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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20107; Directorate Identifier 2005-SW-02-AD; Amendment 39-13981; AD 2005-04-09]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) model helicopters that currently requires certain checks and inspections of the tail rotor blades. If a crack is found, the existing AD requires replacing the tail rotor blade (blade) with an airworthy blade before further flight. This amendment requires the same checks and inspections as the existing AD, but expands the applicability with the addition of two BHTC Model 430 helicopter serial numbers. This amendment is prompted by the manufacturer issuing revised service information that includes the additional two serial numbers. The actions specified by this AD are intended to detect a crack in the blade, and to prevent loss of a blade and subsequent loss of control of the helicopter.

DATES: Effective March 4, 2005.

Comments for inclusion in the Rules Docket must be received on or before April 18, 2005.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically;

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically;

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL-401, Washington, DC 20590;
- *Fax:* (202) 493-2251; or
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437-2862 or (800) 363-8023, fax (450) 433-0272. You may examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

EXAMINING THE DOCKET: You may examine the docket that contains the AD, any comments, and other information on the Internet at <http://dms.dot.gov>, or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: On December 23, 2004, the FAA issued AD 2004-26-11, Amendment 39-13923 (70 FR 7; January 3, 2005), to require certain checks and inspections of the blades. If a crack is found, that AD requires replacing the blade with an airworthy blade before further flight. That action

was prompted by three reports of cracked blades that were found during scheduled inspections. That condition, if not corrected, could result in loss of a blade and subsequent loss of control of the helicopter.

Since issuing that AD, the alert service bulletin (ASB) that is applicable to BHTC Model 430 helicopters has been revised by the manufacturer to include two additional helicopter serial numbers. Further, we discovered two typographical errors in the AD—the word “Canada” is inadvertently omitted from the manufacturer’s name in the Summary section, and in Note 1 of the AD, the number for the Model 430 helicopter ASB is incorrectly stated as 430-04-32 instead of 430-04-31—as well as some minor editorial errors, which have been corrected in this AD.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on the specified BHTC model helicopters. Transport Canada advises of the discovery of cracked blades during scheduled inspections on three occasions. Two cracks originated from the outboard feathering bearing bore underneath the flanged sleeves. The third crack started from the inboard feathering bearing bore. Investigation found that the cracks originated from either a machining burr or a corrosion site in the bearing bore underneath the flanged sleeves.

BHTC has issued ASB No. 222-04-100 for Model 222 and 222B helicopters; ASB No. 222U-04-71 for Model 222U helicopters; and ASB No. 230-04-31 for Model 230 helicopters, all dated August 27, 2004; and, ASB No. 430-04-31, Revision A, dated November 29, 2004, for Model 430 helicopters. The ASBs specify a visual inspection of the blade root end around the feather bearings for a crack, not later than at the next scheduled inspection, and thereafter at intervals not to exceed 3 flight hours. Further, they describe a visual inspection for a crack, to include removing the blade from the helicopter, within 50 flight hours, and thereafter at intervals not to exceed 50 flight hours. Transport Canada classified these ASBs as mandatory and issued AD CF-2004-21R1, dated December 9, 2004, to ensure the continued airworthiness of these helicopters in Canada. This AD differs from those ASBs in that it requires an initial visual check, which may be

performed by a pilot, within 3 hours time-in-service (TIS) rather than a visual inspection not later than at the next scheduled inspection and every 3 flight hours maximum thereafter as stated in the ASBs.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, this AD supersedes AD 2004-26-11 to require the following:

- Within 3 hours TIS, and thereafter at intervals not to exceed 3 hours TIS, clean and visually check both sides of each blade for a crack in the area around the tail rotor feathering bearing. An owner/operator (pilot) may perform this check. Pilots may perform the checks required by paragraph (a) of this AD because they require no tools, can be done by observation, and can be done equally well by a pilot or a mechanic. However, the pilot must enter compliance with these requirements into the helicopter maintenance records by following 14 CFR 43.11 and 91.417(a)(2)(v).

