance with these standards and/or processes.

4. Expand the range of clinical treatment and recovery support services providers that meet appropriate standards.

a. States should describe how they intend to provide technical assistance and training to providers of clinical treatment and recovery services as described in Appendix A in order for them to meet State standards.

5. Ensure that outcome and financial data is reported in a timely manner.

a. States should describe how they intend to ensure that outcome data are reported in the following seven domains:

1. Abstinence From Drug and Alcohol Use

1.1 During the past 30 days, how many days has the client used the following:

		Number of days
a.	Any alcohol	
b1. ..	Alcohol to intoxication (5+ drinks in one setting)	
b2. ..	Alcohol to intoxication (4 or fewer drinks and felt high)	
c.	Illegal drugs	

1.2 During the past 30 days, how many days has the client used any of the following:

		Number of days
a.	Cocaine/crack	
b.	Marijuana/Hashish	
c.	Heroin or other opiates	
d.	Hallucinogens/psychedelics	
e.	Methamphetamine or other amphetamines	
f.	Benzodiazepines	
g.	Barbiturates	
h.	Ecstasy and other club drugs	
i.	Ketamine	
j.	Inhalents	

2. Employment/Education

2.1 Is the client currently employed?

- Full time—Working 35 hours or more each week; includes members of the uniformed services
- Part time—Working fewer than 35 hours each week
- Unemployed, looking for work during the past 30 days, or on lay off from a job
- Not in labor force—Not looking for work during the past 30 days or a homemaker, student, disables, retired, or an inmate of an institution

2.2 For those not in the labor force, what is their status?

- Student enrolled in a school or job training program
- Homemaker
- Retired
- Disabled
- Inmate of an institution that restrains a person, otherwise able, from the workforce

2.3 Is the client currently enrolled in school or a job training program?

- Not enrolled
- Enrolled, full time
- Enrolled, part time
- Other (specify) _____

3. Crime and Criminal Justice

3.1 In the past 30 days, how many times has the client been arrested?

If no arrests, go to item 4

_____times

3.2 In the past 30 days, how many times has the client been arrested for alcohol or illicit drug offenses?

_____times

3.3 In the past 30 days, how many nights has the client spent in jail/prison?

_____times

4. Family and Living Conditions

4.1 In the past 30 days, where has the client been living most of the time?

○ Homeless—No fixed address; includes shelters

○ Dependent living—Dependent children and adults living in a supervised setting such as a halfway house or group home

○ Independent living (including on own, self-supported, and non-supervised group homes)

4.2 Does the client have children?

○ No (go to section 5) ○ Yes

2.a How many children does the client have? _____

2.b Are the client's children living with someone else due to a child protection court order?

○ No (go to section 5) ○ Yes

2.c If yes, how many of the client's children are living with someone else due to a child protection court order? _____

2.d For how many children has the client lost parental rights?

(The client's parental rights were terminated.)

_____

5. Social Support of Recovery

5.1 In the past 30 days, did the client attend any voluntary self-help groups?

(*i.e.*, did the client participate in a non-professional, peer-operated organization devoted to helping individuals who have addiction related problems such as: Alcoholics Anonymous, Narcotics Anonymous, Oxford House, Secular Organization for Sobriety, Women for Sobriety, *etc.*)

○ No ○ Yes

5.2 In the past 30 days, did the client attend any religious/faith affiliated recovery or self-help groups?

○ No ○ Yes

5.3 In the past 30 days, did the client attend meetings of organizations that support recovery other than the organizations described above?

○ No ○ Yes

5.4 In the past 30 days, did the client have interaction with family and/or friends that are supportive of recovery?

○ No ○ Yes

6. Access/Capacity

6.1 How many people received vouchers for clinical treatment and recovery support services?

_____

6.2 What is the total number of vouchers issued for clinical treatment and recovery support services?

_____

6.3 How many providers of clinical treatment and recovery support service providers were designated as participating providers in the ATR program?

_____

7. Retention

7.1 Identify the number of service sessions/days provided to each client during the past 30 days.

Field	Sessions/days
Clinical Treatment and Recovery Support Services:	
7.1.1. Screening/assessment	
7.1.2. Brief Intervention	
7.1.3. Treatment planning	
7.1.4. Detoxification	
7.1.5. Medical care	
7.1.6. Substance abuse education	

Field	Sessions/ days
7.1.7. Individual counseling	
7.1.8. Group counseling	
7.1.9. Family/marriage counseling	
7.1.10. Pharmacological interventions	
7.1.11. Co-occurring treatment services	
7.1.12. Family services, including marriage education, and parenting and child development services	
7.1.13. Pre-employment counseling	
7.1.14. Case management	
7.1.15. Relapse prevention	
7.1.16. Continuing care (including face-to-face and telephone-based continuing care counseling)	
7.1.17. Alcohol/Drug testing	
7.1.18. Outreach	
7.1.19. Individual services coordination, providing linkages with other services (legal services, TANF, social services, food stamps, *etc.*)	
7.1.20. Recovery coaching (including stage-appropriate recovery education, assistance in recovery management, telephone monitoring, *etc.*)	
7.1.21. Family support and childcare	
7.1.22. Transportation to and from clinical treatment, recovery support activities, employment, *etc.*	
7.1.23. Supportive transitional drug-free housing services	
7.1.24. Self-help and support groups, such as 12-step groups, SMART Recovery, Women for Sobriety, *etc.*	
7.1.25. Spiritual support	
7.1.26. Employment coaching	
7.1.27. Other	

7.2 Length of stay (described by date of first individual or group addiction counseling service to date of last contact for addiction service)

2.a What is the date (month, day, and year) that the client last received clinical treatment or paid recovery support services?

2.b What is the date of discharge? (Specify the month, day, and year the client was formally discharged from the treatment provider, service, or program. This date may be the same as the date of last contact.)

2.c What is the reason for discharge?

○ Treatment completed.
○ Transferred to another provider.
○ Administrative discharge.
○ Incarcerated.
○ Death.
○ Lost contact (dropped out).

Notes regarding outcome data in the 7 domains:

(1) Data on drug/alcohol use, employment/education, crime and criminal justice involvement, family and living conditions, and social support shall be collected at the time of entry to, exit from, and at least every two months during an episode of care. This data will be collected by the providers and given to the States. In the case of brief interventions, only drug/alcohol use should be reported. Please note that the substance use domain is framed in terms of rates of frequency of use; however, the primary outcome measure for this program is abstinence from substance use, and successful completion of an episode of care should be established by randomly collected samples that are free of these substances.

(2) It will be necessary for States to uniquely identify clients through the course of a clinical treatment/recovery support episode of care and provide basic demographic information. Client IDs should be client specific and should also allow for clients to be tracked through multiple episodes of care.

(3) For the purposes of the voucher program, an episode of care means the period of time from entry to exit from a paid service, whether it be a clinical treatment service or a recovery support service.

(4) Providers will collect data on access/capacity and retention at entry to, exit from, and at least every two months during an episode of care. This data will be given to the States. The retention domain does not apply in the case of brief interventions; however, for brief interventions the client should report completion.

(5) The grantee's ability to demonstrate improvement in the above domains will be a factor in determining funding levels in years after year 1 of the grant.

(6) States should propose a plan for collecting 6-month post-exit data from a paid service on a sample basis by the third year of the grant.

b. States should describe how they intend to ensure financial data is reported as follows:

1. Information should be provided on the type of service, date of service, and the days, partial days, or hour(s) of service provided.

2. Each State should submit data on reimbursement rate per service (clinical treatment or recovery support service) per day, partial day, or hour (s) for the voucher program.

c. States should describe how they intend to ensure data is reported to SAMHSA within the following time frames:

1. Outcome measures and financial data will be reported to SAMHSA quarterly, within 30 days from the end of the quarter.

2. States will take action necessary to ensure that data are valid and reliable, and are submitted in a timely manner.

Appendix D: Screening, Assessment, and Level of Care Determination

Screening

The purpose of screening is to quickly and cost-effectively rule out people without substance abuse problems and to identify the need for specialized substance abuse treatment.

The basic questions asked in the screening process are: (1) Is a substance abuse problem present; and (2) does it require specialized care. Although we often think individuals seeking clinical treatment have been previously screened, some individuals seek specialized treatment directly.

If screening suggests an individual probably has a problem likely to require specialized treatment, the next step in the sequence may be thought of as the problem assessment.

Assessment

Assessment is the systematic process of interaction with an individual to observe, elicit, and subsequently assemble the relevant information required to manage his or her problems, both immediately and for the foreseeable future. An assessment gauges which of the available clinical treatment and recovery services options are likely to be most appropriate for the individual being assessed. Hence, assessment must occur prior to any referral of the individual to a particular kind of clinical treatment and/or recovery support service. When the same general approach is applied to all or most clients, assessment may have little impact.

Purpose of Assessment

• To characterize a problem—

Substance abuse problems differ from person to person, often both in degree and in kind. What should emerge from an assessment is a detailed picture of the particular kind of substance abuse problem manifested by a particular individual at a particular point in time.

In the absence of a clear, unambiguous picture at initial contact, appropriate decisions regarding care for the present and future may be difficult.

• To characterize an individual—

Substance abuse problems do not occur in a vacuum. Individuals who manifest them are at least as different from one another as they are from people without substance use disorders. Some of these problems may be the result of abuse of drugs or alcohol; some may result in using drugs or alcohol; others may be independent problems. All are important in themselves, requiring assessment, (and often attention), in clinical treatment and/or recovery support programs. Individual characteristics may affect a person's acceptance (and, in consequence, the eventual outcome) of various forms of clinical treatment and/or recovery support services. Thus, detailed knowledge of individual characteristics can help provide the client with a list of appropriate clinical treatment and/or recovery support service options.

• To identify appropriate clinical treatment and/or recovery support service options—

Assessment prior to clinical treatment and/or recovery support forms the basis on which individuals are provided a list of clinical treatment and/or recovery support options appropriate to their needs.

Additional information on the individual will need to be gathered by program staff following the selection of a clinical treatment and/or recovery support program to plan the individual's ongoing course of care.

Level of Care Determination

Level of care determination is achieved through the client's selection of clinical treatment and recovery support alternatives that are both available and most likely to facilitate a positive outcome in a particular individual. Level of Care Determination:

- Focuses on matching clinical treatment and/or recovery support services to individual needs within the framework of client choice
- Defines expectations for each stage of care:
- Acute intervention, including detoxification.
- Rehabilitation.
- Maintenance and relapse prevention.

While choice among the various clinical treatment and/or recovery support services options resides with the individual, the assessor is responsible to ensure that the individual is fully conversant with all of the therapeutic alternatives available from eligible providers.

The Level of Care Determination Process

Level of Care determination is a complex matter, requiring consideration of individuals and their substance abuse problems, and knowledge of available clinical treatment and recovery support services by both the assessor and the client.

The following general descriptors of clinical treatment and recovery support services represent the kinds of information most useful to help identify appropriate levels of care and clinical treatment and/or recovery support service options for individuals with substance abuse problems. When presented to clients in every-day language, the following information can assist clients in making an informed choice of the clinical treatment and/or recovery support service option(s) that may meet their needs:

- Philosophy and orientation of the program (*e.g.*, medical model, social model, spiritual model, *etc.*);
- Stage of substance abuse problem or recovery at which the clinical treatment and/or recovery support service is directed (*e.g.*, detoxification, rehabilitation, maintenance);
- Setting of the program (*e.g.*, inpatient, outpatient, residential) and staffing; and
- Therapeutic approach/type of intervention.

Additional Resources for Screening, Assessment, and Level of Care Determination

I. Resources To Implement Screening

In health care, screening is a process to identify people who have, or are at risk for, an illness or disorder. The purpose of screening is to target persons for clinical treatment and/or recovery support services, thus reducing the long-term morbidity and mortality related to the condition. In addition, by intervening early and raising the individual's level of concern about risk factors and substance-related problems, screening for drug and alcohol problems in community settings can reduce subsequent use.

Two types of screening procedures are typically used. The first includes self-report questionnaires and structured interviews; the second, clinical laboratory tests that can detect biochemical changes associated with excessive alcohol consumption or illicit drug use.

A variety of screening instruments are available. The majority of studies and implementation efforts have focused on screening for alcohol problems. The CAGE and AUDIT are the most commonly used screening tools. The DAST has also been used in conjunction with the AUDIT in several projects, where there has been an effort to implement this approach for persons with or at risk for a substance use disorder. Several new instruments have been developed, but not yet rigorously tested, to assess harmful use of either alcohol or drugs (*e.g.*, the CAGE–D, the ASSIST, the TCUDS, the GAIN–QS, the PDES).

Brown, RL and Rounds LA. 1995. Conjoint screening questionnaires for alcohol and other drug abuse: criterion validity in a primary care practice. *Wisconsin Medical Journal,* 94, 135–140.

Brown R, Leonard T, Saunders LA, *et al.* (1997). A two-item screening test for alcohol and other drug problems. *Journal of Family Practice,* 44, 151–160.

A bibliography with descriptions and evaluations of various interview, questionnaire, and laboratory test screening approaches is available from Project Cork.

Project Cork. 2002. *CORK Bibliography: Screening Tests.* 2001–2002, 58 Citations. *http://www.projectcork.org/bibliographies/data/Bibliography_Screening_Tests.html*

Screening instruments have been developed or modified for use with different target populations, notably adolescents, offenders within the criminal justice system, welfare recipients, women, and the elderly. Several have been translated into other languages and have been evaluated for cultural sensitivity. Again, SAMHSA is not requiring a specific instrument or protocol, but choice of instruments or laboratory tests must be justified.

It is well recognized that screening instruments used with adolescents must be developmentally appropriate, valid and reliable, and practical for use in busy medical settings. One example of a brief substance abuse screening instrument recently developed specifically for use with adolescents is the CRAFFT test.

Knight JR, Sherritt L, Shrier LA, Harris SK, Chang G. 2002. Validity of the CRAFFT substance abuse screening test among adolescent clinic patients. *Arch Pediatr Adolesc Med.* 156(6): 607–14.

Additional screening tests and procedures targeted at *adolescents,* including the PDES and the GAIN–QS, are described in these publications:

Winters KC. 1992. Development of an adolescent alcohol and other drug abuse screening scale: Personal Experience Screening Questionnaire. *Addict Behav.* 17(5): 479–90.

Winters KC. 1999. *Screening and Assessing Adolescents For Substance Use Disorders.* Treatment Improvement Protocol (TIP) Series 31 DHHS Publication No. (SMA) 99–3282.

Winters KC. 1999. *Treatment of Adolescents With Substance Use Disorders.* Treatment Improvement Protocol (TIP) Series 32. DHHS Publication No. (SMA) 99–3283.

Winters KC. 2001. Assessing adolescent substance use problems and other areas of functioning: State of the art. In: PM Monti, SM. Colby, and TA. O'Leary (eds). *Adolescents, Alcohol, and Substance Abuse: Reaching Teens Through Brief Interventions.* New York, Guilford Publications, Inc., pp. 80–108.

Dennis ML 1998. *Global Appraisal of Individual Needs (GAIN) manual: Administration, Scoring and Interpretation,* (Prepared with funds from CSAT TI 11320). Bloomington IL: Lighthouse Publications. *http://www.chestnut.org/LI/GAIN/GAIN_QS/index.html*

Martino S, Grilo CM, and Fehon DC 2000. Development of the drug abuse screening test for adolescents (DAST–A). *Addictive Behaviors* 25(1): 57–70.

Screening tests and procedures targeted at the *elderly* are described in these publications:

Blow, F.C. Consensus Panel Chair. 1998. *Substance Abuse Among Older Adults.* Treatment Improvement Protocol (TIP) Series 26. DHHS Publication No. (SMA) 98–3179.

Blow FC and Barry KL. 1999–2000. Advances in alcohol screening and brief intervention with older adults. Advances in Medical Psychotherapy. 10:107–124.

Screening tests and procedures targeted at persons in the criminal justice system are described in these publications:

Inciardi JA Consensus Panel Chair 1994. *Screening and Assessment for Alcohol and Other Drug Abuse Among Adults in the Criminal Justice System.* Treatment Improvement Protocol (TIP) Series 7. DHHS Publication No. (SMA) 94B2076.

Peters, RH, Greenbaum, PE, Steinberg, ML, Carter, CR, Ortiz, MM, Fry, BC, Valle, SK. 2000. Effectiveness of screening instruments in detecting substance use disorders among prisoners. *Journal Substance Abuse Treatment:* 18(4): 349–58.

Simpson DD. 2001. Core set of TCU forms. Fort Worth: Texas Christian University, Institute of Behavioral Research. *http://www.ibr.tcu.edu.*

Efforts are ongoing to develop methods to better screen people with co-occurring substance use and mental disorders.

II. Assessment Instruments

Substance abuse assessment instruments are designed to determine the precise nature and severity of an individual's problems.

Some instruments are also designed to help pinpoint specific diagnoses. While the results of assessment instruments do not necessarily specify the service needs of clients, the data collected from these instruments can help determine a client's level of care need and, thus, the options of eligible service providers.

- **Adult Assessment Instruments**

Addiction Severity Index (ASI)

ASI is a 30- to 40-minute, interviewer-administered instrument that assesses severity of alcohol and drug problems across several domains. The ASI has been tested extensively and used widely for initial client assessments and to measure client progress and outcomes. The ASI should be administered by trained clinicians.

McLellan, A.T.; Luborsky, L.; O'Brien, C.P.; Woody, G.E. An improved diagnostic instrument for substance abuse patients: The Addiction Severity Index. *J Nerv Ment Dis* 168:26–33, 1980.

and/or

McLellan, A.T.; Kushner, H.; Metzger, D.; Peters F.; *et al.* The fifth edition of the Addiction Severity Index. *J Subst Abuse Treat* 9:199–213, 1992.

Substance Use Disorders Diagnostic Schedule (SUDDS–IV)

''The SUDDS–IV is a comprehensive diagnostic assessment interview providing definitive documentation for substance-specific abuse or dependence diagnoses based on DSM–IV–TR criteria. It also screens for depression and anxiety disorders. In addition to diagnostic documentation, the SUDDS–IV provides valuable information for treatment planning and patient placement.'' (Source: *http://www.evinceassessment.com*)

Harrison, P. & Hoffman, N. (1987). Substance Use Disorders Diagnostic Schedule (SUDDS). St. Paul, MN: Norman G. Hoffman.

Minnesota Multiphasic Personality Inventory (MMPI)

''The Minnesota Multiphasic Personality Inventory (MMPI) is an objective verbal inventory designed as a personality test for the assessment of psychopathology consisting of 550 statements, 16 of which are repeated. The replicated statements were originally included to facilitate the first attempt at scanner scoring. Though they are no longer needed for this purpose, they persist in the inventory.'' (Source: *http://www.cps.nova.edu/~cpphelp/MMPI–2.html*)

Hathaway, S. & McKinley, J. Manual for the Minnesota Multiphasic Personality Inventory. New York: Psychological Corporation; 1951, 1967, 1983.

and/or;

Hathaway, S.; McKinley, J.; Butcher, J.; Dahlstrom, W.; Graham, J.; Tellegen, A.; *et al.*

Minnesota Multiphasic Personality Inventory-2: manual for administration. Minneapolis: University of Minnesota Press; 1989.

The Recovery Attitude and Treatment Evaluator (RAATE)

''The RAATE–CE and QI instruments were designed to assist in placing patients into the appropriate level of care at admission, in making continued stay or transfer decisions during treatment (utilization review), and documenting appropriateness of discharge. Both instruments demonstrate good face and rational-expert content validity.'' (Source: NIAAA)

Mee-Lee, D. An instrument for treatment progress and matching: The Recovery Attitude and Treatment Evaluator (RAATE). *J Subst Abuse Treat* 5:183–186, 1988.

and/or

Mee-Lee, D.; Hoffmann, N.G.; and Smith, M.B. *The Recovery Attitude And Treatment Evaluator Manual.* St. Paul, Minnesota: New Standards, Inc., 1992.

- **Adolescent Assessment Instruments**

Comprehensive Adolescent Severity Inventory (CASI)

CASI measures education, substance use, use of free time, leisure activities, peer relationships, family history and intrafamilial substance use, psychiatric status, and legal history. The CASI also incorporates results from urine drug screens and observations form the assessor. Psychometric studies on the CASI support the instrument's reliability and validity.

Meyers, Kathleen. *Comprehensive Adolescent Severity Inventory (CASI).* Philadelphia, PA : Penn/VA Center for Studies of Addiction, 1996. c. 176 p. [RJ 503.7 M4 1996].

Global Assessment of Individual Needs (GAIN)

Dennis, ML 1998. *Global Appraisal of Individual Needs (GAIN) manual: Administration, Scoring and Interpretation,* (Prepared with funds from CSAT TI 11320). Bloomington IL: Lighthouse Publications. *http://www.chestnut.org/LI/GAIN/GAIN_QS/index.html.*

Winters, KC. 1999. *Screening and Assessing Adolescents For Substance Use Disorders.* Treatment Improvement Protocol (TIP) Series 31 DHHS Publication No. (SMA) 99–3282.

III. Diagnostic Criteria

Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition (DSM–IV)

DSM–IV includes the most widely accepted criteria for diagnosing substance abuse and mental disorders. Based on data collected during an assessment, the DSM criteria for substance use disorders can be used to determine if someone has a ''substance abuse'' or ''substance dependence'' diagnosis. DSM–IV was first published in 1994 by the American Psychiatric Association, Washington, DC.

IV. Level of Care Determination, Continued Stay, and Discharge Criteria

Patient Placement Criteria for the Treatment of Substance-Related Disorders

The American Society of Addiction Medicine (ASAM) published the second edition of its *Patient Placement Criteria for the Treatment of Substance-Related Disorders* (ASAM PPC–2) in 1996. ASAM's PPC–2R presents the criteria for determining which level of services best fits a client's needs. The PPC–2R now has both adult and adolescent criteria and the appropriate criteria should be used for each of these groups.

RAATE

''The RAATE–CE and QI instruments were designed to assist in placing patients into the appropriate level of care at admission, in making continued stay or transfer decisions during treatment (utilization review), and documenting appropriateness of discharge. Both instruments demonstrate good face and rational-expert content validity.'' (Source: NIAAA)

Mee-Lee, D. An instrument for treatment progress and matching: The Recovery Attitude and Treatment Evaluator (RAATE). *J Subst Abuse Treat* 5:183–186, 1988.

and/or

Mee-Lee, D.; Hoffmann, N.G.; and Smith, M.B. *The Recovery Attitude And Treatment Evaluator Manual.* St. Paul, Minnesota: New Standards, Inc., 1992.

Appendix E: Example of How a State Could Implement a Voucher Program

The following is an example of how a State (hypothetically named ''PIB'') could use vouchers for assessment and level of care determination as well as for substance use clinical treatment and recovery support services.

Please note that technical assistance is available to all applicants to assist them in the development and implementation processes. We encourage all applicants to seek such assistance.

1. Outreach and Client Choice

Prior to launching its voucher program, PIB conducted outreach to a wide range of substance abuse service providers—both those involved in clinical treatment and those involved in other recovery support services. PIB explained to the providers that the State's new voucher program would differ from traditional treatment services. Instead of the State choosing a particular treatment for an individual, clients would receive vouchers to redeem at the providers of their choice. PIB encouraged providers to become eligible providers, explaining that the program would be most successful if clients have access to a variety of treatment and recovery service choices.

Before implementation, PIB also conducted significant outreach to clients, prior to implementing its voucher system, to ensure individual clients were aware of how the program would operate, and that the program would give individuals a choice among various eligible service providers. PIB also established a 24-hour, seven-day-a-week telephone line in place (800–FOR–HELP). This number made available a list of eligible assessment, treatment, and recovery service providers (throughout the State) for the voucher treatment system. PIB was committed to providing an administrative process to be used to ensure individuals received appropriate services in safe settings and services delivered by appropriate individuals.

2. Standards, Eligible Providers, Voucher Process, and Incentives

PIB recognized it had to set a minimum level of eligibility criteria and standards for each provider within the clinical treatment and recovery support services network to provide quality treatment services to its citizens. Therefore, in accordance with State administrative procedures, PIB published eligibility criteria and standards and, based on provider response to the standards, created a list of eligible entities to provide assessment and level of care determination as well as treatment and recovery services. Two major eligibility conditions were required of providers: (1) Meeting standards required by PIB for other providers that provide the same type of clinical treatment and recovery support services within the State and (2) agreeing to provide the relevant outcomes and financial data. The list of eligible entities included 10 new providers who had never been funded by the State before, four of which were faith-based providers, three of which were proprietary providers, and three of which were community-based, recovery support organizations.

At the outset of the voucher initiative, PIB developed an eligibility application process and incentives to improve outcomes. As part of the application process, providers agreed to receive 90% of the reimbursement rate for their services; 10% was withheld and set aside to be used to reimburse and incentivize positive client outcomes.

3. The Role of PIB's Information System

A critical component of PIB's voucher program was its electronic information system (EIS). As clients submitted a request for services from the State of PIB, they entered an electronic voucher system. A first task was to establish a client's identity and ascertain whether she or he previously had participated in the voucher program. If a client was new to the voucher system, they received a unique client number and an initial client record was created. Initial contact information included, at a minimum, name, social security number, birth date, and—where possible—substance abuse problem information. The client was then given a voucher for an assessment and a list of various assessment sites. The client was also provided with notice of the right to genuine and independent choice among eligible providers, including the right to an alternative provider to whom the client had no religious objection. After the client redeemed the assessment voucher, the client received a full assessment, involving the administration of an assessment instrument, resulting in the creation of a new case number, a sequence number that essentially counted the client's assessments (if they were re-assessed following an initial assessment) within the voucher system. This allowed level of care determination and subsequent client activity to be associated with particular assessment events.

The entire assessment packet, for use in the development of an interim treatment and recovery plan, was then sent to the provider(s) chosen by the client. When the level of care determination was entered into the EIS system, a summary of the assessment and disposition were made available electronically to the chosen provider. PIB provided detailed requirements for data reporting, including data definitions to be used.

4. How Vouchers Are Issued

In the State of PIB, clients who were determined to be financially eligible for subsidies had 30-day vouchers for an assessment created for them by the State. Once an assessment occurred, the assessor created a treatment/recovery services voucher with an active life of one-year (365 days). PIB specified that creation of a treatment voucher was not a guarantee of payment for services up to the full voucher value. It represented a commitment on the part of the State of PIB to pay for services up to that maximum while funding was available and the client remained eligible. If at any point in the fiscal year funds for that year were exhausted, all subsidies ended for that year, without regard to the existence of vouchers that still retained value. When the next fiscal period began and new money was allocated to the funding pool, vouchers that had not expired and were not fully expended remained chargeable for services, but only for those services rendered after the beginning of the new fiscal period.