- Within 50 hours TIS, and thereafter at intervals not to exceed 50 hours TIS, clean and inspect both sides of each blade for a crack using a 10X or higher magnifying glass.

- If a crack is found in the blade paint during a visual check or inspection, further inspect the blade as follows, before further flight:

- Remove the blade. Remove the paint to the bare metal in the area of the suspected crack by using plastic metal blasting (PMB) or a nylon web abrasive pad and abrading the blade surface in a span-wise direction only.

- Using a 10X or higher power magnifying glass, inspect the blade for a crack.

- If a crack is found, replace the blade with an airworthy blade before further flight.

- If no crack is found in the blade surface, refinish the blade by applying one coat of epoxy polyamide primer, MIL-P-23377 or MIL-P-85582, so that the primer overlaps the existing coats

just beyond the abraded area. Let the area dry for 30 minutes to 1 hour. Then, apply one sealer coat of polyurethane, MILC85285 TYI CL2, color number 27925 (semi-gloss white), per Fed. Std. 595, and reinstall the blade.

This AD is an interim action, pending release of additional service information from the manufacturer concerning instructions for inspecting and reworking the affected blades. We expect that service information to eliminate the recurring inspections required by this AD.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, checking the blade for a crack within 3 hours TIS, and thereafter at intervals not to exceed 3 hours TIS, is required, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 156 helicopters and will require:

- 0.25 work hour for a pilot check, and 2 work hours for a maintenance inspection, at an average labor rate of \$65 per work hour; and
- Parts, which will cost an estimated \$13,410 per helicopter.

Based on these figures, the estimated total cost impact of the AD on U.S. operators is \$2,842,320 per year, assuming each helicopter will require 200 pilot checks, 12 maintenance inspections, and one blade replacement per year.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send or deliver your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-20107; Directorate Identifier 2005-SW-02-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal

information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–13923 (70 FR 7, January 3, 2005), and by adding a new airworthiness directive (AD), Amendment 39–13981, to read as follows:

2005–04–09 Bell Helicopter Textron
Canada: Amendment 39–13981. Docket

No. FAA–2005–20107; Directorate Identifier 2005–SW–02–AD. Supersedes AD 2004–26–11, Amendment 39–13923, Docket No. FAA–2004–19969, Directorate Identifier 2004–SW–43–AD.

Applicability: The following helicopter models, identified by serial number, with one of the following part numbered tail rotor blades installed, certificated in any category.

Model	Serial No.	Tail rotor blade (blade) part no.
222	47006 through 47089	222–016–001–123, –127, –131, and –135.
222B	47131 through 47156	222–016–001–123, –127, –131, and –135.
222U	47501 through 47574	222–016–001–123, and –131.
230	23001 through 23038	222–016–001–123, and –131.
430	49001 through 49107	222–016–001–123, and –131.

Compliance: Required as indicated.
 To detect a crack in the blade and to prevent loss of the blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 3 hours time-in-service (TIS), and thereafter at intervals not to exceed 3 hours TIS, clean and visually check both sides of each blade for a crack in the paint in the areas shown in Figure 1 of this AD. An owner/operator (pilot), holding at least a

private pilot certificate, may perform this visual check and must enter compliance with this paragraph into the helicopter maintenance records by following 14 CFR 43.11 and 91.417(a)(2)(v).