Vouchers were created and information about them was forwarded to participating providers as follows:

(1) The staff responsible for the client's assessment determined eligibility and created a computer record of the treatment and/or recovery voucher based on the determined level of need, including client identification, voucher type and value, and effective and expiration dates for the voucher. The vouchers were not available to be charged against until written or electronic notification of client admission to a participating provider's program was received at PIB's State Substance Abuse Authority.

(2) Assessment staff provided the client with a recommendation regarding level of care and a list of the various eligible providers. The client selected a provider and assessment staff determined whether the provider had an opening. If an appropriate opening existed, an appointment was made with the provider. The client was given the date and time of the appointment and directions to the provider, and a voucher packet was sent to the provider. If the client was not prepared to make a provider selection at assessment, the client was given a voucher packet, which included a list of eligible providers and information regarding the client's time-limited voucher eligibility.

(3) Printed notification of the client's voucher eligibility was included in the voucher packet sent to the provider, as part of the 'Voucher Letter'. Another document included in the packet, the ''Voucher Completion Form,'' was provided so the treatment or recovery agency could record the outcome of the placement, including the date the client was admitted, if appropriate. This admission date had to be communicated to the State agency administering the program—either via electronic submission through the PIB Voucher Client System, or by filling out the ''Voucher Completion Form''—before services could be entered against the corresponding treatment voucher. PIB specified that the information returned by the provider *must* include both verification of client admission and date of admission.

(4) Upon receipt of verification of client admission from the provider, the computerized voucher record became available for use by the provider.

5. Invoicing and Payment for Services

PIB specified that payments to providers be calculated on a service-by-service basis, using a standardized rate schedule. PIB specified that 90% of the rate be invoiced when services were delivered, and that the additional 10% be generated following outcomes reporting. In the State of PIB, the services allowable were determined by the particular type of voucher that was issued for the client and by the services offered by the submitting provider. Individual services were restricted to clearly defined minimum and maximum time limits. PIB provided a detailed account of the voucher and service types, rate schedule, incentive payment conditions, and restrictions that were in effect for the voucher program in the State of PIB.

Charges for payment available to providers could be submitted in one of two ways: electronic submission on-line from the provider's facility, or submission at PIB's administrative agency. Invoices for voucher services were generated once a month at the PIB's administrative agency and submitted to PIB for payment. PIB specified that providers could not generate their own invoices; only administrative agency staff could do so. Services performed on or after the start day for the invoice period were not invoiced until the next invoice period.

6. Voucher Closure/Expiration and Subsidy Shortfalls

PIB specified that a voucher was in effect for 365 days from the date of assessment, when client eligibility was determined. If at the end of this period all subsidy funds had not been expended and the client was still in treatment or recovery, a client might—on a case-by-case basis—receive a time extension on the voucher's expiration date. If the client sought another assessment subsequent to the expiration of a previous voucher, voucher eligibility also might be reconsidered on a case-by-case basis. This process, however, required review of the client's circumstances by a designated PIB Utilization Review person/board.

PIB specified that only two circumstances could necessitate the closure of a voucher prior to its 365-day life: (1) Change in the client's residence beyond the State of PIB; and (2) death of the client.

Providers were responsible for notifying the PIB administrative agency when either of the above situations occurred. In addition, providers were required, as part of their eligibility to participate in the PIB voucher program, to communicate discharge/separation information to the PIB administrative agency via the ''Treatment/Recovery Services Discharge Summary'' form, or through the automated Voucher Client System. This information included

outcome information on each client, such as achieving abstinence from substance use. In addition, outcome information became an important part of ''report cards'' issued in the second year of the program.

PIB monitored provider reporting of outcomes information on a monthly basis. At the end of the first six months of the first year, PIB recognized that six providers needed technical assistance to accurately report outcomes information. PIB provided such technical assistance in a timely manner. At the end of the first year, however, four of the six providers were still unable to provide the outcomes information in each of the seven domains. As a result, PIB declared these four providers ineligible for the voucher program for the next year.

Clients could not receive subsidies for the same type of clinical treatment or recovery support service from more than one provider at a time, so separation information was necessary if a client was being re-placed and the new provider was expecting the client to be subsidized with a voucher.

Because the voucher program operated with limited money, PIB told providers it was unlikely that each year's subsidy fund will cover all services provided to all qualified clients. In order to reduce the impact of funding shortfalls to providers, PIB agreed to allocate subsidy funds on a quarterly basis during the fiscal year (July 1 to June 30), one-fourth being made available July 1st, one-fourth added in on October 1st, and so on. If the quarterly allotment was exhausted prior to the end of the quarter service subsidies stopped until the new quarter began and a new allotment was added. At that point services rendered after the beginning of the new quarter could be entered and subsidized. PIB felt that, while this approach to fund allocation might produce a brief period of non-payment at the end of each quarter, it would guarantee that funding was available in all four quarters, and avoid any long, disruptive interruption of subsidies in the last months of the fiscal year.

PIB frequently reviewed its program to ensure clients had genuine, free and independent choice of clinical treatment and/or recovery support providers. It committed to recruiting a broad array of eligible providers, contacting traditional providers, faith-based providers, proprietary providers, and other community organizations. PIB ensured that clients were notified of their right to choose among eligible providers, and it educated assessment staff on the importance of allowing clients to make this choice. PIB also maintained an up-to-date, client friendly information service in order to ensure client choice was always available (*e.g.* a Web site or 24-hour manned help line) with a list of provider organizations and an associated list of available services from the continuum of treatment and recovery. The lists developed by PIB were constantly evolving to incorporate the most accurate information. The list of provider organizations was searchable by category of available services and by location.

Appendix F—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.,* relating to eligibility) may be stated in the specific funding announcement. Please check the entire funding announcement before preparing your application.

☐ Use the PHS 5161–1 application.

☐ Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

☐ Information provided must be sufficient for review.

☐ Text must be legible.

- Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
- Text in the Project Narrative cannot exceed 6 lines per vertical inch.

☐ Paper must be white paper and 8.5 inches by 11.0 inches in size.

☐ To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

- Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.
- Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the total number of allowed pages. This number represents the full page less margins, multiplied by the total number of allowed pages.
- Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

☐ The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in the application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

☐ The 10 application components required for SAMHSA applications should be included. These are:

- Face Page (Standard Form 424, which is in PHS 5161–1).
- Abstract.
- Table of Contents.
- Budget Form (Standard Form 424A, which is in PHS 5161–1).
- Project Narrative and Supporting Documentation.
- Appendices.
- Assurances (Standard Form 424B, which is in PHS 5161–1).
- Certifications (a form within PHS 5161–1).
- Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1).
- Checklist (a form in PHS 5161–1).

☐ Applications should comply with the following requirements:

- Provisions relating to confidentiality, participant protection and the protection of human subjects stated in the specific funding announcement.
- Budgetary limitations as specified in Sections I, II, and IV–5 of the specific funding announcement.
- Documentation of nonprofit status as required in the PHS 5161–1.

☐ Pages should be typed single-spaced with one column per page.

☐ Pages should not have printing on both sides.

☐ Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

☐ Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix G: Managing on the Basis of Reasonable Costs

States are encouraged to manage the program on the basis of reasonable costs. Proposed per person costs for treatment and recovery support services to be provided under this initiative should be included in the application. In cases where it is not possible to include costs that are based on prior experience, the application should include an estimate of the cost of the service, as well as a plan and timeline for developing cost data based on experience.

The following are considered reasonable ranges by treatment or modality:

- Screening/Brief Intervention/Brief Treatment/Outreach/Pretreatment Services—$200 to $1,200.
- Outpatient (Non-Methadone)—$1,000 to $5,000.
- Outpatient (Methadone)—$1,500 to $8,000.
- Residential—$3,000 to $10,000.

If the State deviates from these costs, it should provide a justification for doing so, in order for SAMHSA to determine reasonableness of costs. Reasonable cost is based on actual cost of providing such services, including direct and indirect cost of providers and excluding any costs that are unnecessary in the efficient delivery of services covered by the program (Center for Medicare and Medicaid Services, 2003). While cost ranges for recovery support services are not specified above, due to the great variations that exist, applicants are expected to provide costs for recovery support services that they intend to provide. Per person costs for each modality should be computed by dividing the number of persons served in each modality by the amount of the project budget used to fund that program component after subtracting out the costs of required data collection and submission.

Dated: February 27, 2004.

James Stone,

Deputy Administrator, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 04–4733 Filed 3–3–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection for Probate to the Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to Office of Management and Budget for renewal.

SUMMARY: As required by the Paperwork Reduction Act of 1995, we are submitting to the Office of Management and Budget the information collection found in the general Probate of Indian Decedents' Estates, Except for Members of the Five Civilized Tribes regulations. The purpose of this data collection is to ensure that Probate regulations are administered for the benefit of individual Indians and any persons having claims against an Indian decedent's estate.

DATES: Submit comments or suggestions on or before April 5, 2004 to be assured of consideration.

ADDRESSES: You may submit comments to the Desk Officer for the Department of the Interior by e-mail to *OIRA_DOCKET@omb.eop.gov* or by facsimile to (202) 395–6566.

Send a copy of the comments to Ben Burshia, Bureau of Indian Affairs, Office of the Deputy Bureau Director—Trust Services, Division of Real Estate Services, MS 4512–MIB, 1849 C Street NW., Washington, DC 20240. Comments may also be telefaxed to (202) 219–1255. We cannot accept E-mail comments at this time.

FOR FURTHER INFORMATION CONTACT: Angela D. Pittman, (202) 208–4861.

SUPPLEMENTARY INFORMATION: The information provided through collection requirements is used by the Department of the Interior, BIA, to determine heirs and divide any funds held by the BIA for an Indian decedent and to divide the decedent's trust and restricted real property. The information is particularly used by the Bureau of Indian Affairs in:

(a) Instructing an individual in starting the probate process;

(b) Preparing a probate package for review;

(c) Filing claims;

(d) Disbursing assets; and

(e) Filing appeals for adverse decisions.

Request for Comments

A notice requesting comments was published in the **Federal Register** on July 22, 2003 (68 FR 43365). No comments were received. The Bureau of Indian Affairs now requests your comments on this collection be sent to the Desk Officer for the Department of the Interior at the Office of Management and Budget. Please address the following:

(a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as facilitating use of automation for collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, Room 4522, during the hours of 8:30 a.m. to 5 p.m. EST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

Information Collection Abstract

OMB Control Number: 1076–0156.

Type of Review: Renewal.

Title: 25 CFR 15, Probate of Indian Estates, Except for Members of the Five Civilized Tribes.

Brief Description of Collection: Information is collected through the probate process when BIA learns of decedent's death from a neighbor, friend, family, or any other interested person by providing a copy of decedent's obituary notice from a local newspaper; or an affidavit of death prepared by someone who knows about the decedent's death. BIA also requires other documents to process the probate package. An interested party must inform BIA if any of the documents or information identified are not available.

Respondents: Possible respondents include: individual tribal members, individual non-Indians, individual tribal member-owned businesses, non-Indian owned businesses, tribal governments, and land owners who are seeking a benefit.

Number of Respondents: 32,589 annually.

Annual hours: 156,407.

Estimated Time per Response: 5 hours.

Frequency of Response: As required.

Dated: February 27, 2004.

Dave Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–4851 Filed 3–3–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 002–2004]

Privacy Act of 1974; Systems of Records

AGENCY: United States Trustee Program, Department of Justice.

ACTION: Notice of modifications to systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, the United States Trustee Program (''USTP''), Department of Justice, proposes to modify the following existing Privacy Act systems of record:

JUSTICE/UST–001, Bankruptcy Case Files and Associated Records (last substantively revised on Sept. 23, 1999 at 64 FR 51557);

JUSTICE/UST–002, Bankruptcy Trustee Oversight Records (last substantively revised on Sept. 23, 1999 at 64 FR 51557);

JUSTICE/UST–003, U.S. Trustee Program Timekeeping Records (last substantively revised on July 26, 1999 at 64 FR 40392); and

JUSTICE/UST–004, U.S. Trustee Program Case Referral System (last substantively revised on Sept. 23, 1999 at 64 FR 51557).

By notice published on November 10, 2003, a routine use for contractors was added to each of these systems of records. *See* 68 FR 63819 (effective Dec. 15, 2003). Additional revisions are detailed below, and the modified systems are published, in their entirety, in this notice.

DATES: These actions will be effective April 13, 2004.

FOR FURTHER INFORMATION CONTACT: For information regarding these changes, and for general information regarding USTP's Privacy Act systems, contact Anthony J. Ciccone, FOIA/Privacy Counsel, Executive Office for United States Trustees, at (202) 307–1399.

SUPPLEMENTARY INFORMATION: USTP has made minor changes and clarifications in its existing systems of record, such as to correct typographical errors, update certain statutory references, reflect miscellaneous nomenclature changes, and update storage, safeguards, access, and related issues. In addition, these revisions add several routine uses to facilitate civil and criminal enforcement efforts, including a routine use to share data with bankruptcy case trustees for law enforcement and other agency purposes under the Bankruptcy Code and related authority.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility of the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments April 5, 2004. The public, OMB, and Congress are invited to submit comments to: Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1331 Pennsylvania Ave., NW., Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress.

Dated: February 25, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

JUSTICE/UST–001

SYSTEM NAME:

Bankruptcy Case Files and Associated Records

SYSTEM LOCATION:

The Executive Office for United States Trustees (EOUST) and other offices of the United States Trustee Program (USTP) depending upon the judicial district where a bankruptcy case or proceeding is pending or was administered. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.)*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities involved in cases or proceedings under the Bankruptcy Code (11 U.S.C. 101, *et seq.*), including but not limited to: Debtors; creditors; bankruptcy trustees; other parties in interest; and professionals, attorneys, and agents representing debtors, creditors, and trustees or otherwise involved in bankruptcy cases or proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may include: (a) Petitions/orders for relief; (b) schedules of assets and liabilities of debtors; (c) lists of creditors; (d) statements of financial affairs; (e) operating or status reports; (f) alphabetical cross-reference index cards; (g) general correspondence regarding bankruptcy cases and proceedings; (h) miscellaneous investigative records; (i) copies of certain pleadings or other papers filed in court, including those filed by the United States Trustee Program; (j) appraisal reports; (k) names of bank depositories and amounts of funds deposited therein; (l) names of sureties and amounts of trustees' bonds; (m) tape or other recordings of creditors meetings conducted under 11 U.S.C. 341 for the purpose of examination of debtors by creditors, trustee and others; (n) plans filed under Chapter 11, 12 or 13; (o) names of persons serving as counsel, trustee, professionals, or other functionaries in bankruptcy cases and proceedings, including compensation earned or sought by each; and (p) other case-related information, such as case number, case status, case type, parties' names and other personal identifiers, social security numbers and financial account numbers, estate assets/liabilities, case filings/reports, trustee bonds, calendars of meetings and hearings, due dates of plan, schedules and other filings, creditors' committee status, attorneys/professionals' data, and trustees/examiners' data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to the bankruptcy oversight and related responsibilities of the United States Trustee Program under, *e.g.*, 28 U.S.C. 581, *et seq.*, and 11 U.S.C. 101, *et seq.*

PURPOSES:

The records in this system are used by USTP personnel to determine the existence of a case, to ascertain the status of actions with respect to a case, to ensure that timely action is taken as appropriate, to determine the involvement by agents or other representatives of parties in such cases, and to facilitate the performance of U.S. Trustee Program duties under, *e.g.*, 28 U.S.C. 581, *et seq.*, 11 U.S.C. 101, *et seq.*, and other legal authority.

As provided in 11 U.S.C. 107, a document filed in a case and the dockets of the bankruptcy court are public records and open to examination except when the court enters a protective order or otherwise acts to seal a docket entry.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(A) Release of Information to Former Employees: The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(B) Release of Information to Contractors: Information from these records may be disclosed to contractors,

grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

(C) Release of Information in Proceedings: Information from these records may be disclosed in an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

(D) Release of Information for Litigation-related Discussions: Information from these records may be disclosed to an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

(E) Release of Information to Bankruptcy Trustees: Information from these records may be disclosed to a trustee under Chapters 7, 11, 12 or 13 of Title 11, U.S. Code, when the United States Trustee determines that the release of such information is necessary to enable the trustee to properly administer a case or to perform the duties and responsibilities of a case trustee under 28 U.S.C. 586, 18 U.S.C. 3057, or 11 U.S.C. 101, *et seq.*

(F) Release of Information to Complainants and Victims: Information from these records may be disclosed to complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(G) Release of Information to the News Media: Information from these records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(H) Release of Information to Members of Congress: Information from these records may be disclosed to a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(I) Release of Information to NARA and GSA: A record from this system of records may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, *et seq.*

(J) Release of Information to Law Enforcement or Regulatory Agencies: Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, tribal, or foreign law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(K) Release of Information to Licensing Agencies: Information from these records may be disclosed to federal, state, local, tribal, or foreign licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(L) Release of Information for Employment, Clearance, Contract, or Grant Purposes: Information from these records may be disclosed to appropriate officials and employees of a federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(M) Release of Information to Credit/Consumer Reporting Agencies: Information from these records may be disclosed to a credit or consumer reporting agency, as such terms are used in the Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.*) and the Debt Collection Act (31 U.S.C. 3701, *et seq.*), when such information is necessary or appropriate to ensure that bankruptcy-related credit information is correct and accurate.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system, except as specified below, are recorded on paper/cardboard material and maintained in file cabinets, storage containers, electric file/card retrievers, or safes. Certain records in this system are entered into automated information systems and stored on magnetic disks for use or reproduction in report form at various times.

RETRIEVABILITY:

In USTP field offices, bankruptcy case records are retrieved by bankruptcy court case numbers, cross-referenced alphabetically by names of debtors. Bankruptcy case records pertaining to case trustees, sureties, depository banks and to agents representing parties are maintained and retrieved alphabetically. Bankruptcy case records in the Executive Office are maintained and retrieved alphabetically by name of the debtor, or the particular person involved. Automated information is retrieved by a variety of key words, including names of individuals.

SAFEGUARDS:

Records contained in this system are unclassified. They are safeguarded and protected in accordance with Departmental rules and procedures governing the handling of office records and computerized information. During duty hours, access to this system is monitored and controlled by U.S. Trustee Program personnel. During nonduty hours, offices are locked.

RETENTION AND DISPOSAL:

Chapter 7 no-asset case records may be destroyed six months after the case is closed. Section 341 meeting tapes may be destroyed two years after the date of the 341 meeting. Chapter 7 asset case records may be destroyed three years after the case is closed. Chapter 11 case records may be destroyed three years after the case is dismissed or closed. Chapter 12 and chapter 13 case records may be destroyed six months after the case is dismissed or closed. To prevent unauthorized disclosure, records are destroyed by shredding, burning, or similar methods.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system of records are: (a) The U.S. Trustee or Assistant U.S. Trustee, to the extent these records are maintained in their offices; and (b) the General Counsel, to the extent these records are maintained in the Executive Office. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.*)

NOTIFICATION PROCEDURE:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site *(http://www.usdoj.gov/ust).*

The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD ACCESS PROCEDURES:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should clearly and concisely state what information is being contested, the reasons for contesting it, and the proposed amendment to the information. Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD SOURCE CATEGORIES:

Sources of information contained in this system generally consist of debtors, creditors, trustees, examiners, attorneys, and other agents participating in the administration of a case, judges of the bankruptcy courts and other judicial officers, parties in interest, and employees of the U.S. Trustee Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/UST–002

SYSTEM NAME:

Bankruptcy Trustee Oversight Records

SYSTEM LOCATION:

The Executive Office for United States Trustees (EOUST) and other offices of the United States Trustee Program (USTP) depending upon the judicial district where the bankruptcy case trustee serves or has made application to serve. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.*)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons serving, or applying to, serve as estate trustees in bankruptcy cases filed under Chapters 7, 11, 12, or 13 of the Bankruptcy Code (11 U.S.C. 101 *et seq.*) and/or subject to USTP oversight pursuant to 28 U.S.C. 586.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may include: resumes, applications, references, recommendations, and related materials; notes, correspondence, memoranda, messages, and agreements; audits, reviews, evaluations, financial records, transcripts, and security clearance information; social security numbers, financial account numbers, and other personal identifiers; and other information provided to USTP by trustees, applicants, and third parties or developed by U.S. Trustee Program personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to the bankruptcy oversight and related responsibilities of the United States Trustee Program under, *e.g.*, 28 U.S.C. 581, *et seq.*, and 11 U.S.C. 101, *et seq.*

PURPOSE:

These records are used by U.S. Trustee Program personnel for determining and reassessing the qualifications and eligibility of persons serving or applying to serve as trustees in bankruptcy cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(A) Release of Information to Former Employees: The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(B) Release of Information to Contractors: Information from these records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

(C) Release of Information in Proceedings: Information from these records may be disclosed in an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

(D) Release of Information for Litigation-related Discussions: Information from these records may be disclosed to an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

(E) Release of Information to Bankruptcy Trustees: Information from these records may be disclosed to a trustee under Chapters 7, 11, 12 or 13 of Title 11, U.S. Code, when the United States Trustee determines that the release of such information is necessary to enable the trustee to properly administer a case or to perform the duties and responsibilities of a case trustee under 28 U.S.C. 586, 18 U.S.C. 3057, or 11 U.S.C. 101, *et seq.*

(F) Release of Information to Complainants and Victims: Information from these records may be disclosed to complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(G) Release of Information to the News Media: Information from these records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(H) Release of Information to Members of Congress: Information from these records may be disclosed to a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(I) Release of Information to NARA and GSA: A record from this system of records may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, *et seq.*

(J) Release of Information to Law Enforcement or Regulatory Agencies: Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, tribal, or foreign law enforcement authority or

other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(K) Release of Information to Licensing Agencies: Information from these records may be disclosed to federal, state, local, tribal, or foreign licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(L) Release of Information to Credit/Consumer Reporting Agencies: Information from these records may be disclosed to a credit or consumer reporting agency, as such terms are used in the Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.*) and the Debt Collection Act (31 U.S.C. 3701, *et seq.*), when such information is necessary or appropriate to ensure that bankruptcy-related credit information is correct and accurate.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system, except as specified below, are recorded on paper/cardboard material and maintained in file cabinets, storage containers, electric file/card retrievers, or safes. Certain records in this system are entered into automated information systems and stored on magnetic disks for use or reproduction in report form at various times.

RETRIEVABILITY:

In USTP field offices, bankruptcy trustee oversight records are filed alphabetically by the trustee's or applicant's name. In EOUST, similar records are maintained alphabetically, organized by region. Automated information is retrieved by a variety of key words, including names of individuals.

SAFEGUARDS:

Records contained in this system are unclassified. They are safeguarded and protected in accordance with Departmental rules and procedures governing the handling of official records and computerized information. During duty hours, access to this system is monitored and controlled by U.S. Trustee Program office personnel. During nonduty hours, offices are locked.

RETENTION AND DISPOSAL:

Bankruptcy trustee oversight records may be destroyed after three years except in the following circumstances. If the trustee dies, his/her trustee oversight records may be destroyed after one year. Case Trustee Interim Reports may be destroyed after five years. To prevent unauthorized disclosure, records are destroyed by shredding, burning, or similar methods.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system of records are: (a) The U.S. Trustee or Assistant U.S. Trustee, to the extent these records are maintained in their offices; and (b) the Assistant Director, Office of Review and Oversight, to the extent these records are maintained in the Executive Office. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.*)

NOTIFICATION PROCEDURE:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD ACCESS PROCEDURES:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should clearly and concisely state what information is being contested, the reasons for contesting it, and the proposed amendment to the information. Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD SOURCE CATEGORIES:

Sources of information contained in this system generally consist of the applicant, the applicant's references, interested third parties, and/or U.S. Trustee Program personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/UST–003

SYSTEM NAME:

U.S. Trustee Program Timekeeping Records

SYSTEM LOCATION:

The Executive Office for United States Trustees (EOUST) and other offices of the United States Trustee Program (USTP) depending upon where an employee has been assigned for duty. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.*)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nonclerical employees of the U.S. Trustee Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may include USTP employees' names, personal identifiers, and a record of their work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to the responsibilities of the United States Trustee Program under, *e.g.*, 28 U.S.C. 581, *et seq.*, and 11 U.S.C. 101, *et seq.*

PURPOSE:

This system consists of records of the work time of nonclerical employees of the U.S. Trustee program, and is used, *e.g.*, to analyze workload as a basis for requesting and allocating personnel and other resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(A) Release of Information to Former Employees: The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(B) Release of Information to Contractors: Information from these records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

(C) Release of Information to Members of Congress: Information from these records may be disclosed to a Member of Congress, or staff acting upon the

Member's behalf, when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(D) Release of Information to NARA and GSA: A record from this system of records may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, *et seq.*

(E) Release of Information in Proceedings: Information from these records may be disclosed in an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system, except as specified below, are recorded on paper/cardboard material and maintained in file cabinets, storage containers, electric file/card retrievers, or safes. Certain records in this system are entered into automated information systems and stored on magnetic disks for use or reproduction in report form at various times.

RETRIEVABILITY:

In USTP field offices, U.S. Trustee Program timekeeping records are maintained by the name of the employee. In EOUST, such records are maintained and organized by the name of the employee. Automated information is retrieved by a variety of key words.

SAFEGUARDS:

Records contained in this system are unclassified. They are safeguarded and protected in accordance with Departmental rules and procedures governing the handling of official records and computerized information. During duty hours, access to this system is monitored and controlled by U.S. Trustee Program office personnel. During nonduty hours, offices are locked.