BILLING CODE 4910–13–P

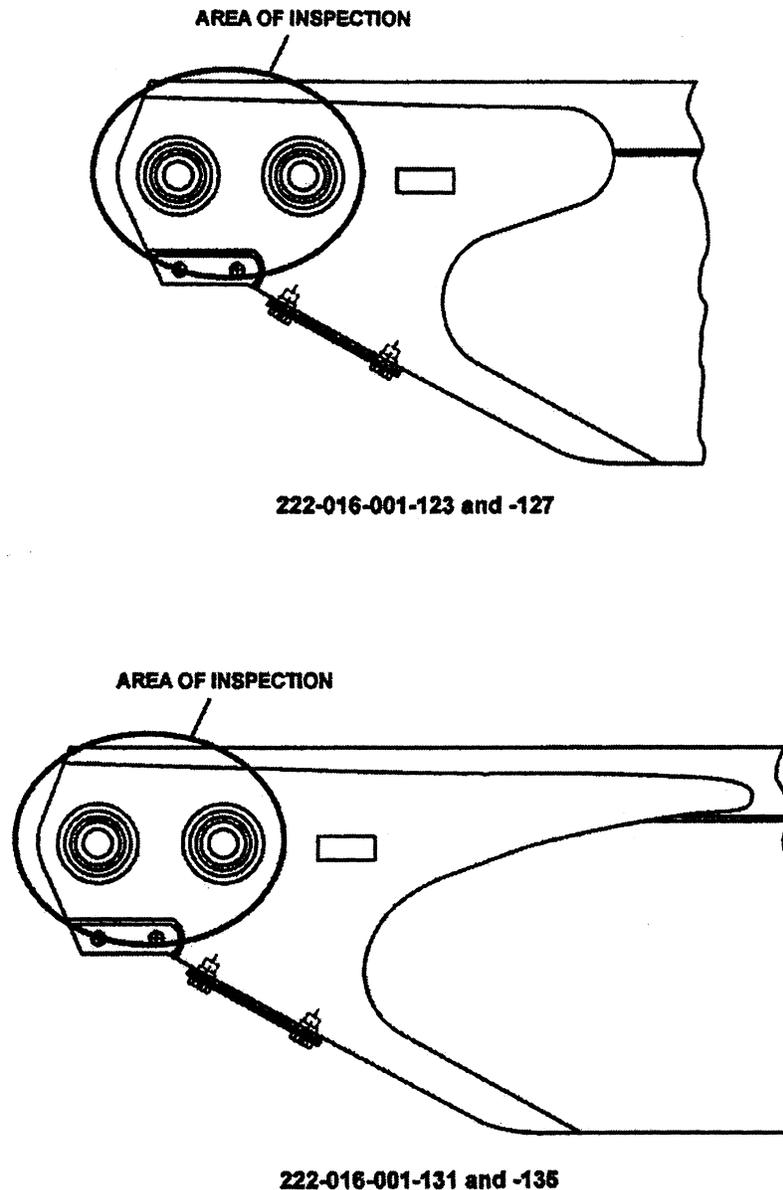


Figure 1. Blade inspection area

BILLING CODE 4910-13-C

Note 1: Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222-04-100, No. 222U-04-71, and No. 230-04-31, all dated August 27, 2004, and ASB No. 430-04-31, Revision A, dated November 29, 2004, pertain to the subject of this AD.

(b) If the visual check required by paragraph (a) reveals a crack in the paint, before further flight, remove the blade and follow the requirements in paragraphs (c)(2) through (c)(3)(ii) of this AD.

(c) Within the next 50 hours TIS, unless accomplished previously, and thereafter at

intervals not to exceed 50 hours TIS, clean the blade by wiping down both surfaces of each blade in the inspection area depicted in Figure 1 of this AD using aliphatic naphtha (C-305) or detergent (C-318) or an equivalent. Using a 10X or higher power magnifying glass, visually inspect both sides of the blade in the areas depicted in Figure 1 of this AD.

(1) If a crack is found, even if only in the paint, before further flight, remove the blade from the helicopter and proceed with the following:

(2) Remove the paint on the blade down to the bare metal in the area of the suspected crack by using plastic metal blasting (PMB) or a nylon web abrasive pad. Abrade the blade surface in a span-wise direction only.

Note 2: PMB may cause damage to helicopter parts if untrained personnel perform the paint removal. BHT-ALL-SPM, chapter 3, paragraph 3-24, pertains to the subject of this AD.

(3) Using a 10X or higher power magnifying glass, inspect the blade for a crack.

(i) If a crack is found, replace the blade with an airworthy blade before further flight.

(ii) If no crack is found in the blade surface, refinish the blade by applying one coat of epoxy polyamide primer, MIL-P-23377 or MIL-P-85582, so that the primer overlaps the existing coats just beyond the abraded area. Let the area dry for 30 minutes to 1 hour. Then, apply one sealer coat of polyurethane, MILC85285 TYI CL2, color number 27925 (semi-gloss white), per Fed. Std. 595. Reinstall the blade.

Note 3: BHT-ALL-SPM, chapter 4, pertains to painting the blade.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, FAA, for information about previously approved alternative methods of compliance.

(e) Special flight permits may be issued by following 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished provided you do not find a crack in the blade paint during a check or inspection.

(f) This amendment becomes effective March 4, 2005.

Note 4: The subject of this AD is addressed in Transport Canada (Canada) Airworthiness Directive CF-2004-21R1, dated December 9, 2004.

Issued in Fort Worth, Texas, on February 10, 2005.

Kim Smith,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05-3049 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-20276; Directorate Identifier 2005-NM-023-AD; Amendment 39-13979; AD 2005-04-07]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes and Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A, CL-601-3R, and CL-604) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes and Model CL-600-1A11 (CL-600), CL-

600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A, CL-601-3R, and CL-604) series airplanes. This AD requires revising the airplane flight manuals to include a new cold weather operations limitation. This AD is prompted by a report that even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces can cause an adverse change in the stall speeds, stall characteristics, and the protection provided by the stall protection system. We are issuing this AD to prevent possible loss of control on take-off resulting from even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces.

DATES: Effective February 22, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of February 22, 2005.

We must receive comments on this AD by April 18, 2005.

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

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the temporary revisions identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2005-20276; the directorate identifier for this docket is 2005-NM-023-AD.

Examining the Docket

You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT:

Bruce Valentine, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7328; fax (516) 794-5531.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist under certain operating conditions on all Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes and Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A, CL-601-3R, and CL-604) series airplanes. TCCA advises that even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces of these airplanes can cause an unsafe condition where an adverse change in the stall speeds, stall characteristics, and the protection provided by the stall protection system may result in reduced controllability of the airplane. TCCA advises that cold weather operational requirements for the subject airplane flight manuals should include wing leading edge and upper wing surface inspections using visual and tactile means in identifying potential contamination by frost, ice, snow, or slush.

Relevant Temporary Revision Information

Bombardier has issued temporary revisions (TRs) to the applicable Bombardier airplane flight manuals (AFMs) as listed in the following table. The TRs include a new take-off limitation to emphasize the requirement for an aerodynamically clean airplane during cold weather operations. The TRs specify that, in addition to a visual check, a tactile check must be done to determine that the wing is free from frost, ice, snow, or slush when certain weather conditions exist.

TABLE—TRS

Bombardier model	TR	AFM
CL-600-1A11 (CL-600) series airplanes	600/21, February 4, 2005	PSP 600 (US)
CL-600-1A11 (CL-600) series airplanes	600-1/16, February 4, 2005	PSP 600-1 (US)
CL-600-2A12 (CL-601) series airplanes	601/13, February 4, 2005	PSP 601-1B-1
CL-600-2A12 (CL-601) series airplanes	601/14, February 4, 2005	PSP 601-1A-1
CL-600-2A12 (CL-601) series airplanes	601/18, February 4, 2005	PSP 601-1B
CL-600-2A12 (CL-601) series airplanes	601/26, February 4, 2005	PSP 601-1A
CL-600-2B16 (CL-601-3A and CL-601-3R) series airplanes	601/24, February 4, 2005	PSP 601A-1
CL-600-2B16 (CL-601-3A and CL-601-3R) series airplanes	601/25, February 4, 2005	PSP 601A-1-1
CL-600-2B16 (CL-604) series airplanes	604/17, February 4, 2005	PSP 604-1
CL-600-2B19 (Regional Jet Series 100 & 440)	RJ/149-1, February 1, 2005	CSP A-012

Accomplishing the actions specified in the TRs is intended to ensure the applicable airplane is operated in a safe condition. TCCA mandated the TRs and issued Canadian airworthiness directives CF-2005-01, dated February 2, 2005, and CF-2005-03, dated February 8, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA’s Determination and Requirements of This AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA’s findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent possible loss of control on take-off resulting from even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces. This AD requires revising the airplane flight manuals to include a new cold weather operations limitation.