RETENTION AND DISPOSAL:

These records may be destroyed by shredding, burning, or similar methods after being audited or when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system of records are: (a) The U.S. Trustee or Assistant U.S. Trustee, to the extent these records are maintained in their offices; and (b) the Office of the Director, to the extent these records are maintained in the Executive Office. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.*)

NOTIFICATION PROCEDURE:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD ACCESS PROCEDURES:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should clearly and concisely state what information is being contested, the reasons for contesting it, and the proposed amendment to the information. Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site (*http://www.usdoj.gov/ust*). The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD SOURCE CATEGORIES:

Sources of information contained in this system generally consist of U.S. Trustee Program personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

JUSTICE/UST–004

SYSTEM NAME:

U.S. Trustee Program Case Referral System

SYSTEM LOCATION:

The Executive Office for United States Trustees (EOUST) and other offices of the United States Trustee Program (USTP), depending on where the acts under investigation occurred. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.*)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Entities and individuals involved in the bankruptcy process who are suspected of having engaged in criminal conduct or of having violated other Federal laws, and whose activities have been or may be investigated or reported by the U.S. Trustee Program to a U.S. Attorney to other law enforcement authorities for investigation, prosecution, or other action pursuant to 28 U.S.C. 586, 18 U.S.C. 3057, or other legal authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may include information associated with a referral to law enforcement authorities in connection with bankruptcy proceedings or related matters arising under 11 U.S.C. 101 *et seq.* or 28 U.S.C. 581, *et seq.* This system may contain information pertaining to the subject of the referral, who may be a debtor, creditor, party in interest, or any other entity associated with the bankruptcy or other proceedings. This system may also contain information about the proceedings with which the subject of the referral is associated. Such information may include the subject's name, address, date of birth, social security number, financial account numbers, or other personal identifiers; a chronological account of the incident(s); the source of the information, including confidential sources, if any; witnesses' names, addresses, and other personal identifiers; the law enforcement agency to which the referral is made; the status or final disposition of the referral; the case number, chapter, and status of any related proceedings; the bankruptcy trustee/examiner's name, address, phone number, and other personal identifiers; the judge assigned to the case; and such other case data as may be furnished to or available in the records of the court or of the U.S. Trustee Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to the responsibilities of the United States Trustee Program under, *e.g.*, 28 U.S.C. 581, *et seq.*, 11 U.S.C. 101, *et seq.*, and 18 U.S.C. 3057.

PURPOSE(S):

The purposes of this system are to assist the U.S. Trustees: (1) In supervising the administration of cases and trustees in cases and proceedings filed under the Bankruptcy Code (11 U.S.C. 101, *et seq.*); (2) in carrying out their congressional mandate ''to serve as bankruptcy watch-dogs to prevent fraud,

dishonesty, and overreaching in the bankruptcy arena'' (H.R. Rep. No. 595, 95th Cong., 2d Sess. 88 (1978)); and (3) in complying with 18 U.S.C. 3057, which directs trustees to report for investigation any instance where there are reasonable grounds for believing that there has been a violation of Federal laws relating to insolvent debtors or reorganization plans. The U.S. Trustee Program may inform the appropriate law enforcement authorities when fraud or other violations of Federal law are suspected or discovered in a bankruptcy case and will maintain records thereof described under ''Categories of Records in the System'' (above). The data will be used for Program-wide evaluation purposes, for statistical purposes, and to track the number, type, and outcome of cases referred for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(A) Release of Information to Former Employees: The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(B) Release of Information to Contractors: Information from these records may be disclosed to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

(C) Release of Information in Proceedings: Information from these records may be disclosed in an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

(D) Release of Information for Litigation-related Discussions: Information from these records may be disclosed to an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

(E) Release of Information to Bankruptcy Trustees: Information from these records may be disclosed to a trustee under Chapters 7, 11, 12 or 13 of Title 11, U.S. Code, when the United States Trustee determines that the release of such information is necessary to enable the trustee to properly administer a case or to perform the duties and responsibilities of a case trustee under 28 U.S.C. 586, 18 U.S.C. 3057, or 11 U.S.C. 101, *et seq.*

(F) Release of Information to Complainants and Victims: Information from these records may be disclosed to complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(G) Release of Information to the News Media: Information from these records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

(H) Release of Information to Members of Congress: Information from these records may be disclosed to a Member of Congress, or staff acting on the Member's behalf, when the Member or staff requests the information on behalf of, and at the request of, the individual to whom the records pertain.

(I) Release of Information to NARA and GSA: These records may be disclosed to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, *et seq.*

(J) Release of Information to Law Enforcement or Regulatory Agencies: Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, tribal, or foreign law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(K) Release of Information to Licensing Agencies: Information from these records may be disclosed to federal, state, local, tribal, or foreign licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(L) Release of Information to Judicial Branch: These records may be disclosed to members of the judicial branch of the Federal Government where disclosure appears relevant to the authorized function of the recipient judicial office or court system under 18 U.S.C. 3057.

(M) Release of Information to Credit/Consumer Reporting Agencies: Information from these records may be disclosed to a credit or consumer reporting agency, as such terms are used in the Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.*) and the Debt Collection Act (31 U.S.C. 3701, *et seq.*), when such information is necessary or appropriate to ensure that bankruptcy-related credit information is correct and accurate.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system, except as specified below, are recorded on paper/cardboard material and maintained in file cabinets, storage containers, electric file/card retrievers, or safes. Certain records in this system are entered into automated information systems and stored on magnetic disks for use or reproduction in report form at various times.

RETRIEVABILITY:

In EOUST and in USTP field offices, case referral records are filed alphanumerically or chronologically. Automated information is retrieved by a variety of key words, including names of individuals or other personal identifiers.

SAFEGUARDS:

Records contained in this system are unclassified but highly sensitive. They are safeguarded and protected in accordance with Departmental rules and procedures governing the handling of official records and computerized information. During duty hours, access to this system is monitored and controlled by U.S. Trustee Program office personnel. During nonduty hours, offices are locked. Only those persons with a need to know have access to the records.

RETENTION AND DISPOSAL:

Criminal referral records may be destroyed by shredding, burning, or similar methods five years from the date

of the finding of insufficient evidence, declination of prosecution, or the voting of a No True Bill by a Grand Jury.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system of records are: (a) The U.S. Trustee or Assistant U.S. Trustee, to the extent these records are maintained in their offices; and (b) Office of General Counsel and/or Chief of Criminal Enforcement, to the extent these records are maintained in the Executive Office. (Office addresses can be located on the Internet at *http://www.usdoj.gov/ust.*)

NOTIFICATION PROCEDURE:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site *(http://www.usdoj.gov/ust).* The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD ACCESS PROCEDURES:

Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site *(http://www.usdoj.gov/ust).* The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should clearly and concisely state what information is being contested, the reasons for contesting it, and the proposed amendment to the information. Address such inquiries to the Office of General Counsel (FOIA/Privacy Counsel) at the address listed on the U.S. Trustee Program FOIA/Privacy Act Web site *(http://www.usdoj.gov/ust).* The envelope and letter should be clearly marked ''Privacy Act Request'' and comply with 28 CFR 16.40 *et seq.*

RECORD SOURCE CATEGORIES:

The records generally contain information obtained by or furnished to the U.S. Trustee Program from: (1) Federal or State court records; (2) debtors or debtors' principals, agents or representatives; (3) informants and interested third parties; and (4) other law enforcement sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system of records from subsections (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**. See 28 CFR 16.77.

[FR Doc. 04–4828 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Gaming Standards Association

Notice is hereby given that, on January 27, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Gaming Standards Association (''GSA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Casino Technology AD, Sofia, Bulgaria; Flint & K, Inc., Moscow, Russia; Gaming Laboratories International, Inc., Lakewood, NJ, GTECH Corporation, West Greenwich, RI; Hyatt Gaming Services LLC, Chicago, IL; International Currency Technology (ICT), Taipei, Taiwan; Loto-Quebec , Montreal, Quebec, Canada; Molex Incorporated, Lisle, IL; Multi-State Lottery Association (MUSL), West Des Moines, IA; Octavian International LTD, Guildford, Surrey, United Kingdom; Renaissance Casino Solutions, Henderson, NV; R. Franco USA, Phoenix, AZ; and Seminole Tribe of Florida, Hollywood, FL have been added as parties to this venture. Also, Acres Gaming, Las Vegas, NV; Austrian Gaming Industries GmbH, Lower Austria, Austria; Cyberview Technologies, Inc., Las Vegas, NV; IDX, Inc., El Dorado, AZ; Shuffle Master Gaming, Inc., Las Vegas, NV; Sierra Design Group, Reno, NV; and Station Casinos, Las Vegas, NV have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GSA intends to file additional written notification disclosing all changes in membership.

On March 6, 2003, GSA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 1, 2003 (68 FR 15743).

The last notification was filed with the Department on July 8, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 4, 2003 (68 FR 45855).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4843 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on January 21, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cocoon Technologies, Vienna, Austria has been added as a party to this venture. Also, IBM Corp., Westwood, MA; and Learning and Teaching Scotland, Glasgow, United Kingdom have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on October 30, 2003. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on December 1, 2003 (68 FR 67215).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4844 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences

Notice is hereby given that, on February 2, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Automation Alley, Troy, MI; Alfalight, Inc., Madison, WI; Cubic Systems, Inc., Ann Arbor, MI; Packer Technologies International, Inc., Warrenville, IL; Portal Dynamics, Inc., Alexandria, VA; and University of Arkansas, Fayetteville, AR have been added as parties to this venture. Also, 3D Systems, Inc., Valencia, CA; Aereous, LLC, Walled Lake, MI; CH2M Hill, Milwaukee, WI; Consilio Response Team, Walled Lake, MI; HY-Tech Research Corporation, Radford, VA; Intelliworxx, Inc., Sarasota, FL; Johann A. Krause, Inc., Auburn Hills, MI; and Manufacturing Laboratories, Inc., Gainesville, FL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, National Center for Manufacturing Sciences filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on October 15, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 12, 2003 (68 FR 64125).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4846 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program (''NSRP'')

Notice is hereby given that, on February 17, 2994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Shipbuilding Research Program (''NSRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bollinger Shipyards, Inc., Lockport, LA has been added as a party to this venture. Also, Cascade General, Inc., Portland, OR has been removed as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSRP intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, NSRP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on October 29, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 12, 2003 (68 FR 69422).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4840 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum (''PERF'')

Notice is hereby given that, on January 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changing in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, INA INDUSTRIJA NAFTE d.d. NAFTAPLIN, Zagreb, Croatia has become a member of PERF.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petroleum Environmental Reserach Forum (''PERF'') intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, Petroleum Environmental Research Forum (''PERF'') filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on January 22, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 24, 2004 (69 FR 8486).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4847 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on February 4, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''),

Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Molex Japan Co., Ltd., Yamato Kamagawa, Japan; Renesas Technology Corporation, Tokyo, Japan; and Tyco Electronics Amp K.K., Kawaski, Japan have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on November 12, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 12, 2003 (68 FR 69423).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4841 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Service Creation Community (SCC)

Notice is hereby given that, on January 28, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Service Creation Community (SCC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accenture, Dallas, TX; ADC Telecommunications, Rumson, NJ; Airespace, San Jose, CA; Ascendent Telecommunications, Inc., Encino, CA; Bridgewater Systems, Ottawa, Ontario, Canada; British Telecommunications, Billericay, Essex, United Kingdom; Current Analysis, Sterling, VA; Epicenter, San Clemente, CA; Goldman, Sachs, & Co., New York, NY; InStat/MDR, Scottsdale, AZ, interNetwork, Inc., San Francisco, CA; IP Infusion, San Jose, CA; Juniper Networks, Sunnyvale, CA; LSI Logic Storage Systems, Inc., Wichita, KS; Maranti Networks, San Jose, CA; Micromuse Inc., San Francisco, CA; MeTV Networks, Summerland, CA; Microsoft Corporation, Redmond, WA; Net.com, Fremont, CA; Oracle, St. Louis, MO; PacketExchange, London, United Kingdom; Paradyne, Largo, FL; Procket Networks, Milpitas, CA; Radvision, Glen Rock, NJ; Siemens, Boca Raton, FL; Telechoice, Dallas, TX; Tony Fisch Consulting, Los Angeles, CA; Wandl Inc., Bound Brook, NJ; Yipes, San Francisco, CA; and Welsh Development Agency, Cardiff, United Kingdom have been added as parties to this venture.

Also, Ai Metrix, El Dorado Hills, CA; Broadband Content Coalition, Guildford, Surrey, United Kingdom; and Infonautics Consulting, Inc., Ramsey, NJ have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Service Creation Community (SCC) intends to file additional written notification disclosing all changes in membership.

On February 4, 2003, SCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26649).

The last notification was filed with the Department on July 7, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 28, 2003 (68 FR 44366).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4842 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Technologies for Advanced Holographic Data Storage

Notice is hereby given that, on January 26, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Technologies for Advanced Holographic Data Storage has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the ACT's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are InPhase Technologies, Longmont, CO; and Displaytech Incorporated, Longmont, CO. The nature and objectives of the venture are to carry out a project of certain research and development tasks described in a proposal to the Advanced Technology Program of the National Institute of Standards and Technology relating to holographic data storage. The participants intend to develop and demonstrate higher-density optical data recording techniques, write heads integrating optical elements that reduce needed recording media dynamic range, data processing and encoding techniques for reduced error rates and higher efficiencies, and optical servo mechanisms for relaxed mechanical alignment tolerances of system components. In the final task of the project, the participants plan to demonstrate the integration of the advanced holographic data recording and recovery technologies developed under the project.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–4845 Filed 3–3–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Office of the Assistant Secretary for Administration and Management; Submission for OMB Review; Comment Request

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506–3507), the U.S. Department of Labor (DOL) has submitted the following public information collection requirement for review and clearance.

OMB Number: 1225–0072.

Type of Review: Extension.

Title: Applicant Background Questionnaire.

Description: The form gathers information concerning the gender, race or ethnic background, and disability status of applicants for employment. Applicants for employment are asked to voluntarily complete these questions to assist the agency in evaluating and improving its efforts to publicize job openings and to encourage applications for employment, from a diverse group of qualified candidates, including minorities and persons with disabilities. The Department will use the information to assess the effectiveness of specific outreach efforts and means of communicating information on job vacancies. The currently approved form is being extended with no revision.

DATES: Comments will be considered if received on or before April 5, 2004.

Send or deliver written comments to: William Anderson Glasgow, U.S. Department of Labor, Human Resource Center, 200 Constitution Ave., NW., Room N–5470, Washington, DC 20210.

For copies of the form, and further information contact William Anderson Glasgow on (202) 693–7738, or e-mail address *glasgow.william@dol.gov.*

Estimated number of respondents: 3000.

The average estimated response time: 5 minutes.

Total estimated public burden: 250 hours.

Signed at Washington, DC this 27th day of February, 2004.

Daliza Salas,

Director of Human Resources.

[FR Doc. 04–4836 Filed 3–3–04; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Applications for a Permit to Fire More Than 20 Boreholes, for the Use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units

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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the application for a permit to fire more than 20 boreholes, for the use of nonpermissible blasting units, and for the use of nonpermissible explosives and nonpermissible shot-firing units, and posting of warning notices with regard to mis-fired explosives.

DATES: Submit comments on or before May 3, 2004.

ADDRESSES: Send comments to Darrin King, Chief, Records Management Division, 1100 Wilson Boulevard, Room 2139, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *king.darrin@dol.gov,* along with an original printed copy. Mr. King can be reached at (202) 693–9838 (voice) or 202–693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: A copy of the proposed information collection request and further information may be obtained by contacting Darrin King, Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2139, Arlington, VA 22209–3939. Mr. King can be reached at *king.darrin@dol.gov* (Internet e-mail), (202) 693–9838 (voice), or (202) 693–9801(facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, a mine operator is required to use permissible explosives in underground coal mines. The Mine Act also provides that under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Title 30 CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines.

II. Desired Focus of Comments

MSHA 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

Title 30 CFR 75.1321, 75.1327 and 77.1901–1 provide MSHA District Managers with the authority to address unusual but reoccurring blasting practices needed for breaking rock types more resilient than coal and for misfires in blasting coal. MSHA uses the information requested to issue permits to mine operators or shaft and slope

contractors for the use of nonpermissible explosives and/or shot-firing units under 30 CFR part 77, subpart T—Slope and Shaft Sinking. Similar permits are issued by MSHA to underground coal mine operators for shooting more than 20 bore holes and/or for the use of nonpermissible shot firing units when requested under 30 CFR part 75, subpart N—Explosives and Blasting. The approved permits allow the use of specific equipment and explosives in limited applications and under exceptional circumstances where standard coal blasting techniques or equipment is inadequate to the task. These permits inform mine management and the miners of the steps to be employed to protect the safety of any person exposed to such blasting while using nonpermissible items. Also, the posting of danger/warning signs at entrances to locations where an misfired blast hole or round remains indisposed is a safety precaution predating the Coal Mine Safety and Health Act.

Type of Review: Extension (without change).

Agency: Mine Safety and Health Administration.

Title: Application for a Permit to Fire More than 20 Boreholes for the use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units.

OMB Number: 1219–0025.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
75.1321 Permit Appl	19	On Occasion	19	1 hour	19
75.1327 Misfire Notices Posted	57	On Occasion	57	20 minutes	19
77.1909–1 Permit APL	29	On Occasion	29	1 hour	29
Totals			105		67

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $588.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 26th day of February, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–4837 Filed 3–3–04; 8:45 am]

BILLING CODE 4510–43–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act; Meeting

February 24, 2004.

TIME AND DATE: 2 p.m., Thursday, February 26, 2004.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on an appeal of Rag Cumberland Resources LP from the decision of an administrative law judge in *Secretary of Labor* v. *Rag Cumberland Resources LP,* Docket Nos. PENN 2000–181–R *et al.* (Issues include whether the judge correctly determined that the operator violated 30 CFR 75.334(b) and 75.363(a).) No earlier announcement of the oral argument was possible.

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 04–5011 Filed 3–2–04; 3:46 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[04–036]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code VE, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals from offerors to award purchase orders and to use bank cards for required goods and services with an estimated value of $100,000 or less. Bids are requested and evaluated in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. 2451 *et seq.* As the need arises for goods and services valued at less than $100,000, NASA follows the procedures set forth in part 13 of the Federal Acquisition Regulations (FAR) and part 1813 of the NASA FAR Supplement (NFS) before an order can be awarded. Similarly, quotes voluntarily submitted in response to Request for Quotations (RFQs), contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers in the selection of contractors for goods and services required to meet the Agency's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Purchase Orders for Goods and Services With an Estimated Value of $100,000 or Less.

OMB Number: 2700–0086.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 242,955.

Estimated Time Per Response: Varies, depending on type of response. Bank card transactions take an average of 20 minutes per response. Bids take an average of 15 minutes per response.

Estimated Total Annual Burden Hours: 73,152.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 04–4790 Filed 3–3–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[04–037]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code VE, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals submitted to NASA for the award of contracts with a value greater than $500,000 for goods and services. Solicitations for bids and proposals, and requirements for contract deliverables, are prepared in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. *et seq.* As the need arises for goods and services, NASA follows the procedures set forth in parts 14 and 15 of the FAR for the issuance of Invitation for Bids (IFBs) and Request for Proposals (RFPs) before a contract can be awarded. Similarly, in bids and proposals voluntarily submitted in response to IFBs and RFPs, contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers to determine the responsiveness of bids and proposals and come to a decision on which contractor can provide the greatest benefit to the Agency and, ultimately, who will be awarded a contract.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Bids and Proposals for Contracts With an Estimated Value More Than $500,000.

OMB Number: 2700–0085.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 1,313.

Estimated Time Per Response: Varies, depending on type of response. Bids take an average of 400 hours per response. Proposals take an average of 600 hours per response.

Estimated Total Annual Burden Hours: 750,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 04–4791 Filed 3–3–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (04–038)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its

continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals submitted to NASA for the award of contracts with a value less than $500,000 for goods and services in support of NASA's mission, and in response to contractual requirements. Solicitations for bids and proposals, and requirements for contract deliverables, are prepared in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. *et seq.*, and approved mission requirements. As the need arises for goods and services, NASA follows the procedures set forth in Parts 14 and 15 of the FAR for the issuance of Invitation for Bids (IFBs) and Request for Proposals (RFPs) before a contract can be awarded. Similarly, in bids and proposals voluntarily submitted in response to IFBs and RFPs, contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers to determine the responsiveness of bids and proposals and come to a decision on which contractor can provide the greatest benefit to the Agency and, ultimately, who will be awarded a contract.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Bids and Proposals for Contracts With an Estimated Value Less than $500,000.

OMB Number: 2700–0087.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 7,900.

Estimated Time Per Response: Varies, depending on type of response. Bids take an average of 250 hours per response. Proposals take an average of 400 hours per response.

Estimated Total Annual Burden Hours: 2,560,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 04–4792 Filed 3–3–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[04–039]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection, in the form of reports for contracts with a value more than $500,000, designed to monitor contract compliance in support of NASA's mission. The requirements for this information are set forth in the Federal Acquisition Regulation (FAR), the NASA FAR Supplement, and approved mission requirements. NASA technical program and contract management personnel use this information to effectively manage and administer contracts; to measure the contractor's performance; to evaluate contractor management systems; to ensure compliance with mandatory public policy provision,; to evaluate and control costs charged against a contract; to detect and minimize conditions conducive to fraud, waste, and abuse; and to form a database for general overview reports to the Congressional and Executive branches.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Reports Required for Contracts With an Estimated Value More Than $500,000.

OMB Number: 2700–0089.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 1,652.

Estimated Time Per Response: Respondents submit an average of 53 reports annually, requiring an average of 7 hours per report response time, for a total of 371 annual hours per respondent.

Estimated Total Annual Burden Hours: 601,328.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 04–4793 Filed 3–3–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–029)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that CogniTek Management Systems, Inc., of Northfield, Illinois, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent No. 6,374,630, entitled ''Carbon Dioxide Absorption Heat Pump,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Patent Counsel at the NASA Management Office—JPL.

DATES: Responses to this notice must be received by April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Station 180–200, Pasadena, CA 91109–8099.

Dated: February 19, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–4849 Filed 3–3–04; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

NSB Public Service Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Board announces the following meeting:

Date and Time: Wednesday, March 10, 2 p.m.–3:30 p.m. EST (teleconference meeting).

Place: National Science Foundation, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

For Further Information Contact: Michael P. Crosby, Ph.D., Executive Officer, NSB, (703) 292–7000.

Michael P. Crosby,

Executive Officer.

[FR Doc. 04–4812 Filed 3–3–04; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

State of Utah: NRC Staff Draft Assessment of a Proposed Amendment to Agreement Between the Nuclear Regulatory Commission and the State of Utah

AGENCY: Nuclear Regulatory Commission.

ACTION: Fourth notice of a proposed amendment to the Agreement with the State of Utah; request for comment.

SUMMARY: By letter dated January 2, 2003, Governor Michael O. Leavitt of Utah requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an amendment to the Agreement with Utah (the Agreement) as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed amendment to the Agreement, the Commission would relinquish, and Utah would assume, an additional portion of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed amendment to the Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the portion of the regulatory program Utah would assume. Comments are requested on the proposed amendment to the Agreement and the staff's draft assessment, which finds the program to be adequate to protect public health and safety and compatible with NRC's program for regulation of 11e.(2) byproduct material.

The proposed amendment to the Agreement would release (exempt) persons who possess or use certain radioactive materials in Utah from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires March 15, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following phrase (Utah Amendment) in the subject line of your comments. Comments will be made available to the public in their entirety. Personal information will not be removed from your comments.

Mail comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov.*

Fax comments to: Chief, Rules and Directives Branch, at (301) 415–5144.

Publicly available documents related to this notice, including public

comments received, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

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

Documents available in ADAMS include: The request for an amended Agreement by the Governor of Utah including all information and documentation submitted in support of the request (ML030280380); NRC comments on the request (ML031810623), Utah's response to NRC comments (ML032060090); Utah's additional clarification (ML033640565), and the full text of the NRC Staff Draft Assessment (ML040370585).

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2819 or e-mail *DMS4@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States. The Agreement States currently regulate approximately 16,850 material licenses, while NRC regulates approximately 4550 licenses. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274. Under the proposed amendment to the Agreement, four NRC licenses will transfer to Utah.

Section 274e requires that the terms of the proposed amendment to the Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This fourth Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated January 2, 2003, Governor Leavitt certified that the State of Utah has a program for the control of radiation hazards that is adequate to protect public health and safety within Utah for the materials and activities specified in the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Utah requests authority over are: The possession and use of byproduct material as defined in section 11e.(2) of the Act and the facilities that generate such material (uranium mill tailings and uranium mills). Included with the letter was the text of the proposed amendment to the Agreement, which has been edited and is shown in Appendix A to this notice.

(b) The proposed amendment to the Agreement modifies the articles of the Agreement that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority; and
—Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed amendment to the Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the amendment to the Agreement, with the effective date, will be published after the amendment to the Agreement is approved by the Commission and signed by the Chairman of the Commission and the Governor of Utah.

(c) Utah currently regulates all radioactive materials covered under the Act, except for conducting sealed source and device evaluations which will remain under NRC jurisdiction, and the possession and use of 11e.(2) byproduct material, which would be assumed by Utah under the proposed amendment to their Agreement. Section 19–3–113 of the Utah code provides the authority for the Governor to enter into an Agreement with the Commission. Section 19–3–113 also contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Utah licenses until the licenses expire or are replaced by State issued licenses. The regulatory program including 11e.(2) byproduct materials is authorized by law in section 19–3–104.

(d) The NRC staff draft assessment finds that the Utah program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of 11e.(2) byproduct material and the facilities that generate such material.

II. Summary of the NRC Staff Draft Assessment of the Utah Program for the Control of 11e.(2) Byproduct Materials

The NRC staff has examined Utah's request for an amendment to the Agreement with respect to the ability of the Utah radiation control program to regulate 11e.(2) byproduct material. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' referred to herein as the ''NRC criteria'' (46 FR 7540, January 23, 1981, as amended by policy statements published at 46 FR 36969, July 16, 1981, and at 48 FR 33376, July 21, 1983).

(a) *Organization and Personnel.* The 11e.(2) byproduct material program will be located within the existing Division of Radiation Control (Program) of the Utah Department of Environmental Quality. The Program will be responsible for all regulatory activities related to the proposed amendment to the Agreement.

The Program performed an analysis of the expected Program workload under the proposed amendment to the Agreement and determined that a level of three technical and one administrative staff would be needed to implement the 11e.(2) byproduct material authority. The distribution of the qualifications of the individual technical staff members will be balanced with the technical expertise needed for 11e.(2) byproduct material (*i.e.*, health physics, hydrology, engineering). The Program currently has and intends to initially use existing qualified staff to conduct the 11e.(2) byproduct materials activities. At least two staff are qualified in each of the three technical areas identified in the Criteria: Health physics, engineering, and hydrology.

The educational requirements for the 11e.(2) byproduct material program staff

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

members are specified in the Utah State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection.

The Program also plans to hire three new staff into the program to supplement the existing staff (two professional/technical and one administrative). New staff hired into the Program will be qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

Based on the NRC staff review of the State's need analysis, current staff qualifications, and the current staff assignments for the 11e.(2) byproduct material program, the NRC staff concludes that Utah will have an adequate number of qualified staff assigned to regulate the 11e.(2) byproduct material workload of the Program under the terms of the amendment to the Agreement.

(b) *Legislation and Regulations.* The Utah Department of Environmental Quality (Department) is designated by law to be the implementing agency. The law establishes a Radiation Control Board (Board) that has the authority to issue regulations and has delegated the authority to the Executive Secretary the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. The Executive Secretary is the director of the Division of Radiation Control in the Department. Licensees are required to provide access to inspectors. The law requires the Board to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent. Utah has adopted R313–24 Utah Administrative Code that incorporates NRC uranium milling regulations by reference, with a few exceptions, and other regulatory changes needed for the 11e.(2) byproduct material program. The NRC staff reviewed and forwarded comments on these regulations to the Utah staff. The final regulations were sent to NRC for review. The NRC staff review verified that, with the one exception of the alternative groundwater standards, the Utah rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The alternative groundwater standards were addressed in a separate Commission action (*see* 68 FR 51516, August 27, 2003, and 68 FR 60885, October 24, 2003) and will be resolved prior to the Commission's final approval of an amendment to the Agreement with Utah. The NRC staff also concludes that Utah will not attempt to enforce regulatory matters reserved to the Commission.

(c) *Evaluation of License Applications.* Utah has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use 11e.(2) byproduct material. Utah will use its general licensing procedures, along with the additional requirements in R313–24 specific to 11e.(2) byproduct material. Utah will use the NRC regulatory guides as guidance in conducting its licensing reviews.

(d) *Inspections and Enforcement.* The Utah radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Utah Revised Statutes, procedures for the enforcement of regulatory requirements.

(e) *Regulatory Administration.* The Utah Department of Environmental Quality is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Utah law prescribes standards of ethical conduct for State employees.

(f) *Cooperation with Other Agencies.* Utah law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Utah. The law provides that these former NRC licenses will expire either 90 days after receipt from the Department of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. Utah also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Utah meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

NRC will continue the formal processing of the proposed amendment to the Agreement which includes publication of this notice once a week for four consecutive weeks for public review and comment.

Dated in Rockville, Maryland, this 25th day of February, 2004.

For the Nuclear Regulatory Commission.

Josephine M. Piccone,

Deputy Director, Office of State and Tribal Programs.

Appendix A

Amendment to Agreement between the United States Nuclear Regulatory Commission and the State of Utah for discontinuance of certain Commission regulatory authority and responsibility within the State pursuant to section 274 of the Atomic Energy Act, as amended.

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement on March 29, 1984 (hereinafter referred to the Agreement of March 29, 1984), with the State of Utah under section 274 of the Atomic Energy Act of 1954, as amended (hereafter referred to the Act) which became effective on April 1, 1984, providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8 and section 161 of the Act with respect to byproduct materials as

defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended), pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and

Whereas, the Governor requested, and the Commission agreed, that the Commission reassert Commission authority for the evaluation of radiation safety information for sealed sources or devices containing byproduct, source or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission; and

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated 19–3–113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and

Whereas, the Governor of the State of Utah has requested this amendment in accordance with section 274 of the Act by certifying on January 2, 2003, that the State of Utah has a program for the control of radiological and non-radiological hazards adequate to protect the public health and safety and the environment with respect to byproduct material as defined in section 11e.(2) of the Act and facilities that generate this material and that the State desires to assume regulatory responsibility for such material; and

Whereas, the Commission found on [date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of byproduct material as defined in section 11e.(2) and is adequate to protect public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and the Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, this amendment to the Agreement of March 29, 1984, as amended, is entered into pursuant to the provisions of the Act.

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B and renumbering paragraphs B through D as C through E. Paragraph B will read as follows:

''B. Byproduct materials as defined in Section 11e.(2) of the Act;''

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

''E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.''

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as A by placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as 1 through 5. After the current amended language, the following new section B is added to read:

''B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Utah at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment.

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.''

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

''ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in the production of such byproduct material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation and or long-term surveillance and maintenance of such byproduct material:

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.''

This amendment shall become effective on [date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done in Rockville, Maryland, in triplicate, this [day] day of [month, year].

For the United States Nuclear Regulatory Commission.

Nils J. Diaz, *Chairman.*

Done in Salt Lake City, Utah, in triplicate, this [day] day of [month, year].

For the State of Utah.

Olene S. Walker, *Governor.*

[FR Doc. 04–4671 Filed 3–3–04; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420–0011, under review is summarized below.

DATES: Comments must be received within 60 calendar days of publication of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Repondents: Business or other institution (except farms); individuals.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 7 hours per project.

Number of Responses: 150 per year.

Federal Cost: $28,350.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principle document used by OPIC to determine the investor's and projects' eligibility for political risk insurance, assess the environmental impact and the developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for the insurance underwriting analysis.

Dated: March 1, 2004.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 04–4858 Filed 3–3–04; 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0004.

Extension:

Rule 604, SEC File No. 270–221, OMB Control No. 3235–0232.

Rule 605, SEC File No. 270–221, OMB Control No. 3235–0232.

Form 1–E, SEC File No. 270–221, OMB Control No. 3235–0232.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

- Rule 604—Filing of Notification on Form 1–E.

Rule 604 of Regulation E [17 CFR 230.604] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act'') requires a small business investment company (''SBIC'') or a business development company (''BDC'') claiming an exemption from registering its securities under the Securities Act to file a notification with the Commission on Form 1–E.

- Rule 605—Filing and Use of the Offering Circular.

Rule 605 of Regulation E [17 CFR 230.605] under the Securities Act requires an SBIC or BDC claiming an exemption from registering its securities under the Securities Act to file an offering circular with the Commission that must also be provided to persons to whom an offer is made.

- Form 1–E—Notification Under Regulation E.

Form 1–E is the form that an SBIC or BDC uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdiction in which the issuer intends to offer its securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that approximately ten issuers file a total of approximately fifteen notifications on Form 1–E with the Commission annually, together with offering circulars. The Commission estimates that the total burden hours for preparing these notifications would be 1,500 hours in the aggregate. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0004.

Dated: February 23, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4830 Filed 3–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Allied Healthcare International Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC; File No. 1–11570

February 27, 2004.

Allied Healthcare International Inc., a New York corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on February 12, 2004 to withdraw the Issuer's Security from listing on the Amex and to list the Security on Nasdaq National Market System (''NMS''). The Board states that listing on the Nasdaq NMS would tend to increase both the visibility of the Issuer in the investing community and the liquidity of the market for the Issuer's Security. The Issuer states that the last day of trading its Security on Amex was February 20, 2004.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of New York, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before March 23, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–11570. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–4832 Filed 3–3–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of The Ohio Art Company To Withdraw Its Common Stock, $1.00 Par Value, From Listing and Registration on the American Stock Exchange LLC; File No. 1–07162

February 27, 2004.

The Ohio Art Company, an Ohio corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $1.00 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

On February 19, 2004, the Board of Directors (''Board'') of the Issuer unanimously approved a resolution to withdraw the Issuer's Security from listing on the Amex. The Board states that the reasons for such action include: (i) The number of stockholders of record in the Issuer's Security; (ii) the limited extent of trading in the Issuer's Security; and (iii) the material costs of complying with the requirements of the Sarbanes-Oxley Act. The Company anticipates that its Security will be quoted on the OTC Pink Sheets.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Ohio, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before March 23, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–07162. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–4833 Filed 3–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Proterion Corporation To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC; File No. 1–16670

February 27, 2004.

Proterion Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

On December 8, 2003, the Board of Directors (''Board'') of the Issuer executed a unanimous written consent approving certain resolutions to

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

withdraw the Issuer's Security from listing on the Amex. The Board states that its decision to withdraw the Security from listing and registration on the Amex was based on numerous factors that indicated that, despite the Issuer's and Board's previous actions and efforts: (i) The Issuer can no longer financially afford to be a reporting company registered under the Exchange Act and listed on a national securities exchange and; (ii) for the foreseeable future, the Issuer and its stockholders will not be able to realize the benefits associated with being such a listed reporting company. The Issuer stated that it is current in contact with various market professionals concerning the listing of the Security on the OTC Pink Sheets prior to the delisting.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before March 23, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–16677. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–4834 Filed 3–3–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26371; 812–12949]

Burnham Investment Trust and Burnham Asset Management Corp.; Notice of Application.

February 27, 2004.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Burnham Investment Trust (the ''Trust'') and Burnham Asset Management Corp. (the ''Adviser'').

FILING DATES: The application was filed on March 27, 2003, and amended on February 19, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 23, 2004, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, Michael E. Barna, Burnham Asset Management Corp., 1325 Avenue of the Americas, 26th Floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Janis F. Kerns, Attorney Adviser, at (202) 942–0524, or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and has multiple series (each series, a ''Fund,'' collectively the ''Funds''), each with its own investment objectives, policies, and restrictions. The Adviser, a Delaware corporation, serves as the investment adviser to the Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[1]

2. The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement between the Trust, on behalf of each Fund, and the Adviser (''Advisory Agreement'') that was approved by the Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholder(s). Each Advisory Agreement permits the Adviser to enter into separate investment advisory agreements (''Sub-advisory Agreements'') with sub-advisers (''Sub-advisers'') to whom the Adviser may delegate responsibility for providing investment advice and making investment decisions for a Fund. Each Sub-adviser is or will be registered under the Advisers Act or exempt from registration. The Adviser monitors and evaluates the Sub-advisers and recommends to the Board their hiring, termination, and replacement. The Adviser recommends Sub-advisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. The Adviser compensates the Sub-advisers

[1] The applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other existing or future registered open-end management investment company and its series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with the application; and (c) comply with the terms and conditions in the application (included in the term ''Funds''). The Trust is the only existing registered open-end management investment company that current intends to rely on the order. The name of the Sub-adviser will not appear in the name of a Fund, or, if the name of any Fund contains the name of a Sub-adviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Sub-adviser.

out of the fee paid to the Adviser by a Fund.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Sub-advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as a Sub-adviser to one or more of the Funds (''Affiliated Sub-adviser''). None of the current Sub-advisers is an Affiliated Sub-adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders rely on the Adviser to select the Sub-advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-advisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that each Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee Sub-advisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Sub-advisory Agreement with any Affiliated Sub-adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Sub-adviser change is proposed for a Fund with an Affiliated Sub-adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-adviser, shareholders will be furnished all information about the new Sub-adviser that would be contained in a proxy statement. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of any new Sub-adviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will (a) set the Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-advisers to manage all or part of the Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Sub-advisers; (d) monitor and evaluate the performance of Sub-advisers; and (e) implement procedures reasonably designed to ensure that the Sub-advisers comply with each Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-adviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-adviser or an entity that controls, is controlled by, or is under common control with a Sub-adviser.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4800 Filed 3–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26370]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 27, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February, 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and

serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 23, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0504.

Readington Holdings, Inc. [File No. 811–10055]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 23, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. The holders of applicant's Class A senior stock received a priority distribution, as provided in applicant's certificate of incorporation, prior to the remaining assets being distributed to the holders of applicant's Class B junior stock. Expenses of $100,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on February 12, 2004.

Applicant's Address: One Merck Dr., Whitehouse Station, NJ 08889.

The Kenwood Funds [File No. 811–7521]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 23, 2003, applicant transferred its assets to Profit Funds Investment Trust, based on net asset value. Expenses of $65,260 incurred in connection with the reorganization were paid by the Kenwood Group, applicant's investment adviser, and Profit Investment Management, the acquiring fund's investment adviser.

Filing Dates: The application was filed on December 24, 2003, and amended on February 12, 2004.

Applicant's Address: 10 South La Salle St., Suite 3610, Chicago, IL 60603.

Mercury Index Funds, Inc. [File No. 811–9605]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 15, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $5,200 incurred in connection with the liquidation were paid by Mercury Aggregate Bond Index Fund, applicant's sole remaining series.

Filing Dates: The application was filed on December 9, 2003, and amended on February 11, 2004.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Gintel Fund [File No. 811–3115]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 2003, applicant transferred its assets to The Tocqueville Fund series of The Tocqueville Trust, based on net asset value. Applicant has transferred certain claims arising out of the settlement of a securities litigation matter to a liquidating trust for the benefit of applicant's former shareholders. Any amounts ultimately paid to the liquidating trust in connection with this settlement will be distributed pro rata to applicant's former shareholders. Expenses of $47,243 incurred in connection with the reorganization were paid by Gintel Asset Management, Inc., applicant's investment adviser, and Tocqueville Asset Management, L.P., the acquiring fund's investment adviser.

Filing Dates: The application was filed on December 23, 2003, and amended on February 10, 2004.

Applicant's Address: 500 B Monroe Turnpike, Box 141, Monroe, CT 06468.

Papp Focus Fund, Inc. [File No. 811–8601]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 28, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $20,364 incurred in connection with the liquidation were paid by L. Roy Papp & Associates LLP, applicant's investment adviser.

Filing Date: The application was filed on February 3, 2004.

Applicant's Address: 6225 North 24th St., Suite 150, Phoenix, AZ 85016.

Phoenix Duff & Phelps Utilities Bond Fund, Inc. [File No. 811–9251]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on October 24, 2003, and amended on February 3, 2004.

Applicant's Address: 55 East Monroe St., Chicago, IL 60603.

Acacia Life Insurance Co. [File No. 811–10369]

Summary: Applicant, a separate account of Acacia Life Insurance Company, seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on December 19, 2003, and amended on February 3, 2004.

Applicant's Address: 7315 Wisconsin Avenue, Bethesda, MD 20814.

Acacia Life Insurance Co. [File No. 811–10367]

Summary: Applicant, a separate account of Acacia Life Insurance Company, seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Date: The application was filed on February 3, 2004.

Applicant's Address: 7315 Wisconsin Avenue, Bethesda, MD 20814.

Acacia Life Insurance Co. Regent 2001 [File No. 811–10403]

Summary: Applicant, a separate account of Acacia Life Insurance Company, seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities and is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on December 19, 2003, and amended on February 3, 2004.

Applicant's Address: 7315 Wisconsin Avenue, Bethesda, MD 20814.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4801 Filed 3–3–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of March 8, 2004:

A closed meeting will be held on Tuesday, March 9, 2004 at 2 p.m. and an open meeting will be held on Thursday, March 11, 2004 at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (6), (7), (9), and (10) and 17 CFR 200.402(a) (5), (6), (7), 9(ii), and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 9, 2004 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature;
Settlement of an administrative proceeding;
Institution and settlement of injunctive actions; and
A litigation matter.

The subject matter of the open meeting scheduled for Thursday, March 11, 2004 will be:

1. The Commission will consider whether to propose amendments to Form 20–F that would allow an eligible foreign private issuer that adopts International Financial Reporting Standards (''IFRS'') as its basis of accounting for the first time for any financial year beginning no later than January 1, 2007 to file two years, rather than three years, of financial statements in a registration statement or annual report filed for the year in which it first adopts IFRS, with appropriate related disclosure. In addition, the amendments would require all first-time adopters of IFRS to include certain information.

For further information please contact Michael Coco, Division of Corporation Finance, at (202) 942–2990.

2. The Commission will consider whether to adopt amendments to Form 8–K under the Securities Exchange Act of 1934 to add several new disclosure items, amend certain of the existing Form 8–K disclosure items and shorten the Form 8–K filing deadline. The amendments further the goals of Section 409 of the Sarbanes-Oxley Act of 2002 which requires public companies to disclose ''on a rapid and current basis'' material information regarding changes in their financial condition or operations as the Commission, by rule, determines to be necessary or useful for the protection of investors and in the public interest.

For further information, please contact Raymond Be or Julie A. Bell, Division of Corporation Finance, at (202) 942–2910 or (202) 942–2906, respectively.

3. The Commission will consider whether to propose amendments to Forms N–1A, N–2, and N–3 under the Securities Act of 1933 and the Investment Company Act of 1940, and amendments to Form N–CSR under the Investment Company Act of 1940 and the Securities Exchange Act of 1934, regarding the disclosure provided by registered management investment companies about their portfolio managers. The proposals would extend the existing requirement that a registered management investment company provide basic information in its prospectus regarding its portfolio managers to members of management teams. The proposals would also require a registered management investment company to disclose additional information about its portfolio managers in its Statement of Additional Information, including other investment companies and accounts they manage, compensation structure, and securities ownership in investment companies and accounts they manage.

For further information, please contact Sanjay Lamba at (202) 942–7926.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 2, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–5021 Filed 3–2–04; 2:11 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49332/February 27, 2004]

Order Making Fiscal 2004 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.[3]

Section 31(j)(1) and (3) require the Commission to make annual adjustments to the fee rates applicable under sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal year 2012 and beyond.[4] Section 31(j)(2) requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal 2002 through fiscal 2011.[5] The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under section 31 equal to the ''target offsetting collection amount'' specified in section 31(l)(1) for that fiscal year.[6] For fiscal 2004, the target offsetting collection amount is $1,028,000,000.[7]

Congress established the target offsetting collection amounts in the Investor and Capital Markets Fee Relief Act (''Fee Relief Act'') by applying reducing fee rates to the Congressional Budget Office's (''CBO'') January 2001 projections of dollar volume for fiscal years 2002 through 2011.[8] In any fiscal

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] 15 U.S.C. 78ee(j)(1) and (j)(3).

[5] 15 U.S.C. 78ee(j)(2).

[6] 15 U.S.C. 78ee(*l*)(1).

[7] *Id.*

[8] The target offsetting collection amounts for fiscal 2002 through 2006 were determined by applying a rate of $15 per million to the CBO's

year through fiscal 2011, the annual, and in certain circumstances, mid-year adjustment mechanism will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2004

Under Section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under sections 31(b) and (c) in fiscal year 2004 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate ($25,918,721,642,549) is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2004.[9] To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2004.

Based on data provided by the national securities exchanges and the national securities association that are subject to section 31,[10] the actual aggregate dollar volume of sales during the first four months of fiscal 2004 was $8,654,590,961,387.[11] Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal 2004 (developed after consultation with the CBO and the OMB),[12] the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2004 to be $22,548,401,329,881. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2004 will be $31,202,992,291,268.

Because the baseline estimate of $25,918,721,642,549 is more than 10% less than the $31,202,992,291,268 estimated actual aggregate dollar volume of sales for fiscal 2004, section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under sections 31(b) and (c).

III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2004. Specifically, the Commission must adjust the rates under sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of [fiscal 2004], is reasonably likely to produce aggregate fee collections under section 31 (including fees collected during such 5-month period and assessments collected under [section 31(d)]) that are equal to [$1,028,000,000].''[13] In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under section 31(d) during all of fiscal 2004 from $1,028,000,000, which is the target offsetting collection amount for fiscal 2004. That difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect $622,904,612 in fees for the period prior to the effective date of the mid-year adjustment[14] and $23,900 in assessments on round turn transactions in security futures products during all of fiscal 2004. Using the methodology referenced in part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal 2004 following the effective date of the new rate will be $17,307,204,075,317. Based on these estimates, the uniform adjusted rate is $23.40 per million of the aggregate dollar amount of sales of securities.[15]

This fee rate is substantially lower than the current fee rate of $39.00 per million, but it is still higher than the fee rate in effect upon to the enactment of the Fee Relief Act. The fee rate remains above the initial fee rate as a direct consequence of the decline in the aggregate dollar amount of sales of securities in fiscal 2004 compared to the CBO's January 2001 projection of the aggregate dollar amount of sales for fiscal 2004. The aggregate dollar amount of sales of securities subject to section 31 fees is illustrated in Appendix A.

IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. Therefore, the exchanges and the national securities association that are subject to section 31 fees must pay fees under sections 31(b) and (c) at the uniform adjusted rate of $23.40 per million for sales of securities transacted on April 1, 2004, and thereafter until the

January 2001 projections of dollar volume for those fiscal years. The target offsetting collection amounts for fiscal 2007 through 2011 were determined by applying a rate of $7 per million to the CBO's January 2001 projections of dollar volume for those fiscal years. For example, CBO's January 2001 projection of dollar volume for fiscal 2004 was $68,500,000,000,000. Applying the initial rate under the Fee Relief Act of $15 per million to that projection produces the target offsetting collection amount for fiscal 2004 of $1,028,000,000.

[9] The amount $25,918,721,642,549 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2004 calculated by the Commission in its Order Making Fiscal 2004 Annual Adjustments to the Fee Rates Applicable Under section 6(b) of the Securities Act of 1933 and sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. Nos. 33–8225 and 34–47768 (April 30, 2003), 68 FR 24027 (May 6, 2003).

[10] Each exchange is required to file a monthly report on Form R–31 containing dollar volume data on sales of securities subject to section 31 on the exchange. The report is due by the end of the month following the month for which the exchange provides dollar volume data. The NASD Inc. (''NASD'') provides data separately.

[11] Although section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2004 ''based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year,'' data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, *i.e.,* March 1, 2004. Dollar volume data on sales of securities subject to section 31 for February 2004 will not be available from the exchanges and the NASD for several weeks.

[12] *See* Appendix A.

[13] 15 U.S.C. 78ee(j)(2). The term ''fees collected'' is not defined in section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of section 31 fees for fiscal 2004 until March 15, the Commission will not ''collect'' any fees in the first five months of fiscal 2004. *See* 15 U.S.C. 78ee(e) However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress by stating in section 31(j)(2) that the ''uniform adjusted rate * * * is reasonably likely to produce aggregate fee collections under Section 31 * * * that are equal to [$1,028,000,000],'' intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

[14] This calculation is based on applying a fee rate of $46.80 per million to the projected aggregate dollar volume of sales of securities subject to section 31 through February 21, 2004, and a rate of $39.00 for the period from February 22, 2004, to March 31, 2004. Because the Commission's regular appropriation for fiscal year 2004 was not enacted prior to the end of fiscal year 2003, Exchange Act section 31(k), the ''Lapse of Appropriation'' provision, required that the fee rate in use at the end of fiscal year 2003, $46.80 per million, remain in effect until 30 days after the appropriation was enacted. *See also* Order Making Fiscal 2004 Annual Adjustments to the Fee Rates Applicable Under section 6(b) of the Securities Act of 1933 and sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. Nos. 33–8225 and 34–47768 (April 30, 2003), 68 FR 24027 (May 6, 2003). The Commission's regular appropriation for fiscal year 2004 was enacted on January 23, 2004, and the $39.00 per million rate went into effect 30 days later, by operation of the statute. *See* Exchange Act section 31(j)(4)(A)(ii).

[15] The calculation is as follows: ($1,028,000,000–$622,904,612–$23,900)/$17,307,204,075,317=$0.0000234047. Consistent with the system requirements of the exchanges and the NASD, the Commission rounds this result to the seventh decimal point, yielding a rate of $23.40 per million.

annual adjustment for fiscal 2005 is effective.[16]

V. Conclusion

Accordingly, pursuant to section 31 of the Exchange Act, [17] *it is hereby ordered* that each of the fee rates under sections 31(b) and (c) of the Exchange Act shall be $23.40 per $1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

Appendix A

A. Baseline Estimate of the Aggregate Dollar Amount of Sales.

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 1994–January 2004). The data obtained from the exchanges and NASD are presented in Table A. The monthly aggregate dollar amount of sales (exchange plus Nasdaq) is contained in column E.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.015 and the standard deviation 0.118. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 2.2 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January 2004 ($120,604,513,953) to forecast ADS for February 2004 ($123,288,117,886 = $120,604,513,953 × 1.022).[1] Multiply by the number of trading days in February 2004 (19) to obtain a forecast of the total dollar volume forecast for the month ($2,342,474,239,842). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column I of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column E) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column F).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t/ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, * * *, \Delta_{120}\}$. These are given by $\mu = 0.015$ and $\sigma = 0.118$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t/ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.022 \times ADS_{t-1}$.

6. For February 2004, this gives a forecast ADS of 1.022 × $120,604,513,953 = $123,288,117,886. Multiply this figure by the 19 trading days in February 2004 to obtain a total dollar volume forecast of $2,342,474,239,842.

7. For March 2004, multiply the February 2004 ADS forecast by 1.022 to obtain a forecast ADS of $126,031,435,423. Multiply this figure by the 23 trading days in March 2004 to obtain a total dollar volume forecast of $2,898,723,014,722.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A to Calculate the New Fee Rate

1. Using the data from Table A, determine the actual and projected aggregate dollar volume of sales between 10/1/03 and 2/21/04 to be $10,380,624,611,797. (Allocate the projected aggregate dollar volume in February 2004 based on the number of trading days in the periods—14 trading days during 2/1/04 and 2/21/04, and 5 trading days during 2/22/04 and 2/29/04.) Multiply this amount by the fee rate of $46.80 per million dollars in sales during this period and get an estimate of $485,813,231 in actual and projected fees collected during 10/1/03 and 2/21/04. Determine the projected aggregate dollar volume of sales between 2/22/04 and 3/31/04 to be $3,515,163,604,154. Multiply this amount by the fee rate of $39.00 per million dollars in sales during this period and get an estimate of $137,091,381 in projected fees collected during 2/22/04 and 3/31/04.

2. Estimate the amount of assessments on securities futures products collected during 10/1/03 and 9/30/04 to be $23,900 by summing the amounts collected through January of $7,700 with projections of a 2.2% monthly increase in subsequent months.

3. Using the data from Table A, determine the projected aggregate dollar volume of sales between 4/1/04 and 9/30/04 to be $17,307,204,075,317.

4. The rate necessary to collect the target $1,028,000,000 in fee revenues is then calculated as: ($1,028,000,000 − $485,813,231 − $137,091,381 − $23,900) ÷ $17,307,204,075,317 = .000023405.

5. Consistent with the system requirements of the exchanges and the NASD, round the rate to the seventh decimal point, yielding a rate of .0000234 (or $23.40 per million).

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[16] Section 31(j)(1) and section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2004, adjusting the fee rates applicable under sections 31(b) and (c) for fiscal 2005. These fee rates for fiscal 2005 will be effective on the later of October 1, 2004, or thirty days after the enactment of the Commission's regular appropriation for fiscal 2005.

[17] 15 U.S.C. 78ee.

[1] The value 1.022 has been rounded. All computations are done with the unrounded value.