Differences Between This AD and the Canadian Airworthiness Directives

Due to the degree of urgency associated with the subject unsafe condition, this AD specifies a compliance time of within 5 days after the effective date of this AD in order to closely coincide with the compliance times specified in the Canadian airworthiness directives. Canadian airworthiness directive CF-2005-01 specifies a compliance time of within 14 days after February 2, 2005 (the effective date of Canadian airworthiness directive CF-2005-01). Canadian airworthiness directive CF-2005-03 specifies a

compliance time of within 14 days after February 8, 2005 (the effective date of Canadian airworthiness directive CF-2005-03).

FAA’s Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA-2005-20276; Directorate Identifier 2005-NM-023-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you can visit <http://dms.dot.gov>.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 (AD):

2005-04-07 Bombardier, Inc. (Formerly Canadair): Amendment 39-13979. Docket No. FAA-2005-20276; Directorate Identifier 2005-NM-023-AD.

Effective Date

(a) This AD becomes effective February 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes and Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A, CL-601-3R, & CL-604) series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces can cause an adverse change in the stall speeds, stall

characteristics, and the protection provided by the stall protection system. The FAA is issuing this AD to prevent possible loss of control on take-off resulting from even small amounts of frost, ice, snow, or slush on the wing leading edges or forward upper wing surfaces.

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.

Revision to Airplane Flight Manual (AFM)

(f) Within 5 days after the effective date of this AD, revise the applicable Bombardier AFMs, Chapter 2 Limitations—Operating Limitations section, by inserting a copy of the new cold weather operations limitation specified in the Canadair (Bombardier) temporary revisions (TRs) listed in Table 1 of this AD. Thereafter, operate the airplanes per the limitation specified in the applicable TR, except as provided by paragraph (g) of this AD.

TABLE 1.—TRs

Bombardier model	TR	AFM
CL-600-1A11 (CL-600) series airplanes	600/21, February 4, 2005	PSP 600 (US)
CL-600-1A11 (CL-600) series airplanes	600-1/16, February 4, 2005	PSP 600-1 (US)
CL-600-2A12 (CL-601) series airplanes	601/13, February 4, 2005	PSP 601-1B-1
CL-6002A12 (CL-601) series airplanes	601/14, February 4, 2005	PSP 601-1A-1
CL-600-2A12 (CL-601) series airplanes	601/18, February 4, 2005	PSP 601-1B
CL-600-2A12 (CL-601) series airplanes	601/26, February 4, 2005	PSP 601-1A
CL-600-2B16 (CL-601-3A and CL-601-3R) series airplanes	601/24, February 4, 2005	PSP 601A-1
CL-600-2B16 (CL-601-3A and CL-601-3R) series airplanes	601/25, February 4, 2005	PSP 601A-1-1
CL-600-2B16 (CL-604) series airplanes	604/17, February 4, 2005	PSP 604-1
CL-600-2B19 (Regional Jet Series 100 & 440)	RJ/149-1, February 1, 2005	CSP A-012

Note 1: When information identical to that in a TR specified in paragraph (f) of this AD has been included in the general revisions of the applicable AFM, the general revisions may be inserted into the AFM, and the TR may be removed from that AFM.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) Canadian airworthiness directives CF-2005-01, dated February 2, 2005, and CF-2005-03, dated February 8, 2005, also address the subject of this AD.