Table A. Estimation of baseline of the aggregate dollar amount of sales.
(Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.)

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/03 to 2/21/04 ($Millions)	10,380,625
b. Baseline estimate of the aggregate dollar amount of sales, 2/22/04 to 3/31/04 ($Millions)	3,515,164
c. Baseline estimate of the aggregate dollar amount of sales, 4/1/04 to 9/30/04 ($Millions)	17,307,204
d. Estimated collections in assessments on securities futures products in FY 2004 ($Millions)	0.024
e. Implied fee rate (($1,028,000,000 - 0.0000468*a - 0.0000390*b - d) /c)	$23.40479

Data

(A) Month	(B) # of Trading Days in Month	(C) Exchange-Listed Dollar Amount of Sales	(D) Nasdaq Dollar Amount of Sales	(E) Aggregate Dollar Amount of Sales	(F) Average Daily Dollar Amount of Sales (ADS)	(G) Change in LN of ADS	(H) Forecast ADS	(I) Forecast Aggregate Dollar Amount of Sales
Jan-94	21	277,615,393,351	137,551,072,000	415,166,465,351	19,769,831,683	-		
Feb-94	19	281,053,587,314	122,882,920,000	403,936,507,314	21,259,816,174	0.073		
Mar-94	23	316,713,498,173	151,177,373,000	467,890,871,173	20,343,081,355	-0.044		
Apr-94	19	289,365,151,226	114,834,515,000	404,199,666,226	21,273,666,643	0.045		
May-94	21	241,278,516,490	112,318,747,000	353,597,263,490	16,837,964,928	-0.234		
Jun-94	22	245,067,967,632	112,555,736,000	357,623,703,632	16,255,622,892	-0.035		
Jul-94	20	221,511,138,952	100,563,525,000	322,074,663,952	16,103,733,198	-0.009		
Aug-94	23	255,511,795,450	127,675,353,000	383,187,148,450	16,660,310,802	0.034		
Sep-94	21	273,589,300,476	111,984,539,000	385,573,839,476	18,360,659,023	0.097		
Oct-94	21	266,363,537,805	129,089,800,000	395,453,337,805	18,831,111,324	0.025		
Nov-94	21	267,314,618,799	121,827,668,000	389,142,286,799	18,530,585,086	-0.016		
Dec-94	21	265,184,891,948	106,839,641,000	372,024,532,948	17,715,453,950	-0.045		
Jan-95	21	253,958,524,771	125,092,685,000	379,051,209,771	18,050,057,608	0.019		
Feb-95	19	263,486,075,035	125,574,811,000	389,060,886,035	20,476,888,739	0.126		
Mar-95	23	330,806,034,718	161,066,575,000	491,872,609,718	21,385,765,640	0.043		
Apr-95	19	285,586,213,818	149,741,420,000	435,327,633,818	22,911,980,727	0.069		
May-95	22	340,254,177,379	191,600,883,000	531,855,060,379	24,175,230,017	0.054		
Jun-95	22	376,703,055,609	197,629,158,000	574,332,213,609	26,106,009,710	0.077		
Jul-95	20	346,809,496,831	229,239,839,000	576,049,335,831	28,802,466,792	0.098		
Aug-95	23	327,435,391,060	243,203,335,000	570,638,726,060	24,810,379,394	-0.149		
Sep-95	20	352,176,019,676	225,957,920,000	578,133,939,676	28,906,696,984	0.153		
Oct-95	22	386,892,948,035	255,297,230,000	642,190,178,035	29,190,462,638	0.010		
Nov-95	21	340,868,134,565	255,556,416,000	596,424,550,565	28,401,169,075	-0.027		
Dec-95	20	386,356,222,037	238,254,219,000	624,610,441,037	31,230,522,052	0.095		
Jan-96	22	412,342,988,854	275,256,103,000	687,599,091,854	31,254,504,175	0.001		
Feb-96	20	432,110,721,273	255,121,750,000	687,232,471,273	34,361,623,564	0.095		
Mar-96	21	462,522,216,093	252,313,904,000	714,836,120,093	34,039,815,243	-0.009		
Apr-96	21	419,529,647,022	284,880,671,000	704,410,318,022	33,543,348,477	-0.015		
May-96	22	444,864,509,489	323,514,998,000	768,379,507,489	34,926,341,250	0.040		

Jun-96	20	364,047,300,223	267,051,480,000	631,098,780,223	31,554,939,011	-0.102		
Jul-96	22	405,998,331,384	282,430,397,000	688,428,728,384	31,292,214,927	-0.008		
Aug-96	22	347,207,351,036	222,902,421,000	570,109,772,036	25,914,080,547	-0.189		
Sep-96	20	361,752,600,688	255,491,281,000	617,243,881,688	30,862,194,084	0.175		
Oct-96	23	450,138,412,454	314,131,029,000	764,269,441,454	33,229,106,150	0.074		
Nov-96	20	468,499,807,419	279,994,893,000	748,494,700,419	37,424,735,021	0.119		
Dec-96	21	475,791,378,753	288,688,118,000	764,479,496,753	36,403,785,560	-0.028		
Jan-97	22	578,613,348,586	378,819,289,000	957,432,637,586	43,519,665,345	0.179		
Feb-97	19	500,101,991,446	337,072,192,000	837,174,183,446	44,061,799,129	0.012		
Mar-97	20	526,670,517,788	312,522,211,000	839,192,728,788	41,959,636,439	-0.049		
Apr-97	22	541,016,966,315	321,782,247,000	862,799,213,315	39,218,146,060	-0.068		
May-97	21	560,712,670,647	365,021,182,000	925,733,852,647	44,082,564,412	0.117		
Jun-97	21	590,497,004,859	339,912,081,000	930,409,085,859	44,305,194,565	0.005		
Jul-97	22	665,142,486,898	420,540,220,000	1,085,682,706,898	49,349,213,950	0.108		
Aug-97	21	646,260,997,751	385,083,141,000	1,031,344,138,751	49,111,625,655	-0.005		
Sep-97	21	636,729,800,602	399,730,444,000	1,036,460,244,602	49,355,249,743	0.005		
Oct-97	23	795,309,593,718	534,343,839,000	1,329,653,432,718	57,811,018,814	0.158		
Nov-97	19	614,656,941,587	311,360,937,000	926,017,878,587	48,737,783,084	-0.171		
Dec-97	22	670,717,275,199	375,503,531,000	1,046,220,806,199	47,555,491,191	-0.025		
Jan-98	20	662,635,021,902	375,290,271,000	1,037,925,292,902	51,896,264,645	0.087		
Feb-98	19	672,828,859,396	408,876,474,000	1,081,705,333,396	56,931,859,652	0.093		
Mar-98	22	795,132,023,467	464,862,662,000	1,259,994,685,467	57,272,485,703	0.006		
Apr-98	21	819,690,018,253	478,804,341,000	1,298,494,359,253	61,833,064,726	0.077		
May-98	20	717,931,027,995	392,290,631,000	1,110,221,658,995	55,511,082,950	-0.108		
Jun-98	22	778,892,937,913	464,886,854,000	1,243,779,791,913	56,535,445,087	0.018		
Jul-98	22	837,582,352,748	561,429,081,000	1,399,011,433,748	63,591,428,807	0.118		
Aug-98	21	812,804,954,442	494,696,509,000	1,307,501,463,442	62,261,974,450	-0.021		
Sep-98	21	899,449,779,083	452,978,456,000	1,352,428,235,083	64,401,344,528	0.034		
Oct-98	22	941,206,761,926	519,628,635,672	1,460,835,397,598	66,401,608,982	0.031		
Nov-98	20	763,668,070,478	534,735,697,587	1,298,403,768,065	64,920,188,403	-0.023		
Dec-98	22	832,619,360,060	610,078,427,246	1,442,697,787,306	65,577,172,150	0.010		
Jan-99	19	1,002,792,782,534	881,762,273,376	1,884,555,055,910	99,187,108,206	0.414		
Feb-99	19	884,236,683,650	771,821,519,115	1,656,058,202,765	87,160,958,040	-0.129		
Mar-99	23	1,063,644,002,718	845,323,661,356	1,908,967,664,074	82,998,594,090	-0.049		
Apr-99	21	1,202,755,130,954	974,846,639,668	2,177,601,770,622	103,695,322,411	0.223		
May-99	20	1,055,752,423,736	728,648,483,251	1,784,400,906,987	89,220,045,349	-0.150		
Jun-99	22	968,672,852,262	728,666,375,241	1,697,339,227,503	77,151,783,068	-0.145		
Jul-99	21	971,377,415,431	795,657,683,556	1,767,035,098,986	84,144,528,523	0.087		
Aug-99	22	910,143,257,265	782,763,893,461	1,692,907,150,726	76,950,325,033	-0.089		
Sep-99	21	887,751,464,814	842,754,416,364	1,730,505,881,178	82,405,041,961	0.068		

Oct-99	21	1,078,637,908,317	938,836,857,225	2,017,474,765,542	96,070,226,931	0.153		
Nov-99	21	1,129,374,113,398	1,218,999,895,936	2,348,374,009,334	111,827,333,778	0.152		
Dec-99	22	1,214,245,992,515	1,472,542,539,476	2,686,788,531,991	122,126,751,454	0.088		
Jan-00	20	1,298,320,930,164	1,759,510,466,949	3,057,831,397,113	152,891,569,856	0.225		
Feb-00	20	1,242,939,925,885	1,730,179,962,177	2,973,119,888,063	148,655,994,403	-0.028		
Mar-00	23	1,674,957,313,287	2,460,195,052,947	4,135,152,366,234	179,789,233,315	0.190		
Apr-00	19	1,435,035,900,103	1,739,658,625,584	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	1,275,173,133,440	1,374,100,073,878	2,649,273,207,318	120,421,509,424	-0.328		
Jun-00	22	1,288,821,230,447	1,594,692,767,334	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	1,210,411,492,966	1,594,341,902,395	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	1,212,084,264,128	1,508,704,131,703	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	1,266,743,469,149	1,663,445,339,863	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	1,520,695,416,929	1,965,230,890,799	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	1,293,925,005,931	1,501,853,870,956	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	1,372,200,223,377	1,437,717,126,473	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	1,553,316,868,836	1,590,184,256,408	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	1,229,720,673,393	1,142,699,849,893	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	1,459,253,562,636	1,095,165,522,477	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	1,320,145,219,933	1,004,204,287,812	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	1,321,526,084,016	1,031,653,304,287	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	1,247,283,258,199	864,638,855,037	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	1,242,431,937,109	761,952,097,446	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,126,055,224,969	677,510,112,826	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,047,626,761,645	525,858,184,738	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	1,349,118,916,636	798,119,956,408	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,172,054,711,429	767,372,506,089	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,163,934,125,870	757,164,612,243	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	1,295,560,129,211	853,683,183,221	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,265,596,423,330	663,234,172,254	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	1,391,686,235,846	610,530,138,668	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	1,425,803,762,869	636,298,103,636	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,389,719,439,112	596,147,222,417	1,985,866,661,529	90,266,666,433	-0.038		
Jun-02	20	1,346,504,731,252	535,838,197,360	1,882,342,928,611	94,117,146,431	0.042		
Jul-02	22	1,788,275,328,841	563,694,536,838	2,351,969,865,679	106,907,721,167	0.127		
Aug-02	22	1,370,483,507,861	427,166,695,393	1,797,650,203,254	81,711,372,875	-0.269		
Sep-02	20	1,146,955,551,522	376,346,966,238	1,523,302,517,760	76,165,125,888	-0.070		
Oct-02	23	1,605,473,978,372	529,782,736,090	2,135,256,714,462	92,837,248,455	0.198		
Nov-02	20	1,287,672,575,420	498,605,599,233	1,786,278,174,653	89,313,908,733	-0.039		
Dec-02	21	1,150,267,594,827	415,897,247,519	1,566,164,842,346	74,579,278,207	-0.180		
Jan-03	21	1,248,793,946,741	474,904,883,673	1,723,698,830,414	82,080,896,686	0.096		

Feb-03	19	1,070,048,068,849	341,674,336,507	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,293,340,642,585	406,242,999,932	1,699,583,642,517	80,932,554,406	0.085		
Apr-03	21	1,310,080,563,238	449,316,319,231	1,759,396,882,469	83,780,803,927	0.035		
May-03	21	1,451,830,957,154	419,562,973,291	1,871,393,930,445	89,113,996,688	0.062		
Jun-03	21	1,656,129,355,959	466,098,458,761	2,122,227,814,720	101,058,467,368	0.126		
Jul-03	22	1,622,749,852,799	478,067,675,641	2,100,817,528,440	95,491,705,838	-0.057		
Aug-03	21	1,407,923,702,993	356,078,779,421	1,764,002,482,414	84,000,118,210	-0.128		
Sep-03	21	1,615,383,245,929	444,929,704,768	2,060,312,950,696	98,110,140,509	0.155		
Oct-03	23	1,828,085,746,139	486,831,267,393	2,314,917,013,532	100,648,565,806	0.026		
Nov-03	19	1,538,248,661,152	356,092,108,495	1,894,340,769,647	99,702,145,771	-0.009		
Dec-03	22	1,690,021,194,145	343,221,705,000	2,033,242,899,145	92,420,131,779	-0.076		
Jan-04	20	1,929,842,015,739	482,248,263,325	2,412,090,279,064	120,604,513,953	0.266		
Feb-04	19						123,288,117,886	2,342,474,239,842
Mar-04	23						126,031,435,423	2,898,723,014,722
Apr-04	21						128,835,795,266	2,705,551,700,579
May-04	20						131,702,555,684	2,634,051,113,688
Jun-04	22						134,633,105,171	2,961,928,313,763
Jul-04	21						137,628,863,114	2,890,206,125,385
Aug-04	22						140,691,280,483	3,095,208,170,629
Sep-04	21						143,821,840,537	3,020,258,651,273

[FR Doc. 04–4802 Filed 3–3–04; 8:45 am]
BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49331; File No. SR–Amex–2004–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Disclosure of Independent Director Determinations

February 27, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2004, the American Stock Exchange LLC (the ''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. On February 26, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] Amex has filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend section 802 of the Amex *Company Guide* to specify that a listed company must disclose those directors that its board of directors has determined to be independent. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 26, 2004. Amendment No. 1 made a technical correction to the text of the proposed rule change to reflect a revision that was made in File No. SR–Amex–2004–06. *See* Securities Exchange Act Release No. 49295 (February 23, 2004).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 1, 2003 the Commission approved comprehensive enhancements to the corporate governance requirements applicable to listed companies in order to promote accountability, transparency, and integrity by such companies, including the changes required by Commission Rule 10A–3[5] with respect to listed company audit committees.[6] Among other things, these enhancements require that for most listed companies at least a majority of the directors on the company's board of directors must be independent as defined in section 121A of the *Amex Company Guide.* Small business issuers are required to maintain a board of directors comprised of at least 50% independent directors.[7] In order to provide increased disclosure to investors, the Exchange is proposing to amend section 802 of the Amex *Company Guide* to specify that a listed company must disclose in its annual meeting proxy statement (or in its next annual report on SEC Form 10–K or equivalent if the issuer does not file an annual proxy statement) those directors that the board of directors has determined to be independent pursuant to section 121A of the Amex *Company Guide.*

2. Statutory Basis

The Amex believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[5] 17 CFR 240.10A–3.

[6] *See* Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR–Amex–2003–65).

[7] The disclosure required in the proposed rule change will apply equally to small business issuers. Telephone conference between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on February 25, 2004.

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 burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Amex as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

Consequently, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

Pursuant to Rule 19b–4(f)(6)(iii),[12] a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may

[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 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

designate if consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the 30-day operative delay and the five-business day pre-filing requirement to permit the Exchange to implement the proposal immediately.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The revision contained in the proposed rule change relating to disclosure of independent director determinations is substantially identical to a rule change by the National Association of Securities Dealers, Inc. that was recently approved by the Commission.[13] In addition, waiving the 30-day operative delay will ease implementation of the new rule and assure consistent application of corporate governance disclosure requirements between listing markets. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[14] The Commission also waives the five business day pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, as amended, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2004–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2004–15 and should be submitted by March 25, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4835 Filed 3–3–04; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of File Nos. SR–NYSE–2002–33, SR–NASD–2002–77, SR–NASD–2002–80, SR–NASD–2002–138, SR–NASD–2002–139, and SR–NASD–2002–141).

[14] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–305]

WTO Dispute Settlement Proceeding Regarding Egypt—Measures Affecting Imports of Textile and Apparel Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on December 23, 2003, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the United States requested consultations with Egypt regarding the import duties that Egypt applies to textile and apparel products. USTR believes the duties Egypt actually applies (on a ''per article'' basis) greatly exceed the *ad valorem* bound rates that Egypt agreed to apply in the Uruguay Round of WTO negotiations.

USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 26, 2004, to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Egypt Textile and Apparel Dispute. Telephone: (202) 395–3582.

FOR FURTHER INFORMATION CONTACT: Jason Kearns, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meeting in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On December 23, 2003, the United States requested consultations with the Government of Egypt pursuant to Articles 1 and 4 of the DSU, Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 7 of the Agreement on Textiles and Clothing (ATC) regarding the tariffs applied to textile and apparel products and the Decree of the President of the Arab Republic of Egypt No. 469 of the year 2001 (''Decree No. 469'') and any amendments, related regulations or other implementing measures.

In the Uruguay Round, Egypt agreed to remove a general prohibition on the importation of apparel and made-up textile products by January 1, 2002. It also agreed to bind its duties under HS Chapters 61 (articles of apparel and clothing, knitted and crocheted) and 62 (articles of apparel and clothing, not knitted or crocheted) at an *ad valorem* rate of 46 percent in 2003, 43 percent in 2004 and 40 percent thereafter. Moreover, it agreed to bind its duties under HS Chapter 63 (other made up

textile articles; sets; worn clothing) at an *ad valorem* rate of 41 percent in 2003, 38 percent in 2004, and 35 percent thereafter.

USTR understands that, on December 31, 2001, just before the import prohibition was set to expire, President Mubarak issued Decree No. 469 amending the customs duties applicable to a number of imported articles, including articles that enter under HS Chapters 61, 62 and 63. The amended duties were specific (*i.e.,* in Egyptian pounds (L.E.) per piece of clothing), rather than *ad valorem.* It appears that the specific duties applied by Egypt greatly exceed Egypt's bound rates of duty. Specifically, it appears that the *ad valorem* equivalent of these duties range from a low of 141 percent to a high of 51,296 percent—all well above the bound rates. USTR therefore believes that these tariffs, Decree No. 469 and any related measures are inconsistent with the obligations of Egypt under several WTO provisions, including Article II of the GATT 1994 and Article 7 of the ATC.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0417@ustr.gov,* with ''Egypt Textile Tariffs (DS305)'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–305, Egypt Textile and Apparel Dispute) may be made by calling the USTR Reading Room at (202) 395–6186.

The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–4804 Filed 3–3–04; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS 174]

WTO Dispute Settlement Proceeding Regarding European Communities—Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on February 23, 2004, a WTO dispute settlement panel was composed to examine the European Communities Regulations 2081/92, as amended, which governs the protection of geographical indications for agricultural foodstuffs. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 26, 2004, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0418@ustr.gov,* with ''EC GI's Dispute (DS174)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Victoria A. Espinel, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–5961.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided for the establishment of a WTO dispute settlement panel. The panel, which would hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

EC Council Regulation (EEC) No 2081/92 of July 14, 1992, as amended, governs the protection of geographical indications and designations of origin for agricultural products and foodstuffs. The United States believes this measure to be inconsistent with several provisions of the WTO Trade-Related Aspects of Intellectual Property Agreement, including Articles 1.1, 2.1 (incorporating by reference Article 2 of the Paris Convention for the Protection of Industrial Property (1967), 3.1, 4, 16.1, 20, 22.1, 22.2, 24.5, 41.1, 41.2, 41.4, 42, 44.1, 63.1, 63.3 and 65.1.) The United States also believes that the measure is inconsistent with Articles I and III:4 of the GATT 1994.

The U.S. concerns are, *inter alia,* that Regulation 2081/92 does not provide the same treatment to other nationals and products originating outside the EC that

it provides to the EC's own nationals and products, does not accord immediately and unconditionally to the nationals and products of each WTO Member any advantage, favor, privilege or immunity granted to the nationals and products of other WTO Members, diminishes the legal protection for trademarks (including to prevent the use of an identical or similar sign that is likely to confuse and adequate protection against invalidation), does not provide legal means for interested parties to prevent the misleading use of a geographical indication, does not define a geographical indication in a manner that is consistent with the definition provided in the TRIPS Agreement, is not sufficiently transparent, and does not provide adequate enforcement procedures.

The U.S. panel request can be downloaded from the WTO Web site, at *http://docsonline.wto.org:80/DDFDocuments/t/WT/DS/174-20.doc.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0418@ustr.gov,* with ''EC GI's Dispute (DS174)'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of each page of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–174, EC Geographical Indications Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–4805 Filed 3–3–04; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14794]

Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Guidance.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA), a modal administration within the U.S. Department of Transportation (DOT), announces the availability of its Guidance for the use of binding arbitration in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. FMCSA will *not* agree to arbitrate maximum civil penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, or any cases that require interpretation of the regulations or analysis of important policy issues. The Guidance is located on the Internet at *http://www.dms.dot.gov,* under docket number FMCSA–2003–14794.

EFFECTIVE DATE: The Guidance becomes effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, (202) 385–2351, Federal Motor Carrier Safety Administration, Adjudications Counsel, 400 7th Street, SW., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m. e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On March 31, 2003, FMCSA published a notice in the **Federal Register** (68 FR 15549) announcing the issuance for public comment of its proposed Guidance for the use of binding arbitration as an alternative dispute resolution technique in civil penalty forfeiture proceedings in which the only issues remaining to be resolved are the amount of the civil penalty owed and the length of time in which to pay it. In response to a petition from the parties, or as a result of the Chief Safety Officer's independent review of case pleadings, the Chief Safety Officer will determine if a case is appropriate for arbitration and notify the parties in writing that the case will be referred to arbitration with the consent of both parties. A detailed explanation of the notification and consent process is provided in the Questions and Answers portion of the Guidance. Maximum civil penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999 and cases requiring interpretation of the regulations or analysis of important policy issues will *not* be selected for binding arbitration. FMCSA will modify or terminate the use of binding arbitration if there is reason to believe that continuation of this process will be inconsistent with the goals and objectives of the Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations.

FMCSA's Guidance, developed pursuant to the Administrative Dispute Resolution Act (ADRA) of 1996 (Pub. L. 104–320, 110 Stat. 3870 (October 19, 1996) (now codified at 5 U.S.C. 571–583)), had been published in full on the

Internet. As was stated in the **Federal Register** notice published on March 31, 2003, FMCSA had submitted the Guidance to the Attorney General for consultation and received his concurrence in accordance with section 575 of the ADRA. The notice called for public comments to be received by U.S. DOT Dockets on or before May 30, 2003.

To date, no comments have been received by FMCSA on this proposal. FMCSA, nevertheless, is making a change to the Guidance. The Guidance stated that each party would present evidence supporting the penalty it considers appropriate *for each violation* and the case as a whole. It further stated that each party would present to the Arbitrator and the opposing party a sealed envelope containing the amount of its proposed penalty *for each violation* as well as a total penalty for the case. The Arbitrator, in turn, would determine the appropriate civil penalty *for each violation* as well as the total civil penalty for the case. (Emphasis added.) Upon further review, the Agency has concluded that having a civil penalty determination made for each violation as well as for the entire case could lead to unwarranted results. Under this scenario, it would be possible for the Arbitrator to select one party's proposed civil penalty for several of the violations, but select the other party's total civil penalty as being closest to his or her own figure. This will lead to confusion, and the Agency's goal of a more efficient and effective resolution of the large volume of adjudication cases before FMCSA's Chief Safety Officer may be jeopardized. Accordingly, the parties will present evidence and a proposed civil penalty only for the case as a whole. The Arbitrator, in turn, will determine the civil penalty for the entire case and select the proposal that is closer to his or her determination. FMCSA has also added language to clarify that the Arbitrator will make a payment plan determination if the carrier has requested one. The Attorney General has approved the Agency's arbitration concept and does not require that these changes be submitted for his concurrence.

FMCSA's issuance of this Guidance satisfies the requirements regarding binding arbitration specified by section 575 of the ADRA of 1996, and addresses use of binding arbitration in a manner consistent with FMCSA's dispute resolution process and its procedural rules of practice at 49 CFR part 386. The Guidance may be located on the Internet at *http://www.dms.dot.gov,* under docket number 2003–14794.

Issued on: February 17, 2004.

Annette M. Sandberg,

Administrator.

Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996

Dated: February 6, 2004.

Summary

The primary mission of the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) is to prevent commercial motor vehicle-related fatalities and injuries. FMCSA contributes to reducing crashes and ensuring commercial motor vehicle safety through its enforcement of safety regulations, including the assessment of civil penalties.

Because of the large volume of cases before FMCSA's Chief Safety Officer for adjudication, the FMCSA has begun to explore whether alternative dispute resolution might lead to a more efficient and effective enforcement program. This Guidance for the Use of Binding Arbitration is being proposed to expand the options for adjudication available to motor carriers, brokers, shippers, freight forwarders, and other individuals or entities engaged in the use of commercial motor vehicles in interstate transportation (hereafter referred to collectively as ''carriers''). Rather than submit to the Chief Safety Officer cases that only involve a question of the amount of civil penalty or terms of payment, carriers may elect to enter into binding arbitration.

This Guidance explains arbitration and addresses critical issues relating to the use of binding arbitration. This Guidance provides that the use of binding arbitration is entirely voluntary. FMCSA believes that, in many cases, the use of binding arbitration can provide significant benefits for the agency and the carriers and that this Guidance would provide FMCSA with another tool to help achieve its goal of effective, efficient, and fair resolution of civil penalty enforcement cases. This program may be terminated, modified, or permanently adopted as part of the FMCSA's enforcement program in the discretion of the Chief Safety Officer (CSO).

This Guidance is being issued after consultation with the Attorney General, pursuant to 5 U.S.C. 575(c).

Background

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) describes a variety of problem-solving processes available to parties who are ready, willing and able to try them in lieu of litigation or other adversarial proceedings to resolve disagreements. ADR gives parties an opportunity to talk with each other directly under the guidance of a dispute resolution professional. ADR processes are generally designed to reduce costs, avoid the delays of judicial proceedings, protect the privacy of the parties, and increase the level of compliance by involving decisionmakers in the process.

In 1990, President George H.W. Bush signed into law the Administrative Dispute Resolution Act of 1990.[1] The Act defines ''alternative means of dispute resolution'' to include any procedure that is used to resolve issues in controversy, including mediation, facilitation, conciliation, fact-finding, mini-trials, use of an ombuds, and arbitration. The use of ADR processes was intended to be and is voluntary (''if the parties agree to such proceeding'' [2]), and it is used in place of traditional adjudication or other formal processes. Among other things, the Act required agencies to adopt an ADR policy and provide ADR training. These procedural requirements have resulted in the increased use of ADR within the Federal government.

The 1990 Act expressly authorized the use of arbitration among several ADR techniques available to federal agencies for purposes of dispute resolution, but specifically permitted agency heads to ''opt out'' of arbitration awards:

(c) The head of any agency that is a party to an arbitration proceeding conducted under this subchapter is authorized to terminate the arbitration proceeding or vacate any award issued pursuant to the proceeding before the award becomes final by serving on all other parties a written notice to that effect, in which case the award shall be null and void.

The Administrative Dispute Resolution Act of 1996 [3] was enacted because of the sunset of the 1990 Act. The primary purpose of this new statute was to reauthorize the 1990 Act. In addition, it enhanced confidentiality protections, simplified the process for acquiring neutrals by addressing the development of procedures for obtaining neutral third parties as mediators on an expedited basis, and

[1] Pub. L. 101–552, 104 Stat. 2736 (codified at 5 U.S.C. 571).

[2] ''An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the partis agree to such proceeding.'' *Id.* at § 572(a).

[3] Pub. L. 104–320, 110 Stat. 3870 (codified at 5 U.S.C. 571).

authorized fully binding arbitration. The ''opt out'' feature of the 1990 Act—which rendered federal agency arbitrations less than ''binding''—was eliminated. The 1996 Act specifically permits federal agencies to use ''binding arbitration'' to resolve ''issues in controversy.'' In addition, the 1996 Act requires that agencies issue guidance as a prerequisite to agencies' use of binding arbitration, in consultation with the Attorney General. 5 U.S.C. 575(c).

In August 2000, the Federal ADR Council under the leadership of the Attorney General approved and endorsed a publication entitled ''Developing Guidance for Binding Arbitration: *A Handbook for Federal Agencies* (the ''Handbook''). The Handbook was created to assist agencies in developing policy for the use of binding arbitration.

In June 2002, Secretary of Transportation Norman Y. Mineta announced a Statement of Policy on ADR. The Department of Transportation is committed to advancing its national transportation goals through ADR. The Department is using ADR in a variety of areas including workplace issues, issuance of regulations, contract and grant award and administration, litigation brought by or against the Department, and other interactions with the public and the regulated community. Because of the volume of cases awaiting a decision of its Chief Safety Officer, FMCSA has begun to explore whether ADR may lead to a more efficient and effective enforcement program.

FMCSA's Enforcement Program

The civil penalty enforcement process begins with a compliance review that is conducted by an FMCSA Safety Investigator or by State enforcement personnel pursuant to the Federal Motor Carrier Safety Assistance Program. (Both hereafter referred to as ''SI''). After conducting a review of a carrier's operations, the SI discusses the review with carrier management personnel. The SI reports on the violations discovered, makes recommendations about corrective action and future compliance, and provides the motor carrier with a proposed safety rating (satisfactory, conditional, or unsatisfactory).

FMCSA's State Director or Division Administrator ultimately reviews the case presented by the SI and decides whether the violations documented during the CR warrant a civil penalty enforcement action. If so, the agency issues a Notice of Claim (NOC) to the carrier. The NOC notifies the carrier of the violations discovered during the CR, asserts a claim for the civil penalty applicable to each violation and the case in total, and informs the carrier how to respond to the NOC.

A carrier may respond to the NOC by paying the civil penalty, requesting a hearing before an Administrative Law Judge, or requesting the CSO to consider the merits of the case on the written record. As part of its reply, the carrier may request an opportunity for settlement discussion. If the carrier ignores the NOC or does not timely reply, the Field Administrator may advise the carrier that it has defaulted, that the NOC has become the final agency order, and that the carrier owes the civil penalty asserted in the NOC.

The Service Center Enforcement Team is led by an Enforcement Program Manager who negotiates with the carrier over the amount of the civil penalty and the terms for payment. To allow the parties an opportunity to resolve the matters without resorting to formal proceedings, the CSO encourages negotiation of the civil penalty and the terms of payment, especially where there is evidence that the carrier has undertaken corrective action prior to issuance of the NOC. See, *e.g.*, In the Matter of Four Star Transport, Inc., Docket No. FMCSA 2000–7070–6, March 9, 2001 and In the Matter of AGG Enterprises, Inc., Docket No. FMCSA–2001–8689–3, December 17, 2001.

When the agency and the carrier cannot agree that a violation occurred or agree to the amount of the civil penalty, agency attorneys will file before the CSO a Motion for Final Order, which is the equivalent of a motion for summary judgment. The carrier typically responds to the motion and, based on the submission of the parties, the CSO issues the final agency decision addressing the violations and, if appropriate, assessing the civil penalty.

Pursuant to 49 U.S.C. 521(b)(2)(D), the amount of the civil penalty for violations of the Federal Motor Carrier Safety Regulations shall take into effect ''the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.'' The amount of the civil penalty for violations of the Hazardous Materials Regulations shall take into account the factors listed at 49 U.S.C. 5123(c), which are nearly identical to those listed in 49 U.S.C. 521(b)(2)(D).

Binding Arbitration

Binding arbitration is the dispute resolution process most like adjudication. In binding arbitration, the parties agree to use a mutually selected decisionmaker to hear their dispute and resolve it by rendering a decision or award that is binding on the parties. Like litigation, binding arbitration is an adversarial, adjudicative process designed to resolve the specific issues submitted by the parties. Binding arbitration differs significantly from litigation in that it does not require conformity with the legal rules of evidence, and the proceeding is conducted in a private rather than a public forum. Binding arbitration awards typically are enforceable by courts, absent defects in the arbitration procedure. Appeal from arbitration awards, pursuant to the Federal Arbitration Act, 9 U.S.C. 10, is generally limited to fraud or misconduct in the proceedings.

FMCSA will use a form of arbitration referred to as ''Night Baseball.'' Under this format, the Arbitrator will determine the appropriate civil penalty without knowledge of the parties' proposals. The actual award will be the party's figure that is closer to the Arbitrator's determination. The process for reaching the final award will be as follows: Each party will present evidence supporting the penalty it considers appropriate for the case as a whole. Evidence will be presented in accordance with the procedures established by the parties within the Arbitration Agreement. No evidence shall be offered or accepted concerning whether the violation(s) occurred because the parties concede the violations as a condition of arbitration. Neither written submissions nor oral argument will contain any reference to the amount of the civil penalty proposed by the party. At a time specified by the Arbitrator, each party will present to the Arbitrator and to the opposing party a sealed envelope containing the amount of its total proposed civil penalty for the case and, if necessary, a proposed payment plan supported by the evidence. Before opening the envelopes, the Arbitrator will determine the total civil penalty and, if necessary, a payment plan. His determination will be provided in writing to the parties. The Arbitrator will then open the envelopes and select the civil penalty and payment plan closer to the Arbitrator's determinations. The actual award will be the party's figure and payment plan that is closer to the Arbitrator's determination. It is possible for the Arbitrator to select the

civil penalty proposed by one party and the payment plan proposed by the other party.

As discussed later in this guidance, the civil penalty amount proposed by the parties may not be set lower than the statutory minimum for any violation nor higher then the amount assessed in the NOC. Because the 1996 Act requires the parties to agree on a maximum award, FMCSA proposes that the maximum award be set at the amount assessed in the NOC.

Statutory Considerations for Not Using Arbitration

The 1996 Act states that agencies should not consider using any form of ADR, including binding arbitration, if:

(1) A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; or

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement. *See* 5 U.S.C. 572(b).

Accordingly, unless the Chief Safety Officer determines that the use of binding arbitration will be in the best interests of the government, a case will not be submitted to binding arbitration.

Other Statutory Considerations

The 1996 Act includes a number of provisions relating to arbitration. FMCSA's use of binding arbitration will be modeled on these provisions.

Authorization of Arbitration

1. The decision to arbitrate must be voluntary on the part of all parties to the arbitration. (*See* 5 U.S.C. 575(a)(1)).

2. An agreement to arbitrate must be in writing. It must set forth the subject matter submitted to the arbitrator, and must specify the maximum award that may be granted by the arbitrator. (*See* 5 U.S.C. 575(a)(2)).

3. FMCSA shall not require anyone to consent to arbitration as a condition of entering into a contract or obtaining any other benefit. (See 5 U.S.C. 575(a)(3)).

4. The Field Administrator who offers to use arbitration has the authority to enter into a settlement concerning the matter after consent to the use of arbitration by the Chief Safety Officer. (*See* 5 U.S.C. 575(b)(1) and (2)).

Enforcement of Arbitration Agreements (5 U.S.C. 576).

Arbitration agreements are enforceable pursuant to 9 U.S.C 4.

Arbitrators (5 U.S.C. 577)

1. The parties to an arbitration are entitled to participate in selecting an arbitrator. (*See* 5 U.S.C. 577(a)).

2. An arbitrator shall not have an official financial or personal conflict of interest with respect to the issue in controversy, unless that interest is fully disclosed in writing and all parties agree that he/she may serve as the arbitrator. (*See* 5 U.S.C. 573, 577(b)).

Authority of the Arbitrator (5 U.S.C. 578)

1. An arbitrator may regulate the course and conduct of the arbitration hearing. (*See* 5 U.S.C. 578(1)).

2. An arbitrator may administer oaths and affirmations. (*See* 5 U.S.C. 578(2)).

3. An arbitrator may compel the attendance of witnesses and the production of documents only to the same extent the agency involved is otherwise authorized by law to do so. (*See* 5 U.S.C. 578(3)).

4. An arbitrator may make awards. (*See* 5 U.S.C. 578(4)).

Arbitration Proceedings (5 U.S.C. 579)

1. The arbitrator shall set the time and place for the arbitration hearing and shall notify the parties of same at least five days before the hearing is to take place. (*See* 5 U.S.C. 579(a)

2. Parties are entitled to a record of the arbitration hearing. Any party wishing a record shall: (1) Make the arrangements for it; (2) notify the arbitrator and other parties that a record is being prepared; (3) supply copies to the arbitrator and the other parties; and (4) pay all costs, unless the parties have agreed to share the costs or the arbitrator determines that the costs should be apportioned. (*See* 5 U.S.C. 579(b)(1)-(4)).

3. At any arbitration hearing, parties are entitled to be heard, to present evidence, and to cross-examine witnesses. The arbitrator may, with the consent of the parties, conduct the hearing by telephone, television, computer or other electronic means, if each party has the opportunity to participate. (*See* 5 U.S.C. 579(c)(1) and (2)).

4. The arbitrator may receive any oral or documentary evidence that is not irrelevant, immaterial, unduly repetitious, or privileged. (*See* 5 U.S.C. 579(4)).

5. The arbitrator shall interpret and apply any relevant statutes, regulations, legal precedents and policy directives. (*See* 5 U.S.C. 579(5)).

6. No party shall have any unauthorized *ex parte* communication with the arbitrator relevant to the merits of the proceeding, unless the parties agree. If a party violates this provision, the arbitrator shall ensure that a memorandum of the communication is included in the record, and that an opportunity for rebuttal is allowed. The arbitrator may require the party who engages in an unauthorized *ex parte* communication to show cause why the issue in controversy should not be resolved against it for the improper conduct. (*See* 5 U.S.C. 579(d)).

Arbitration Awards

1. An arbitration award shall include a brief informal discussion of the factual and legal bases for the award. Formal findings of fact and law are not required. (*See* 5 U.S.C. 580(a)(1)).

2. A final award is binding on the parties and may be enforced pursuant to 9 U.S.C. 9–13. (*See* 5 U.S.C. 580(c)).

3. An arbitration award may not serve as an estoppel in any other proceeding and may not be used as precedent in any factually unrelated proceeding. (*See* 5 U.S.C. 580(d)).

Judicial Review (5 U.S.C. 581)

1. Any action for review of an arbitration award must be made pursuant to sections 9 through 13 of title 9, U.S. Code. (*See* 5 U.S.C. 581(a)). A court may vacate an award where the award was procured by corruption, fraud, or undue means; where there was arbitrator partiality, corruption, misconduct or misbehavior; or where an arbitrator has exceeded or imperfectly executed the arbitrator's powers.

2. A decision by an agency to use or not to use arbitration shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall only be subject to judicial review under section 10(c) of title 9, U.S. Code. (*See* 5 U.S.C. 581(b)).

Questions and Answers on FMCSA's Use of Binding Arbitration

Issue 1: For what types of cases will FMCSA be willing to use binding arbitration?

Response: FMCSA is generally willing to use binding arbitration for the resolution of cases in which the only questions are the amount of, and the length of time permitted to pay, the civil penalty. FMCSA will not agree to arbitrate maximum penalty cases issued pursuant to section 222 of the Motor Carrier Safety Improvement Act of 1999, Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999), 49 U.S.C. 521 note, or any cases that deal with an interpretation of the regulations or with important policy issues.

Issue 2: How and by whom will the decision to arbitrate be made?

Response: The decision to arbitrate is strictly that of the parties. As with any other form of ADR, arbitration must be a completely voluntary process. Either party may petition the Chief Safety Officer for a determination that the case be set for binding arbitration and that the Chief Safety Officer issue a Notification of Arbitration.

Issue 3: Who will have authority to authorize arbitration?

Response: The Chief Safety Officer will decide which cases are appropriate for ADR. Again, this class of cases will include only those that involve solely a monetary dispute and that do not concern FMCSA policy or procedure. The Chief Safety Officer has the discretion to delegate this authority to the FMCSA Adjudications Counsel.

Issue 4: Who has the authority to enter into settlement for FMCSA? May this authority be delegated?

Response: A Field Administrator has the authority to settle a case for FMCSA. This authority may be delegated to the Enforcement Program Manager.

Issue 5: How will the cap on the award be established?

Response: The maximum arbitration award will be set at the civil penalty amount assessed in the NOC, or amended NOC, if one is issued.

Issue 6: Is there a limitation on the length of time for a payment plan, if the Arbitrator orders a payment plan?

Response: The maximum period that the Arbitrator may permit for a payment plan is 60 months from the date of the issuance of the Award.

Issue 7: Who will negotiate the rules and selection of the arbitrator?

Response: The parties must mutually agree upon the arbitrator and will have several options from which to choose, including: (1) Department of Transportation Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration; (2) Uncompensated Neutrals from local communities; and (3) Compensated Neutrals from outside the government, whose costs are to be shared by agreement of the parties. For FMCSA, the decision regarding selection of the arbitrator will be that of the Field Administrator. The parties will establish the procedural rules that will govern any binding arbitration, with input from the selected arbitrator, and include the rules in the Arbitration Agreement.

Issue 8: Who will draft the Arbitration Agreement?

Response: The parties will draft the Arbitration Agreement, with substantive input from the selected arbitrator. A sample Arbitration Agreement is included in Appendix A.

Issue 9: What will the process be for entering into arbitration?

Response: Once the Chief Safety Officer has determined that a case is appropriate for arbitration, he/she will notify the parties to the dispute by issuing a Notification of Arbitration, in writing, indicating that that the case may be referred to arbitration. The Notification will require the parties to indicate agreement or their objection to submitting the case to arbitration. The Notification will require that each party return (serve) the Notification form—with their choice so noted—within 15 days of the date on the Chief Safety Officer's Notification. If the carrier opts for arbitration, the matter will be so assigned unless the Field Administrator or his/her designee submits on the Notification form argument against arbitration. The burden will be upon the Field Administrator to demonstrate that the case involves a question of regulatory interpretation and/or an important policy issue unsuitable for arbitration. After the Chief Safety Officer considers the Field Administrator's argument and renders a decision, that decision is final.

Issue 10: How can FMCSA encourage the efficiency of the arbitration process?

Response: Only single arbitrators (rather than panels of arbitrators) will handle these cases. To assure maximum efficiency of the arbitration process, subject to the consent and cooperation of the carrier, FMCSA will encourage:

A. The resolution of the controversy by means of document review or by arbitration via telephone conference in appropriate cases, with the consent of the carrier.

B. The arbitrator to establish reasonable deadlines for any hearing and rendering of an award. These timeframes shall be incorporated into the Arbitration Agreement.

Issue 11: What is the arbitrator's role?

Response: Consistent with the ADRA, the arbitrator will have the authority to:

- Regulate the course and conduct of arbitration hearings;
- Administer oaths;
- Compel attendance of witnesses and production of evidence, to the extent that the agency is authorized to do so by law;
- Issue awards.

The parties, as part of their Arbitration Agreement, may include any specific additional powers they wish the arbitrator to have and provide the arbitrator broad discretion in terms of efficient case management.

Issue 12: Will FMCSA permit the use of a panel of arbitrators in some circumstances?

Response: Because of the costs of a panel of arbitrators and the lack of complexity in these cases, FMCSA will not agree to a panel of arbitrators.

Issue 13: What selection criteria will be considered in choosing an arbitrator?

Response: The primary criteria for selecting an arbitrator will be: (1) Overall reputation of the arbitrator in terms of competence, integrity, and impartiality; (2) availability of the arbitrator during the periods most convenient for the parties; (3) relative cost; (4) the absence of any actual or potential conflict of interest; and (5) geographic proximity of the proposed arbitrator to the parties and to witnesses if the Arbitration Agreement calls for a hearing.

Issue 14: Will FMCSA agree to allow non-attorneys to represent a party, or for a party to appear *pro se* at the arbitration?

Response: Yes. The Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceeding, 49 CFR part 386, are designed to be readily accessible to small business enterprises and other entities. Carriers often respond to notices of claim without assistance of counsel. Before approving any Arbitration Agreement entered into by an unrepresented carrier, the Arbitrator shall require such carrier to execute a statement acknowledging the risks and limitations inherent in any arbitration.

Issue 15: What should an Arbitration Agreement include?

Response: The Agreement should include the following:

1. The names of the parties.
2. The issues being submitted to binding arbitration.
3. The maximum award that the arbitrator may direct.
4. Any other conditions limiting the range of possible outcomes, including

but not limited to, the statutory minimum for violations of the Hazardous Materials Regulations as set forth at 49 U.S.C. 5123(a).

5. The scope of the arbitration. This will limit time and cost and give the arbitrator power to be a ''case manager.'' A sample case management provision might read:

''The Arbitrator is expected to assume control of the process and to schedule all events as expeditiously as possible, to insure that an award is issued no later than __ days from the date of this Agreement. The penalty will be due to FMCSA thirty days after service of the Arbitration Award by the Arbitrator unless a payment plan is ordered by the Arbitrator.''

6. References to all provisions of the 49 CFR part 386 rules regarding discovery and the conduct of hearings that the parties may wish to apply to the arbitration process.

7. The name of the arbitrator, the amount of compensation (if any) and how it will be paid. (**Note:** No Agreement shall provide for deposits in an escrow account to pay for expenses of the proceeding in advance of expenses being incurred.)

8. The date when the arbitration will commence.

9. The types of remedies available.

10. A confidentiality provision referring to the 1996 Act and stating that neither the Arbitration Agreement nor the arbitration award will be considered confidential.

11. The bases for appeal.

12. The arbitration hearing is open only to the parties, their representatives and the arbitrator. The hearing is not a public forum.

13. The Arbitrator's decision will be issued in writing, and will state the factual and legal bases and amount of the penalty awarded by the Arbitrator.

14. The carrier will have thirty (30) days from the date of service of the award to pay the amount awarded unless the Arbitrator orders a payment plan.

15. The arbitration award is final and has the same force and effect as any final agency order. Thus, failure to pay the determined award triggers the same Agency remedies, as would the failure to pay a civil penalty award entered by the Chief Safety Officer.

A Sample Arbitration Agreement is included in Appendix A.

Issue 16: How will FMCSA pay the arbitrator(s)?

Response: The 1996 Act allows an agency to use, with or without reimbursement, the services and facilities of other Federal agencies, State, local and tribal governments, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals, and without regard to the provisions of 31 U.S.C. 1342 (regarding the acceptance of voluntary services). In addition, the 1996 Act permits selection of all ADR neutrals, including arbitrators, to be done non-competitively. FMCSA and the carrier must agree on the selection of the arbitrator.

FMCSA is considering three categories of potential arbitrators: (1) Department of Transportation Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration; (2) Uncompensated Neutrals from local communities; and (3) Compensated Neutrals from outside the government, whose costs are to be shared by agreement of the parties. To limit costs, FMCSA is considering using Board of Contract Appeals Judges and Uncompensated Neutrals from local communities to serve as arbitrators. If the parties cannot agree on this no-cost option, the parties will agree in advance to share any arbitrator fees and costs, the costs of any transcripts, or other costs, all of which will be paid after the award is issued.

FMCSA will not escrow funds or pay in advance for any such costs.

Issue 17: Is FMCSA willing to use ''administered arbitration''?

Response: No. Because of the cost implications, FMCSA will not agree to administered arbitration, arbitration administered by an outside ADR organization.

Issue 18: What must the arbitration award include?

Response: The arbitration award need not be in the form of formal findings of fact and conclusions of law, but must be in writing and at least provide in summary form the monetary amount of the award, if any, and the factual and legal basis for the arbitrator's decision. The award will be subject to the ''cap'' and any other limitations agreed upon by the parties.

Arbitration awards are not confidential documents. Awards shall be entered into the FMCSA docket for the case. Additionally, awards may be posted on the FMCSA Web site and/or published in the **Federal Register**.

Issue 19: Will FMCSA allow arbitration on the documents only, without a hearing, or a telephonic hearing? If so, in what circumstances?

Response: While the parties to the arbitration are entitled to be heard, to present evidence, and to cross-examine witnesses appearing at a hearing, due to the nature of these cases, FMCSA encourages arbitration on the documents only without a hearing, or a telephonic hearing. This has the advantage of saving time, money, and avoiding scheduling conflicts. The Arbitration Agreement should allow the parties to request a hearing. The Arbitration Agreement should also allow the arbitrator discretion to call for an in-person hearing should the arbitrator determine that credibility may be a factor in the outcome of the award.

The arbitrator may also conduct, with the consent of the parties, all or part of a hearing by telephone, video conferencing, or computer as long as each party has an equal opportunity to participate.

Issue 20: May an arbitration award be used as precedent in any other proceeding?

Response: No, the arbitration award may not be used as precedent consistent with 5 U.S.C. 580(d). Nonetheless, by entering into Arbitration, the carrier has admitted, or the Chief Safety Officer has found, that FMCSA has an appropriate and defined factual basis for the violations, and that the violations may be considered in future enforcement action(s) by FMCSA.

Appendix A

Agreement to Submit to Binding Arbitration

Section One—Parties and Controversy

The Federal Motor Carrier Safety Administration and _____(''Carrier'') (collectively the ''Parties'') voluntarily agree to submit the following controversy arising from violations of the Federal Motor Carrier Safety Regulations to binding arbitration: (briefly describe the controversy).

Section Two—Assignment of Arbitrator

We agree upon_____as the Arbitrator.

Section Three—Issues of Arbitration

We agree that the Arbitrator shall be limited to the following issues of fact and law: (set forth each issue with specificity, including the question of whether a payment plan is appropriate).

Section Four—Costs of Arbitration

We agree to pay the Arbitrator a fee of $_____(''the fee'') for the services as an arbitrator. The Fee is based on the issues specified in Section Three above.

We agree to reimburse the Arbitrator for all reasonable out-of-pocket expenses that the Arbitrator may incur for the arbitration. These expenses include but are not limited to: travel, lodging, and meals (consistent with Federal *per diem* standards), long distance charges, printing and copying, postage and courier fees.

Section Five—Minimum and Maximum Award

We agree that the maximum award shall be (the amount demanded in the Notice of Claim). This amount is a total of the penalties

for each of the individual violations as follows:

We also agree that the minimum award for violation of Hazardous Materials Regulations shall be no less than $250 per violation as set forth at 49 U.S.C. 5123(a).

Section Six—Management of the Proceeding

We further agree that the arbitration proceeding will be conducted in accordance with procedures established in 49 CFR part 386 for discovery and hearings. Additional rules and procedures for the arbitration may be negotiated and agreed upon by the Arbitrator and the Parties at any time during the arbitration process.

We further agree that we shall faithfully observe this agreement and the applicable procedural rules and that we will abide by and perform any award rendered by the arbitrator.

We agree that the Arbitrator will assume control of the process and will schedule all events as expeditiously as possible, to ensure that an award is issued no later than____ days from the date of this Agreement. The penalty will be due to FMCSA 30 days after service of the Arbitration Award by the Arbitrator unless the Arbitrator orders a payment plan.

Consistent with the Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings, 49 CFR part 386, Carriers may be represented by a representative of their choice including non-lawyers. Representatives and FMCSA counsel shall be responsive to the direction provided by the Arbitrator.

We understand that neither party shall initiate or participate in an *ex parte* communication with the arbitrator relevant to the merits of the proceeding, unless the parties agree. If a party or its representative engages in an unauthorized *ex parte* communication, the arbitrator may resolve the case against the offending party. Before taking that action, however, the arbitrator must allow the offending party to show cause why the issue in controversy should not be resolved against it for improper conduct.

Section Seven—Arbitrator's Award

We agree that the Arbitrator's decision will be issued in writing and will state the factual and legal bases and amount of the penalty awarded by the Arbitrator. We further agree that the arbitration award is final and has the same force and effect as any final agency order. Thus, failure to pay the determined award triggers the same Agency remedies, as would the failure to pay a civil penalty award entered by the Chief Safety Officer.

Section Eight—Confidentiality of the Proceeding

We agree that the arbitration proceeding is not a public forum and will be restricted to the Parties, their representatives, and the Arbitrator. We acknowledge and agree that 5 U.S.C. 574 controls the confidentiality of the proceeding, and that neither the Arbitration Agreement nor the arbitration award may be considered confidential.

Section Nine—Judicial Review

The award shall only be reviewable under the provisions of 5 U.S.C. 581 and 9 U.S.C. 9–13.