Material Incorporated by Reference

(i) You must use the Canadair (Bombardier) temporary revisions to the applicable Bombardier airplane flight manuals specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance

with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the temporary revisions, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Temporary revision	Airplane flight manual
RJ/149-1, February 1, 2005	CL-600-2B19 (Regional Jet Series 100 & 440), CSP A-012
600/21, February 4, 2005	CL-600-1A11 (CL-600), PSP 600 (US)
600-1/16, February 4, 2005	CL-600-1A11 (CL-600), PSP 600-1 (US)
601/13, February 4, 2005	CL-600-2A12 (CL-601), PSP 601-1B-1
601/14, February 4, 2005	CL-600-2A12 (CL-601), PSP 601-1A-1
601/18, February 4, 2005	CL-600-2A12 (CL-601), PSP 601-1B
601/24, February 4, 2005	CL-600-2B16 (CL-601-3A and CL-601-3R), PSP 601A-1
601/25, February 4, 2005	CL-600-2B16 (CL-601-3A and CL-601-3R), PSP 601A-1-1
601/26, February 4, 2005	CL-600-2A12 (CL-601), PSP 601-1A
604/17, February 4, 2005	CL-600-2B16 (CL-604), PSP 604-1

Issued in Renton, Washington, on February 10, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-2964 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-NM-237-AD; Amendment 39-13977; AD 2005-04-05]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and -145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB-135 and -145 series airplanes. This AD requires repetitive detailed inspections of the oil in the air turbine starter (ATS) to determine the quantity of the oil and the amount of debris contamination in the oil. If the oil quantity is incorrect or if excessive debris is found in the oil, this AD requires replacement of the ATS with a new or serviceable ATS, and continued repetitive detailed inspections. This AD also requires eventual replacement of each ATS with a new, improved ATS, which constitutes terminating action for the repetitive detailed inspections. This action is necessary to prevent a flash fire in the nacelle, which would result in the flightcrew shutting down the engine during flight, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective March 24, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,

1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FOR FURTHER INFORMATION CONTACT:

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (425) 227-1175; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-135 and -145 series airplanes was published in the **Federal Register** on February 19, 2004 (69 FR 7707). That action proposed to require repetitive detailed inspections of the oil in the air turbine starter (ATS) to determine the quantity of the oil and the amount of debris contamination in the oil. If the oil quantity was incorrect or if excessive debris was found in the oil, that proposal would have required replacement of the ATS with a new or serviceable ATS having the same part number, and continued repetitive detailed inspections. That proposal would also have required eventual replacement of each ATS with a new improved ATS having a new part number, which would constitute terminating action for the repetitive detailed inspections.

Actions Since Proposed AD Was Issued

Since we issued the proposed AD, we have determined that the Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, issued two Brazilian airworthiness directives that address that same unsafe condition. The DAC issued Brazilian airworthiness directive 2001-09-04, dated October 10, 2001. The DAC also issued Brazilian airworthiness directive 2003-07-01, Revision 01, dated December 23, 2003. We issued a parallel proposed AD for each Brazilian airworthiness directive. One proposed AD, Directorate Identifier 2002-NM-352-AD, was published in the **Federal Register** on December 18, 2003 (68 FR 243). The other proposed AD, Directorate Identifier 2003-NM-237-AD, was published in the **Federal Register** on February 19, 2004 (69 FR 7707).

Upon further evaluation, and based on comments received in response to

the proposed AD with Directorate Identifier 2002-NM-352-AD, we have determined that it is in the best interest of the FAA and the U.S. operators to combine the requirements of both of our proposed ADs into this AD. The requirements in this AD adequately address the identified unsafe condition specified in 2002-NM-352-AD. Accordingly, the proposed AD with Directorate Identifier 2002-NM-352-AD will be withdrawn after this AD is issued. The DAC and the airplane manufacturer support our decision.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Part Number (P/N) 3505910-6 as a Replacement Part

Three commenters request that air turbine starter (ATS) P/N 3505910-6 be included in the proposed AD as an acceptable replacement part. (The proposed AD states that an affected ATS should be replaced with a new or serviceable ATS having P/N 3505910-4 or P/N 3505910-5.)

We agree with the commenters' requests. We have revised the Summary section of this AD by deleting the text that states that the ATS should be replaced with an ATS having the same part number. Paragraph (d) of this AD has been revised to include P/N 3505910-6 as an additional acceptable replacement part.