Section Ten—Governing Law

This agreement is entered into consistent with 5 U.S.C. 571 *et seq.*, and we agree that Federal law shall govern this Arbitration. The arbitrator shall apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

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BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the OTS, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On November 13, 2003, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the Federal Register (68 FR 64422) requesting public comment on the extension, without revision, of the currently approved information collection: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks (FFIEC 004). The comment period for this notice expired on January 12, 2004. No comments were received. The agencies are now submitting requests to OMB for approval of the extension, without revision, of the FFIEC 004 report.

DATES: Comments must be submitted on or before April 15, 2004.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: Comments should be sent to the Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0070, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to 202–874–4448, or by e–mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling 202–874–5043.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention: 1550–0075, Fax number 202–906–6518, or e–mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW, by appointment. To make an appointment, call 202–906–5922, send an e–mail to publicinfo@ots.treas.gov, or send a facsimile transmission to 202–906–7755.

Board: Comments should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Please consider submitting your comments through the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*; by e–mail to *regs.comments@federalreserve.gov*; or by fax to the Office of the Secretary at 202–452–3819 or 202–452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at *www.regulations.gov.* All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any

identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. All comments should refer to ''FFIEC 004, 3064–0023.'' Commenters are encouraged to submit comments by fax or electronic mail [FAX number 202–898–3838; e–mail: *comments@fdic.gov*]. Comments also may be hand–delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: John Ference, Acting OCC Clearance Officer, or Camille Dixon, 202–874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

OTS: Marilyn K. Burton, OTS Clearance Officer, 202–906–6467, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Board: Cindy Ayouch, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, 202–898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Proposal to Request Approval From OMB of the Extension for Three Years, Without Revision, of the Following Report:

Title: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks

Form Number: FFIEC 004

Frequency of Response: Annually (for executive officers and principal shareholders), and on occasion (for national banks, state member banks, insured state nonmember banks, and savings associations)

Affected Public: Individuals or households, businesses or other for–profit

For OCC:

OMB Number: 1557–0070

Estimated Number of Respondents: 23,386 (21,260 executive officers and principal shareholders fulfilling record keeping burden, 2,126 national banks fulfilling record keeping and disclosure burden)

Estimated Time per Response: 2.25 hours

Estimated Total Annual Burden: 52,619

For OTS:

OMB Number: 1550–0075

Estimated Number of Respondents: 4,620 (3,696 executive officers and principal shareholders fulfilling record keeping burden, 924 savings associations fulfilling record keeping and disclosure burden)

Estimated Time per Response: 2.75 hours

Estimated Total Annual Burden: 12,705

For Board:

OMB Number: 7100–0034

Estimated Number of Respondents: 4,760 (3,808 executive officers and principal shareholders fulfilling record keeping burden, 952 state member banks fulfilling record keeping and disclosure burden)

Estimated Time per Response: 1.12 hours

Estimated Total Annual Burden: 5,331

For FDIC:

OMB Number: 3064–0023

Estimated Number of Respondents: 26,660 (21,328 executive officers and principal shareholders fulfilling record keeping burden, 5,332 insured state nonmember banks fulfilling record keeping and disclosure burden)

Estimated Time per Response: 1.8 hours

Estimated Total Annual Burden: 47,988

General Description of Report: These information collections are mandatory: 12 U.S.C. 1972(2)(G) (all); 12 U.S.C. 1817(k), 12 CFR 31.2, and 12 U.S.C. 93a (OCC); 12 U.S.C. 1468 and 12 CFR 563.43 (OTS); 12 U.S.C. 375(a)(6) and (10), and 375(b)(10) (Board); and 12 CFR 349.3 and 349.4 (FDIC). In general, these information collections are given confidential treatment (5 U.S.C. 552 (b)(8)), but banks and savings associations are required to make certain limited disclosures.

Abstract: Executive officers and principal shareholders of insured banks and savings associations must file with their institution the information contained in the FFIEC 004 report on their indebtedness and that of their related interests to correspondent banks. The information contained in the FFIEC 004 report is prescribed by statute and regulation, as cited above. Banks and savings associations must retain these reports or reports containing similar information and fulfill other record keeping requirements, such as furnishing annually a list of their correspondent banks to their executive officers and principal shareholders. Banks and savings associations also have certain disclosure requirements for these information collections.

Current Actions: The agencies propose to extend, without revision, the FFIEC 004 report. The agencies continue to evaluate the record keeping requirements contained in their regulations that relate to the FFIEC 004 report. Should the agencies decide to revise these regulations, a separate Federal Register notice will be published inviting comment from the public on the proposed revisions. Any revisions that may be made to the agencies' regulations could be subsequently incorporated into the FFIEC 004.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Date: February 12, 2004.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: February 19, 2004.

Office of Thrift Supervision

James E. Gilleran,

Director.

Board of Governors of the Federal Reserve System, February 27, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this 11th day of February, 2004.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–4839 Filed 3–3–04; 8:45 am]

BILLING CODES 4810–33; 6720–01; 6210–01; 6714–01

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8172]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 8172, Qualification of Trustee or Like Fiduciary in Bankruptcy (§ 301.6036–1).

DATES: Written comments should be received on or before May 3, 2004 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 regulation 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: Qualification of Trustee or Like Fiduciary in Bankruptcy.

OMB Number: 1545–0773.

Regulation Project Number: TD 8172.

Abstract: Internal Revenue Code section 6036 requires that receivers, trustees in bankruptcy, assignees for the benefit of creditors, or other like fiduciaries, and all executors shall notify the district director within 10 days of appointment. This regulation provides that the notice shall include the name and location of the Court and when possible, the date, time, and place of any hearing, meeting or other scheduled action. The regulation also eliminates the notice requirement under section 6036 for bankruptcy trustees, debtors in possession and other fiduciaries in a bankruptcy proceeding.

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: 50,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4867 Filed 3–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879–EO

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879-EO, IRS e-file Signature Authorization for an Exempt Organization.

DATES: Written comments should be received on or before May 3, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage 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: IRS e-file Signature Authorization for an Exempt Organization.

OMB Number: 1545–1878.

Form Number: 8879–EO.

Abstract: Form 8879–EO authorizes an officer of an exempt organization and electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign an organization's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 4 hours, 3 minutes.

Estimated Total Annual Burden Hours: 3,240.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4868 Filed 3–3–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 6629]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, TD 6629. Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands (§ 1.934–1).

DATES: Written comments should be received on or before May 3, 2004 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 regulation 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: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands.

OMB Number: 1545–0782.

Regulation Project Number: TD 6629.

Abstract: Internal Revenue Code section 934(a) (1954 Code) provides that the tax liability incurred to the Virgin Islands shall not be reduced except to the extent provided in Code section 934(b) and (c). Taxpayers applying for tax rebates or subsidies under section 934 of the 1954 Code must provide certain information in order to obtain these benefits.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500

Estimated Average Time Per Respondent: 22 minutes.

Estimated Total Annual Reporting Hours: 184.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4869 Filed 3–3–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 43

Thursday, March 4, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–66–000]

Entergy Asset Management, Inc., Entergy Power Ventures, L.P., Warren Power, LLC, and East Texas Electric Cooperative, Inc.; Notice of Filing

February 19, 2004.

Correction

In notice document E4–391 beginning on page 8945 in the issue of Thursday, February 26, 2004, make the following correction:

On page 8945, in the third column, the docket number should read as set forth above.

[FR Doc. Z4–391 Filed 3–3–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–14095]

National Environmental Policy Act Implementing Procedures

Correction

In notice document 04–4338 beginning on page 9680 in the issue of Monday, March 1, 2004, make the following correction:

On page 9680, in the first column, under **EFFECTIVE DATE** ''March 31, 2004'' should read ''March 30, 2004''.

[FR Doc. C4–4338 Filed 3–3–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
March 4, 2004

Part II

Department of Agriculture

Farm Service Agency

7 CFR Part 701

Emergency Conservation Program; Final Rule

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 701

RIN 0560–AG26

Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts with revisions a proposed rule that set out regulations for the Emergency Conservation Program (ECP) and also provides for resolving matters related to other programs that have been administered under the same part. The revisions made are essentially technical in nature.

DATES: March 4, 2004.

FOR FURTHER INFORMATION CONTACT: Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, USDA/FSA/CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513, telephone 202–690–0571. Electronic mail: *Clayton_Furukawa@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

The Emergency Conservation Program (ECP) provides cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of severe drought.

On August 1, 2002, FSA published a proposed rule in the **Federal Register** (67 FR 49879). The proposed rule removed references to the Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP). ACP was repealed by the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) and administration of FIP was reassigned to the Natural Resources Conservation Service (NRCS) by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). The proposed rule also proposed to clarify, expand, and revise the ECP to reflect current policy and make the program more efficient and easier to administer. The proposed rule had a 60-day comment period, which ended September 30, 2002.

Changes From Proposed Rule

No substantive changes were made to the proposed rule. The Agency removed provisions that made participants ineligible for ECP if they received an FSA emergency loan. Also, section 701.15 of this rule provides for cost sharing for producers who started a practice up to 60 days before their county received a disaster designation. And the part's sections were renumbered.

Summary of Public Comments

Comments in response to the proposed rule were received from one farmer organization. The comments are addressed as follows:

Assistance to Confinement Operations

First, the respondent noted that in the preamble of the proposed rule FSA stated that it was considering allowing ECP assistance for confined livestock operations for natural disasters other than drought, to include assistance such as debris removal, and that the proposed rule gave no indication of what other options were being considered. The proposed rule described the only option being considered, that is, allowing ECP assistance for cleanup of confinement buildings in non-drought disasters, and included it in the proposed rule in order to obtain public comments. The respondent does not believe such assistance should be allowed. FSA agrees and did not include that change in the final rule.

Second, the respondent agrees with the provision making land used for greenhouses or other confined areas, such as corrals, milking parlors, barn lots or feeding areas, ineligible. However, they also believe restoration of animal waste lagoons should be ineligible as well. The rule does not specifically address restoration of animal waste lagoons. However, conservation structures are eligible under the statute and are specifically provided for in section 701.12. The lagoons are considered to be conservation structures. The respondent's suggestion was therefore not adopted in the final rule.

Agency Discretion

The respondent believes the proposed rule allows FSA too much discretion in determinations that should be spelled out in the rule and subject to public notice and comment, as exemplified by the frequent use of the phrase ''as determined by the Deputy Administrator.'' The respondent identifies several specific areas of concern.

First, the rule allows FSA discretion in determining broad program decisions such as application periods, deadlines and provisions for late applications. The respondent agrees that such discretion is appropriate and no change was made in the final rule in that respect.

Second, FSA issues notices, handbooks and other policy statements regarding the ECP, as it does for all of its programs. These internal directives are available to the public at any FSA office. The respondent believes that the rule leaves too many substantive provisions to be implemented through such vehicles rather than through public notice and comment rulemaking. The respondent cites a specific provision, what qualifies as farmland for ECP purposes, as an example, and believes FSA should include such standards in the rule. FSA agrees that substantive program provisions should be described in as detailed a manner as possible in the rule. The final rule was revised to explain provisions more thoroughly and minimize the number of discretionary provisions and exceptions. However, the possible situations and disasters that the ECP may need to address in the future is too great for the regulation to leave the agency without considerable flexibility. Thus, in the final rule, a number of determinations are left to FSA's discretion.

Third, the respondent states that section 701.80 of the proposed rule, *Not an entitlement program,* which states that the regulations do not create an entitlement and that the Deputy Administrator's powers are permissive, could deter producer challenges to agency decisions. The respondent argues that the final rule should make it clear that producers may appeal decisions of the Deputy Administrator to the extent they turn on questions of fact and compliance with clear standards, whether in a rule or a policy statement. To avoid any possible misunderstanding, that section was removed. It should be noted that section 701.34 of the final rule addresses appeals and incorporates by reference the appeal regulations at 7 CFR parts 7 and 780, which apply to all FSA programs. It should also be noted, however, that section 701.80 of the proposed rule was accurate in setting out that the ECP is not an entitlement program. A provision to that effect has been added elsewhere in the regulations. ECP requests can be denied for any reason and all claims are subject to the availability of funds. Also, a provision in section 701.1 relating to appeals was dropped as unnecessary because the other provisions in the rule relating to appeals are governing on the matter.

Cost-Share Levels

The proposed rule proposed simplifying the calculation of maximum

ECP cost-share levels by providing for a standard maximum cost-share of 75 percent of the maximum allowable cost of a practice, as opposed to the previously used sliding scale that provided lower percentages for increasing costs. The respondent agrees that the calculation should be simplified, but offers a suggestion for a somewhat different process. By its suggestion, the maximum cost share might be 75 percent up to the median of ECP costs for the last three years, based on a survey of FSA program use, plus a substantially lower rate, perhaps 30 percent, of remaining costs. Such a process, the respondent argues, would be easier to administer than the old one, would retain the benefits of a tiered system, and would prevent limited ECP funds from being exhausted by a few large programs.

FSA did not adopt the suggestion. The Agency feels a 75-percent cost-share rate, as proposed, is sound for several reasons, primarily because practice costs vary between regions and often from county to county. Basing eligible costs on a statistical median determined at the national level could be detrimental to producers in high-cost areas relative to those in low-cost areas. Conversely, costs based on smaller geographic areas could be highly inaccurate because the smaller areas may have had insufficient similar practices completed during the survey period, be it 3 years or another period. Inaccuracy would increase as the area and number of observations used to calculate the median cost declined. Also, there is not a discrete number of eligible ECP practices. Practices may include combinations of activities to address the problems caused by the disaster. Analyzing the costs to obtain a National costs for conservation measures would be impractical. Thus, FSA feels that State and County committees are in the best position to determine costs for conservation practices in their area, subject to guidance provided by National Office directives, and to limit the Agency's share of that cost as provided in this rule. The respondent's concern that large or expensive projects will exhaust available funding is mitigated by the limitations on payments per person and per practice provided in the rule.

Assistance for Limited Resource Farmers

The proposed rule solicited comments on providing increased cost shares of up to 90 percent to limited resource farmers. The respondent supports such a change and also suggests that FSA develop guidelines for outreach to limited resource farmers. FSA agrees and the final rule provides for cost shares of up to 90 percent to limited resource farmers. With regard to outreach, FSA has procedures for outreach to limited resource farmers and intends to continue to implement them.

Reduction for Emergency Loans

The proposed rule provided that FSA emergency loans received by a farmer for ''same or similar expenses'' as the ECP would be counted as duplicate payments, and ECP cost-share payments would be reduced accordingly. The respondent suggests that this provision be removed because loans, unlike grants, must be repaid, and thus are not truly cost-share payments. FSA agrees and removed the provision from the final rule but retains the right to adjust benefits to avoid duplication with other programs.

Duplicate Payments and Effect of Other Assistance on Eligible Costs

The respondent states that the proposed rule is not clear on how receipt of outside assistance would affect eligibility for ECP, partly because the issue is addressed in several different sections in ways that appear to be inconsistent and partly by confusing duplicate payments with a higher rate of cost share. The Agency agrees that the issue could be explained more clearly. In this rule the Agency clearly labeled the section limiting the maximum cost share per practice, separated the maximum cost share per person into a distinct section, and clarified that participation in other conservation programs that overlap the ECP land and practice can affect the amount of ECP cost share a participant may receive. Also, the agency tried to limit confusion by placing the limits and restrictions as close to each other in the rule, and in as logical an order, as possible.

Offsets

Section 701.87 of the proposed rule proposed to make ECP payments subject to collection by administrative and Treasury offsets. The respondent urges FSA to use statutory authority to exempt disaster-related payments from offsets and not offset ECP payments. However, there is no statutory authority for USDA on its own to exempt ECP payments from offsets, and USDA does not feel in any event that such an exemption is justified at this time, but will continue to review that consideration as the need arises. Generally, it is essential that farmers remain current with their obligations or seek specific relief related to those perennial difficulties if the farmer is going to continue to make use of Federal agricultural programs.

Water Resources

The respondent mentions that the current rule refers to affected farmland and water resources but the proposed rule only refers to farmland. The respondent assumes that water resources that meet all other eligibility requirements would continue to be eligible for assistance under the proposed rule.

The former rule provided regulations for three conservation programs: ACP, FIP and ECP. This rule provides regulations for only the ECP, and the ECP is not changed as it relates to water resources. Specifically defining water resources as eligible throughout the rule was not necessary as water-related eligibilities are defined and set out elsewhere by specific provisions in the regulations. FSA will continue to administer the ECP in accordance with authorizing law and provide assistance for water resources if authorized.

Other Changes

Other clarifying or technical changes have been made. For example, a provision related to liability for suits against the U.S. in the event of a practice failure or problem was removed as redundant and as stating the obvious.

Executive Order 12866

In conformance with Executive Order 12866 this rule has been determined to be not significant and, therefore, it has not been reviewed by the Office of Management and Budget.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Emergency Conservation Program (ECP)—10.054; Agricultural Conservation Program (ACP)—10.063; and Forestry Incentives Program (FIP)—10.064.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule.

Environmental Review

The Agency completed a final environmental impact statement and record of decision, which are on file and available to the public in the Administrative Record at the address specified in the **ADDRESSES** section. It is

also available electronically at: *http://www.fsa.usda.gov/dafp/cepd/epb/nepa.htm.*

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This final rule is not retroactive and it preempts State laws to the extent they conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Unfunded Mandates Reform Act of 1995 (UMRA)

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The Office of Management and Budget approved the information collection requirements of this regulation, provided an expiration date of October 31, 2005, and assigned it OMB control number 0560–0082.

List of Subjects in 7 CFR Part 701

Agriculture, Disaster assistance, Environmental protection, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Water resources.

■ Accordingly, 7 CFR part 701 is revised to read as follows:

PART 701—EMERGENCY CONSERVATION PROGRAM AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

Sec.

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701.2 Definitions.
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701.21 Filing payment application.
701.22 Eligibility to file for cost-share assistance.
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701.31 Maintenance and proper use of practices.
701.32 Failure to comply with program provisions.
701.33 Death, incompetency, or disappearance.
701.34 Appeals.
701.35 Compliance with regulatory measures.
701.36 Schemes and devices and claims avoidances.
701.37 Loss of control of property during the practice life span.
701.38–701.40 [Reserved]
701.41 Cost-share assistance not subject to claims.
701.42 Assignments.
701.43 Information collection requirements.
701.44 Agricultural Conservation Program (ACP) contracts.
701.45 Forestry Incentives Program (FIP) contracts.

Authority: Pub. L. 95–334, 92 Stat. 420, 16 U.S.C. 2201 *et. seq.*

§ 701.1 Administration.

(a) Subject to the availability of funds, this part provides the terms, conditions and requirements of the Emergency Conservation Program (ECP) administered by the Farm Service Agency (FSA).

(b) ECP is administered by the Administrator, FSA through the Deputy Administrator, FSA, and shall be carried out in the field by State and county FSA committees (State and county committees), subject to the availability of funds. Except as otherwise provided in this rule, discretionary determinations to be made under this rule will be made by the Deputy Administrator. Matters committed to the discretion of the Deputy Administrator shall be considered in all cases to be permissive powers and no person shall, under any circumstances, be considered to be entitled to an exercise of such power in their favor.

(c) State and county committees, and representatives and employees, do not have authority to modify or waive any regulations in this part.

(d) The State committee may take any action authorized or required of the county committee by this part, but which the county committee has not taken, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(e) No provision or delegation herein to a State or county committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(f) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(g) The Deputy Administrator may limit the authority of state and county committees to approve cost share in excess of specified amounts.

(h) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(i) FSA may consult with any other USDA agency for such assistance as is determined by FSA to be necessary to implement the ECP. FSA is responsible for the technical aspects of ECP but may enter into a Memorandum of Agreement with another party to provide technical assistance. If this limitation results in significant hardship to producers in a county the State committee may request in writing that the Deputy Administrator waive this requirement for that county.

(j) The provisions in this part shall not create an entitlement in any person to any ECP cost share or claim or any particular notice or form or procedure.

(k) Additional terms and conditions may be set forth in the application or the forms participants will be required to sign for participation in the ECP.

§ 701.2 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall apply to this part:

Agricultural producer means an owner, operator, or tenant of a farm or ranch used to produce for food or fiber, crops (including but not limited to, grain or row crops; seed crops; vegetables or fruits; hay forage or pasture; orchards or vineyards; flowers or bulbs; or field grown ornamentals) or livestock (including but not limited to, dairy or beef cattle; poultry; swine; sheep or goats; fish or other animals raised by aquaculture; other livestock or fowl) for commercial production. Producers of animals raised for recreational uses only are not considered agricultural producers.

Annual agricultural production means production of crops for food or fiber in a commercial operation that occurs on an annual basis under normal conditions.

Applicant means a person who has submitted to FSA a request to participate in the ECP.

Cost-share payment means the payment made by FSA to assist a program participant under this part to establish practices required to address qualifying damage suffered in connection with a qualifying disaster.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, the ECP Program Manager, or designee.

Farmland means land devoted to agricultural production, including land used for aquaculture, or other land as may be determined by the Deputy Administrator.

Program year means the applicable Federal fiscal year.

§ 701.3 Scope.

(a) FSA will provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters as determined by the Deputy Administrator, and to carry out emergency water conservation measures during periods of severe drought.

(b) The objective of the ECP is to make cost-share assistance available to eligible participants on eligible land for certain practices, to rehabilitate farmland damaged by floods, hurricanes, wind erosion, or other natural disasters, and for the installation of water conservation measures during periods of severe drought.

(c) Payments may also be made under this part for:

(1) Emergency water conservation or water enhancement measures (including measures to assist confined livestock) during periods of severe drought; and

(2) Floodplain easements for runoff and other emergency measures that the Deputy Administrator determines is necessary to safeguard life and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural occurrence is causing or has caused, a sudden impairment of the watershed.

(d) Payments under this part are subject to the availability of appropriated funds and any limitations that may otherwise be provided for by Congress.

§ 701.4 Producer eligibility.

(a) To be eligible to participate in the ECP the Deputy Administrator must determine that a person is an agricultural producer with an interest in the land affected by the natural disaster, and that person must be liable for or have paid the expense that is the subject of the cost share. The applicant must be a landowner or user in the area where the qualifying event has occurred, and must be a party who will incur the expense that is the subject of the cost share.

(b) Federal agencies and States, including all agencies and political subdivisions of a State, are ineligible to participate in the ECP.

(c) All producer eligibility is subject to the availability of funds and an application may be denied for any reason.

§ 701.5 Land eligibility.

(a) For land to be eligible, the Deputy Administrator must determine that land that is the subject of the cost share:

(1) Will have new conservation problems caused as a result of a natural disaster that, if not treated, would:

(i) Impair or endanger the land;

(ii) Materially affect the productive capacity of the land;

(iii) Represent unusual damage that, except for wind erosion, is not of the type likely to recur frequently in the same area; and

(iv) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance.

(2) Be physically located in a county in which the ECP has been implemented; and

(3) Be one of the following:

(i) Land expected to have annual agricultural production,

(ii) A field windbreak or a farmstead shelterbelt on which the ECP practice to be implemented involves removing debris that interferes with normal farming operations on the farm and correcting damage caused by the disaster; or

(iii) A farm access road on which debris interfering with the normal farming operation needs to be removed.

(b) Land is ineligible for cost share if the Deputy Administrator determines that it is, as applicable:

(1) Owned or controlled by the United States;

(2) Owned or controlled by States, including State agencies or other political subdivisions of a State;

(3) Protected by a levee or dike that was not effectively and properly functioning prior to the disaster, or is protected, or intended to be protected, by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards;

(4) Adjacent to water impoundment reservoirs that are subject to inundation when the reservoir is filled to capacity;

(5) Land on which levees or dikes are located;

(6) Subject to frequent damage or susceptible to severe damage according to paragraph (c) of this section;

(7) Subject to flowage or flood easements and inundation when water is released in normal operations;

(8) Between any levee or dike and a stream, river, or body of water, including land between two or more levees or dikes;

(9) Located in an old or new channel of a stream, creek, river or other similar body of water, except that land located within or on the banks of an irrigation canal may be eligible if the Deputy Administrator determines that the canal is not a channel subject to flooding;

(10) In greenhouses or other confined areas, including but not limited to, land in corrals, milking parlors, barn lots, or feeding areas;

(11) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land;

(12) Unless otherwise provided for, not considered to be in annual agricultural production, such as land devoted to stream banks, channels, levees, dikes, native woodland areas, roads, and recreational uses; or

(13) Devoted to trees including, but not limited to, timber production.

(c) To determine the likely frequency of damage and of the susceptibility of the land to severe damage under paragraph (b)(6) of this section, FSA will consider all relevant factors, including, but not limited to, the

location of the land, the history of damage to the land, and whether the land was or could have been protected by a functioning levee or dike built to U. S. Army Corps of Engineers, NRCS, or comparable standards. Further, in making such determinations, information may be obtained and used from the Federal Emergency Management Agency or any other Federal, State (including State agencies or political subdivisions), or other entity or individual providing information regarding, for example, flood susceptibility for the land, soil surveys, aerial photographs, or flood plain data or other relevant information.

§§ 701.6–701.9 [Reserved]

§ 701.10 Qualifying minimum cost of restoration.

(a) To qualify for assistance under § 701.3(a), the eligible damage must be so costly that Federal assistance is or will be required to return the land to productive agricultural use or to provide emergency water for livestock.

(b) The Deputy Administrator shall establish the minimum qualifying cost of restoration. Each affected State may be allowed to establish a higher minimum qualifying cost of restoration.

(c) A producer may request a waiver of the qualifying minimum cost of restoration. The waiver request shall document how failure to grant the waiver will result in environmental damage or hardship to the producer and how the waiver will accomplish the goals of the program. Denial of a request for a waiver is not subject to appeal.

§ 701.11 Prohibition on duplicate payments.

(a) *Duplicate payments.* Participants are not eligible to receive funding under the ECP for land on which the participant has or will receive funding under:

(1) The Wetland Reserve Program (WRP) provided for in 7 CFR part 1467;

(2) The Emergency Wetland Reserve Program (EWRP) provided for in 7 CFR part 623;

(3) The Emergency Watershed Protection Program (EWP) provided for in 7 CFR part 624; or

(4) Any other program that covers the same or similar expenses so as to create duplicate payments, or, in effect, a higher rate of cost share than is allowed under this part.

(b) *Refund.* Participants who receive any duplicate funds, payments, or benefits shall refund any ECP payments received.

§ 701.12 Eligible ECP practices.

(a) Cost-share assistance may be offered for ECP practices to replace or restore farmland, fences, or conservation structures to a condition similar to that existing before the natural disaster. No relief under this part shall be allowed to address conservation problems existing before the disaster.

(b) The practice or practices made available when the ECP is implemented shall be only those practices authorized by FSA for which cost-share assistance is essential to permit accomplishment of the program goals.

(c) Cost-share assistance may be provided for permanent vegetative cover, including establishment of the cover where needed, only in conjunction with eligible structures or installations where cover is needed to prevent erosion and/or siltation or to accomplish some other ECP purpose.

(d) Practice specifications shall represent the minimum levels of performance needed to address the ECP need.

§ 701.13 Submitting requests.

(a) Subject to the availability of funds, the Deputy Administrator shall provide for an enrollment period for submitting ECP cost-share requests.

(b) Requests may be accepted after the announced enrollment period, if such acceptance is approved by the Deputy Administrator and is in accordance with the purposes of the program.

§ 701.14 Onsite inspections.

An onsite inspection must be made before approval of any request for ECP assistance.

§ 701.15 Starting practices before cost-share request is submitted; non-entitlement to payment; payment subject to the availability of funds.

(a) Subject to paragraphs (b) and (c) of this section, costs will not be shared for practices or components of practices that are started before a request for cost share under this part is submitted with the applicable county FSA office.

(b) Costs may be shared for drought and non-drought ECP practices or components of practices that are started before a request is submitted with the county FSA office, only if:

(1) Considered and approved on a case-by-case basis in accordance with instructions of the Deputy Administrator;

(2) The disaster that is the basis of a claim for cost-share assistance created a situation that required the producer to take immediate action to prevent further losses;

(3) The Deputy Administrator determines that the request for assistance was filed within a reasonable amount of time after the start of the enrollment period; and

(4) The practice was started no more than 60 days before the ECP designation was approved for the applicable county office.

(c) Any action taken prior to approval of a claim is taken at the producer's own risk.

(d) An application for relief may be denied for any reason.

(e) All payments under this part are subject to the availability of funds.

§ 701.16 Practice approval.

(a) Requests shall be prioritized before approval based on factors deemed appropriate by FSA, which include, but are not limited to:

(1) Type and degree of damage;

(2) Type of practices needed to address the problem;

(3) Availability of funds;

(4) Availability of technical assistance;

(5) Environmental concerns;

(6) Safety factors; or

(7) Welfare of eligible livestock.

(b) Requests for cost-share assistance may be approved if:

(1) Funds are available; and

(2) The requested practice is determined eligible.

§§ 701.17–701–20 [Reserved]

§ 701.21 Filing payment application.

Cost-share assistance is conditioned upon the availability of funds and the performance of the practice in compliance with all applicable specifications and program regulations.

(a) *Completion of practice.* After completion of the approved practice, the participant must certify completion and request payment by the payment request deadline. FSA will provide the participant with a form or another manner to be used to request payment.

(b) *Proof of completion.* Participants shall submit to FSA, at the local county office, the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions.

(c) *Payment request deadline.* The time limits for submission of information shall be determined by the Deputy Administrator. The payment request deadline for each ECP practice will be provided in the agreement after the application is approved. Time limits may be extended where failure to submit required information within the applicable time limits is due to reasons beyond the control of the participant.

§ 701.22 Eligibility to file for cost-share assistance.

Any eligible participant, as defined in this part, who paid part of the cost of an approved practice may file an application for cost-share payment.

§ 701.23 Eligible costs.

(a) Cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice, up to the maximums provided in §§ 701.26 and 701.27.

(b) Eligible costs shall be limited as follows:

(1) Costs for use of personal equipment shall be limited to those incurred beyond the normal operation of the farm or ranch.

(2) Costs for personal labor shall be limited to personal labor not normally required in the operation of the farm or ranch.

(3) Costs for the use of personal equipment and labor must be less than that charged for such equipment and labor by commercial contractors regularly employed in such areas.

(4) Costs shall not exceed those needed to achieve the minimum performance necessary to resolve the problem being corrected by the practice. Any costs above those levels shall not be considered to be eligible costs for purposes of calculations made under this part.

(c) Costs shall not exceed the practice specifications in § 701.12(d) for cost-share calculations.

(d) The gross amount on which the cost-share eligibility may be computed will not include any costs that were reimbursed by a third party including, but not limited to, an insurance indemnity payment.

(e) Total cost-share payments from all sources shall not exceed the total of eligible costs of the practice to the applicant.

§ 701.24 Dividing cost-share among more than one participant.

(a) For qualifying cost-share assistance under this part, the cost shall be credited to the participant who personally performed the practice or who paid to have it performed by a third party. If a payment or credit was made by one participant to another potential participant, paragraph (c) of this section shall apply.

(b) If more than one participant contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those eligible participants in the proportion they contributed to the performance of the practice. FSA may determine what proportion was contributed by each participant by considering the value of the labor, equipment, or material contributed by each participant and any other factors deemed relevant toward performance.

(c) Allowance by a participant of a credit to another participant through adjustment in rent, cash or other consideration, may be considered as a cost of a practice to the paying party only if FSA determines that such credit is directly related to the practice. An applicant who was fully reimbursed shall be considered as not having contributed to the practice performance.

§ 701.25 Practices carried out with aid from ineligible persons.

Any assistance provided by someone other than the eligible participant, including assistance from a State or Federal agency, shall be deducted from the participant's total costs incurred for the practice for the purpose of computing ECP cost shares. If unusual conditions exist, the Deputy Administrator may waive deduction of such contributions upon a request from the State committee and demonstration of the need for such a waiver.

§ 701.26 Maximum cost-share percentage.

(a) In addition to other restrictions that may be applied by FSA, an ECP participant shall not receive more than 75 percent of the lesser of the participant's total actual cost or of the total allowable costs, as determined by this part, to perform the practice.

(b) However, notwithstanding paragraph (a) of this section, a qualified limited resource producer that participates in the ECP may receive no more than 90 percent of the participant's actual cost to perform the practice or 90 percent of the total allowable costs for the practice as determined under this part.

(c) In addition to other limitations that apply, in no case shall the ECP payment exceed 50 percent of what the Deputy Administrator has determined is the agricultural value of the affected land.

§ 701.27 Maximum ECP payments per person.

A person, as defined in part 1400 of this title, is limited to a maximum cost-share of $200,000 per person, per disaster.

§§ 701.28–701.30 [Reserved]

§ 701.31 Maintenance and proper use of practices.

(a) Each participant receiving cost-share assistance is responsible for the required maintenance and proper use of the practice. Some practices have an established life span or minimum period of time during which they are expected to function as a conservation practice with proper maintenance. Cost-share assistance shall not be authorized for normal upkeep or maintenance of any practice.

(b) If a practice is not properly maintained for the established life span, the participant may be required to refund all or part of cost-share assistance received. The Deputy Administrator will determine what constitutes failure to maintain a practice and the amount that must be refunded.

§ 701.32 Failure to comply with program provisions.

Costs may be shared for performance actually rendered even though the minimum requirements otherwise established for a practice have not been satisfied if a reasonable effort was made to satisfy the minimum requirements and if the practice, as performed, will adequately address the need for the practice.

§ 701.33 Death, incompetency, or disappearance.

In case of death, incompetency, or disappearance of any participant, any cost-share payment due shall be paid to the successor, as determined in accordance with part 707 of this chapter.

§ 701.34 Appeals.

Part 11 of this title and part 780 of this chapter apply to determinations made under this part.

§ 701.35 Compliance with regulatory measures.

Participants who perform practices shall be responsible for obtaining the authorities, permits, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The ECP participant shall be wholly responsible for any actions taken with respect to the project and shall, in addition, be responsible for returning and refunding any ECP cost shares made, where the purpose of the project cannot be accomplished because of the applicants' lack of clearances or other problems.

§ 701.36 Schemes and devices and claims avoidances.

(a) If FSA determines that a participant has taken any action designed to defeat, or has the effect of defeating, the purposes of this program, the participant shall be required to refund all or part of any of the program payments otherwise due or paid that participant or related person for that

particular disaster. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice and providing false or misleading information related to practices, costs, or arrangements between entities or individuals that would have an effect on ''person'' determinations made under this part.

(b) All or any part of cost-share assistance that otherwise would be due any participant may be withheld, or required to be refunded, if the participant has adopted, or participated in, any scheme or device designed to evade the maximum cost-share limitation that applies to the ECP or to evade any other requirement or provision of the program or this part.

(c) If FSA determines that a participant has employed any scheme or device to deprive any other person of cost-share assistance, or engaged in any actions to receive payments under this part that also were designed to avoid claims of the United States or its instrumentalities or agents against that party, related parties, or third parties, the participant shall refund all or part of any of those program payments paid to that participant for the project.

(d) For purposes of this section, a scheme or device can include, but is not limited to, instances of coercion, fraud, or misrepresentation regarding the claim for ECP assistance and the facts and circumstances surrounding such claim.

(e) A participant who has knowingly supplied false information or filed a false claim shall be ineligible for cost-share assistance related to the disaster for which the false information was filed, or for any period of time FSA deems appropriate. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out, a false billing, or a billing for practices that do not meet required specifications.

§ 701.37 Loss of control of the property during the practice life span.

In the event of voluntary or involuntary loss of control of the land by the ECP cost-share recipient during the practice life-span, if the person acquiring control elects not to become a successor to the ECP agreement and the practice is not maintained, each participant who received cost-share assistance for the practice may be jointly and severally liable for refunding any ECP cost-share assistance related to that practice. The practice life span, for purposes of this section, includes any maintenance period that is essential to its success.

§§ 701.38–701.40 [Reserved]

§ 701.41 Cost-share assistance not subject to claims.

Any cost-share assistance or portion thereof due any participant under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against any crop or property, or proceeds thereof, except liens and other claims of the United States or its instrumentalities. The regulations governing offsets and withholdings at parts 792 and 1403 of this title shall be applicable to this program and the provisions most favorable to a collection of the debt shall control.

§ 701.42 Assignments.

Participants may assign ECP cost-share assistance payments, in whole or in part, according to part 1404 of this title.

§ 701.43 Information collection requirements.

Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0082.

§ 701.44 Agricultural Conservation Program (ACP) contracts.

Contracts for ACP that are, or were, administered under this part or similar contracts executed in connection with the Interim Environmental Quality Incentives Program, shall, unless the Deputy Administrator determines otherwise, be administered under, and be subject to, the regulations for ACP contracts and the ACP program that were contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 1998, and under the terms of the agreements that were entered into with participants.

§ 701.45 Forestry Incentives Program (FIP) contracts.

The regulations governing the FIP as of July 31, 2002, and contained in the 7 CFR, parts 700 to 899, edition revised as of January 1, 2002, shall continue to apply to FIP contracts in effect as of that date, except as provided in accord with a delegation of the administration of that program and such delegation and actions taken thereunder shall apply to any other FIP matters as may be at issue or in dispute.

Signed in Washington, DC on February 5, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–4861 Filed 3–3–04; 8:45 am]

BILLING CODE 3410–05–P

Federal Register

Thursday,
March 4, 2004

Part III

Department of Agriculture

Record of Decision for the Programmatic Environmental Impact Statement on the Emergency Conservation Program; Notice

DEPARTMENT OF AGRICULTURE

Record of Decision for the Programmatic Environmental Impact Statement on the Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Record of Decision.

SUMMARY: This notice presents the Record of Decision (ROD) regarding the changes made by the Farm Service Agency (FSA) to improve and expand the Emergency Conservation Program (ECP) to make the program easier to administer, reduce the potential for abuse, and make the program's cost-share rates consistent with other USDA programs. FSA prepared a Final Programmatic Environmental Impact Statement (PEIS) for ECP and published it in the **Federal Register** on March 7, 2003, along with a Notice of Availability (NOA). This notice summarizes the long-term environmental, social, and economic impacts of ECP identified in the PEIS that were considered in this decision, and why FSA selected the Proposed Action Alternative that it did in revising ECP.

FOR FURTHER INFORMATION CONTACT: Don Steck, USDA/FSA/CEPD/Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0153, (202) 690–0224, or email at: *don_steck@wdc.usda.gov.* The Final ECP PEIS including appendices and this ROD are available on the FSA Environmental Compliance Web site at: *http://www.fsa.usda.gov/dafp/cepd/epb/impact.htm.*

More detailed information on this program may also be obtained from the FSA Web site at: *http://www.fsa.usda.gov/pas/publications/facts/html/ecp00.htm.*

Record of Decision

I. The Decision

A. PEIS Proposed Action Alternative as the Basis for Implementing and Expanding ECP

Based on a thorough evaluation of the resource areas affected by ECP, a detailed analysis of three program alternatives, and a review of public comments on the Draft PEIS, the Proposed Action Alternative was selected as a means to improve and expand ECP in accordance with the provisions of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*), with regulations set forth at 7 CFR part 701.

B. Overview

ECP provides emergency cost-share assistance to farmers and ranchers to restore agricultural lands damaged by severe wind erosion, floods, hurricanes, or other natural disasters and for carrying out emergency water conservation measures during periods of severe drought. It is administered by FSA state committees (STC) and FSA county committees (COC) and is currently authorized by the Agricultural Credit Act of 1978. This program does not require a major disaster determination by the President or Secretary of Agriculture to provide local assistance. Except for drought, the COC may implement the program with the concurrence of the STC. During periods of severe drought, the determination to implement the program is made by the FSA's Deputy Administrator for Farm Programs or his or her designee.

Funding for ECP is appropriated by Congress, usually through supplemental appropriations in response to disasters, and is held in reserve at the national level. Funds are allocated after a determination has been made authorizing ECP designation. Funds are allocated to States based on the estimate of funds needed to begin implementing ECP.

Participants are not allowed to receive funding under the ECP for land on which the landowner or producer has or will receive funding from: the Wetland Reserve Program (WRP), the Emergency Wetland Reserve Program (EWRP), the Conservation Reserve Program (CRP), the Emergency Watershed Protection Program (EWP), or any other FSA, Commodity Credit Corporation, or other government program that covers similar expenses that duplicate ECP payments.

C. Programmatic Changes to ECP

ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*), with regulations set forth at 7 CFR part 701. On August 1, 2002, FSA published a proposed rule to amend part 701 (67 FR 49879). The proposed rule removed references to the Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP). ACP was repealed by the Federal Agriculture Improvement and Reform Act of 1996 and FIP was reassigned from FSA to the Natural Resources Conservation Service (NRCS) by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–94). The rule proposed to clarify and expand provisions of the ECP to reflect current policy and to make the program more efficient and easier to administer. The proposed rule 60-day comment period ended on September 30, 2002.

A final rule, with no substantive policy changes from the proposed rule, is published concurrently in this issue of the **Federal Register**. The changes to ECP regulations will result in no significant additional costs while making the ECP cost-share rates consistent with other USDA programs. The provisions added to reduce the potential for abuse and improve program delivery will ensure that ECP is carried out in an economically, environmentally, socially, and technically sound manner. FSA will also increase ECP funding for limited resource producers to deal with disaster recovery work it has not addressed previously.

The Proposed Action is comprised of four main elements:

- Eliminate tiered level cost sharing and allow for a more consistent cost-share rate;
- Tentatively provide measures dealing with confined livestock;
- Provide more cost-share assistance for limited resource producers; and
- Require completion of an environmental evaluation checklist prior to approving cost-share assistance.

The final rule changes little with regard to land eligibility or existing ECP conservation practices in the current program. One change that is made is that, in certain instances, such as to supply water during a severe drought, measures dealing with confined livestock are eligible for ECP, although it may not be used to replace or repair buildings. Provisions were added to strengthen the fiscal integrity of the program, including the prohibition of schemes and devices, and debt avoidance. Further, the new ECP provides special consideration for limited resource producers so that ECP funds may be targeted to those with the most need.

Also, the final rule changes how the maximum ECP cost-share level is computed. Under the current regulations, the maximum rate of cost-share is calculated according to a sliding scale, with a higher cost-share percentage being allowed for the first part of the costs of the practice up to a certain limit, and a lower percentage being allowed for additional costs. To eliminate confusion, the new rule provides, instead, for a standard maximum percentage to be used for all costs associated with the practice for which the cost-share is to be received. Program costs will not rise because payments will still be limited by other criteria and by limiting reimbursement to $200,000 per ''person'' per disaster. The FSA county committee may permit reimbursements of up to 75 percent for all reimbursable costs, subject to current per ''person'' limitations, and a 90

percent rate for limited resource producers. The 75 percent rate, like the current sliding rate, is used to determine the maximum amount to be paid to all participants involved with all practices applied for the applicable disaster. However, the $200,000 limit per ''person'' will remain.

In addition, an environmental evaluation checklist will be completed by appropriately trained FSA personnel prior to approval of any ECP cost share assistance. The completion of this checklist will provide a mechanism for reviewing each action's impacts, documenting a finding of no significant impact, and compliance with applicable environmental laws, regulations, and policies. This checklist will discuss the need for any environmental assessment and provide a format for assessing potential impacts and reviewing alternatives and mitigation measures when potential impacts to any of the protected resources listed on the checklist are identified. These protected resources include: wetlands, floodplains, sole source aquifer recharge areas, critical habitat for threatened and endangered species, wilderness, coastal barrier in coastal barrier resources system or approved coastal zone management areas, natural landmarks, and historical and archaeological sites.

II. Description of the Current Emergency Conservation Program

To be eligible for ECP assistance, the applicant must be an agricultural producer and the land receiving the assistance must be physically located in the county in which the ECP has been implemented.

Immediately following a natural disaster event, the county committee will make an overall assessment of the damage to ensure that the damage meets the minimum ECP requirements. The county committee then consults with the state committee to obtain concurrence for all ECP disasters, except drought, before approving the disaster damage for cost-share assistance. The state committee administers ECP within the state according to national policy. Additional eligibility for the program is established after the county committee determines whether:

- The natural disaster has created new conservation problems which, if not treated, would impair or endanger the land;
- Materially affect the productivity of the land;
- The damage represents unusual damage in that it does not occur frequently; or
- The damage would be so costly to repair that Federal assistance is required to return the land to productive agricultural use.

The County committee establishes cost-share levels up to 64 percent, according to a sliding scale: 64 percent for the first $62,500 in reimbursable costs, 40 percent for the next $62,500 in reimbursable costs, and 20 percent for the remaining eligible costs. Cost-sharing involves payments made to producers to cover a specified portion of the cost of installing, implementing, or maintaining conservation practices. Individual or cumulative requests for cost sharing of $20,000 or less per person per disaster may be approved by the county committee, and requests of $20,001 to $62,500 by the state committees. The Deputy Administrator for Farm Programs must approve requests for over $62,500. The payment limit for the program is $200,000 per person per disaster. The Natural Resource Conservation Service (NRCS) may provide technical assistance to resource managers and landowners participating in the ECP.

Before requesting ECP funds, the county committee shall, to the extent possible, use other available program funds instead of ECP. Except in the case of severe drought, the county committee may implement ECP after receiving the state committee's concurrence. County offices maintain a permanent file on natural disasters that have severely damaged agricultural lands in the county, regardless of whether disasters were approved for ECP. This information is used as a basis for future program requests and designations.

Pre-existing conservation problems are not eligible for cost-sharing assistance through ECP. Other lands considered ineligible for cost-share assistance include those lands:

- Owned or controlled by the United States.
- Owned or controlled by a State or State agency.
- Protected by a levee or dike that was not effectively and properly functioning prior to the disaster or is protected or is intended to be protected by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards.
- Located in areas frequently inundated by floods, or having significant possibility of being flooded.
- Damaged as a result of continuous use of poor farming practices.
- Utilized as greenhouses or other confined structures, such as land in corrals, milking parlors, barn lots, or feeding areas; and
- Devoted to trees for timber production and Christmas tree farms.

III. Alternatives Considered

FSA developed the ECP Proposed Action through internal scoping. FSA then conducted formal scoping for the ECP PEIS, meeting with and soliciting input from representatives of other Federal, State, and local agencies, and the general public. Public scoping meetings were held in six cities located around the country. The **Federal Register** and national newspapers published notices stating that FSA was preparing a PEIS and input was being sought through public scoping meetings, a toll-free phone line, regular mail, and email. The Proposed Action Alternative best reflects the ideas voiced and recommendations made during that scoping process. The following alternatives are presented in detail in the Final PEIS.

A. Alternative 1—No Program (Baseline)

The No Program alternative is used as an analytical device to establish a baseline upon which to evaluate the other alternatives. This alternative represents a true baseline rather than a ''permanent legislation'' alternative, since not enough information exists to define the latter. The analysis will establish a baseline by describing what would happen if ECP had never existed.

B. Alternative 2—No Action (Current Program)

Under the No-Action Alternative, FSA state and county committees would continue to administer the ECP under its current regulations. FSA would not make substantive changes in its administration, the mechanisms for review of projects before funding, or follow-up on the program's procedures after completion. FSA would continue to set cost-share levels up to 64 percent based on a sliding rate. FSA would not have a special cost-share level for limited-resource producers. This alternative simply continues the current program.

C. Alternative 3—Proposed Action (FSA's Preferred Alternative)

Under the Proposed Action, FSA would institute changes to facilitate the administration of the program without incurring significant additional costs while making the ECP cost-share rates consistent with other USDA programs. Also, it is meant to prevent abuse, such as when a large practice is subdivided into several smaller practices to avoid lower reimbursement rates applicable at the higher loss levels. It is also meant to improve program delivery and ensure the economic, environmental, and social defensibility and technical soundness of its decisions and practices. FSA would

also expand the ECP to provide funding to limited resource producers to deal with disaster recovery work it has not addressed previously.

IV. Impacts Under the Alternatives

This following section summarizes some of the effects that would be expected to occur to such resource areas as water resources, wetlands, soil and air quality, vegetation, wildlife and their habitat, and socio/economic resources under each of the three alternatives.

A. No Program Alternative

Disaster recovery efforts would likely be reduced or not undertaken in some floodplain locations with damaged marginal agricultural production areas being abandoned and could potentially revert to natural vegetative cover in the long term. This might reduce some of the impacts of farming on affected watersheds and wetlands. In areas where wildfires or drought have eliminated protective cover over upland areas the lack of restoration measures would leave these sites vulnerable to water and wind erosion that could adversely impact water resources, wetlands, air quality, and damage valuable topsoil.

Plant associations such as bottomland hardwood forests might expand in the long term under this alternative with rare plant species potentially benefiting from these changes. However, when a natural disaster destroys the protective cover over upland areas including hillsides, lack of restoration measures would leave these sites vulnerable to wind and water erosion that could adversely affect any natural re-vegetation that might occur in the short term. This would also adversely affect any wildlife cover or food provided by the vegetation in the long term for those wildlife species dependent in part on farming to maintain earlier successional and transitional habitats. Wildlife requiring later successional and relatively undisturbed habitats may benefit where farming is reduced.

Farm owners and operators would experience a greater exposure to the risk and uncertainty associated with a natural disaster.

B. No Action Alternative

Minor short-term effects on water resources such as sedimentation from restoration practices would temporarily add to any adverse impacts that may be resulting from farming activities such as soil erosion or pesticide or fertilizer use. These effects may be important in watersheds already stressed by farming and other factors such as development pressure or areas that are already sensitive to natural disasters.

Wetlands on agricultural lands would not be affected by continuing the current ECP program. FSA would ensure that any disaster recovery measures to be taken would not adversely affect wetlands although some minor impacts to wetlands downstream in the watershed may continue to occur to the extent that any deleterious farming practices resume after disaster recovery.

Short-term minor effects from restoration practices would continue to occur, and could add to any erosion and soil quality impacts that are currently a part of general agricultural production. FSA would ensure that highly erodible land soils are protected from wind or water erosion by making certain the producer is in compliance with highly erodible land requirements. The restoration of crop production, pasture, and shelterbelt sites would also maintain sites currently in managed use that would likely otherwise revert to natural vegetation.

Some wildlife species dependent in part on farming to maintain earlier successional and transitional habitats and to provide a portion of their food may benefit from restoration measures. Wildlife requiring later successional and relatively undisturbed habitats would not benefit where farming is restored.

The primary beneficial impact of the program is to provide repair funds and inject necessary capital into the local economy at a time when individual producers/operators and their surrounding communities are under stress as the result of the natural disaster event.

C. Proposed Action Alternative

The same short-term effects on water quality as under the No Action Alternative would occur and temporarily add to any agricultural degradation of water quality. Until specific practices are determined for confined livestock operations, no additional impacts are expected from any programmatic changes. Completion of the environmental evaluation checklist will ensure that any of these temporary adverse effects are considered and mitigated if necessary.

Wetlands would not be affected by instituting the proposed ECP program. FSA would not allow any disaster recovery measures to be taken that would adversely affect wetlands although some impacts to downstream wetlands may continue to occur to the extent that any deleterious farming practices resume after disaster recovery.

Short-term minor effects from restoration practices would continue to occur, and could add to any erosion and soil quality impacts that are currently a part of general agricultural production. FSA would ensure that highly erodible land soils are protected from wind or water erosion by making certain the producer is in compliance with highly erodible land requirements. The restoration of crop production, pasture, and shelterbelt sites would also maintain sites currently in managed use that would likely otherwise revert to natural vegetation.

Some wildlife species dependent in part on farming to maintain earlier successional and transitional habitats and to provide a portion of their food may benefit from restoration measures. Wildlife requiring later successional and relatively undisturbed habitats would not benefit where farming is restored.

The primary effect of ECP under this alternative would be similar to those outlined for the no action alternative with the beneficial aspect of repairing and restoring the affected area to its pre-disaster condition and use.

V. Rationale for Decision

The Proposed Action Alternative clarifies, expands, and changes provisions of the ECP to reflect current policy and to make the program more efficient and easier to administer. ECP would be administered without incurring significant additional costs while making the ECP cost-share rates consistent with other USDA programs. The prevention of potential programmatic abuse and improved program delivery would ensure the economic, environmental, and social defensibility and technical soundness of FSA decisions and practices with regard to ECP. FSA would also expand the ECP to provide extra funding to limited resource producers to deal with disaster recovery work it has not addressed previously.

VI. Implementation and Monitoring

FSA will implement ECP in a manner that provides the greatest amount of benefits to the environment while causing the least amount of adverse impacts. FSA will ensure that impacts are minimized through a process of completing site-specific environmental evaluations for each approved cost-share assistance to ensure compliance with all applicable Federal, State, and local laws.

Signed in Washington, DC on February 11, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–4862 Filed 3–3–04; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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