Request To Allow Replacement of ATS Within 50 Hours Instead of Before Further Flight

Two commenters request that the proposed AD be revised so that, if the results of an inspection of the oil indicate that the ATS should be replaced, operators may continue to use that ATS for an additional 50 flight hours before doing the replacement. (Paragraph (d) of the proposed AD specifies that the ATS should be replaced prior to further flight.) One commenter states that the 50-hour grace period should be acceptable because Brazilian airworthiness directive 2003-07-01R1, dated December 23, 2003, allows ATS units that don't show evidence of wear or failure to go back into service for 50 flight hours before replacement. The commenter also states that, based on service history, the additional 50 flight hours is very conservative. The other commenter states that EMBRAER Service Bulletin 145-80-0005, Revision 02, dated September 16, 2003, allows a grace

period of 50 flight hours, and that operators incorporating that service bulletin have not reported failures or service interruptions within 50 hours of the service inspection.

We agree to allow a 50-hour grace period for ATSs that meet the criteria specified in EMBRAER Service Bulletin 145-80-0005, Revision 02. We misinterpreted the Brazilian airworthiness directive and, in the proposed AD, identified the 50-hour grace period as a difference between the proposed AD and the Brazilian airworthiness directive. We have determined that a 50-hour grace period will allow airplanes to continue to operate without compromising safety. Paragraph (d) of this AD has been revised to specify that an ATS should be replaced at the times specified in the applicable service bulletin.

Request To Change Compliance Time for Initial Inspection

One commenter requests that the FAA revise the compliance time for the initial detailed inspection specified in paragraph (b) of the proposed AD. The commenter provides two suggestions for making this change. The first suggestion is to either delete the statement "whichever comes first" or change that statement to "whichever comes later." The second suggestion is to change the initial inspection threshold from "Within 200 flight hours or 90 days" to "Within 500 flight hours or 180 days." The commenter states that it is already accomplishing the intent of the proposed AD. Since August 2003, the commenter has repetitively inspected the ATS in its fleet of airplanes at intervals of 500 flight hours. The commenter contends that, by changing the threshold for the initial inspection in the proposed AD, the FAA and the commenter would conserve resources regarding the processing of requests for alternative methods of compliance (AMOCs) related to the compliance time for the initial detailed inspection.

We do not agree with the commenter's request to change the threshold for the initial detailed inspection. In developing an appropriate threshold for this AD, we considered the safety implications, the manufacturer's recommendations, the Brazilian airworthiness authority's recommendations, and operators' maintenance schedules. Under the provisions of paragraph (g) of this AD, however, we may consider requests for adjustments to this compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Include Secondary Test for Certain ATSs

One commenter notes that Brazilian airworthiness directive 2003-07-01R1 includes a provision that a new ATS should not be replaced during the first 400 hours of operation after installation if oil system debris is detected during an inspection. The proposed AD does not include that provision. The commenter states that metallic debris is normal during the "wear-in" of a new ATS. Such debris does not necessarily indicate abnormal wear or imminent failure of the part. The commenter also states that EMBRAER Service Bulletins 145-80-0005, Revision 02, dated September 16, 2003; and 145LEG-80-0001, Revision 01, dated April 10, 2003; include a secondary test (referred to as a "penalty run" in the service bulletins) that should be conducted on new ATSs that show metallic particles on the magnetic drain plug. (Those service bulletins were cited in the proposed AD as acceptable sources of service information for inspecting the ATS.) The results of the secondary test will help operators determine if metal debris is a result of the normal "wear-in" period or abnormal ATS wear, or is from a different part of the engine.

We agree that, if an ATS has less than 400 flight hours since new or last overhaul, operators should be allowed the option of performing the secondary test. This option allows airplanes to continue to operate without compromising safety. Paragraph (d) of this AD has been revised to allow operators the option of replacing the ATS before further flight or performing the secondary test in accordance with the applicable service bulletin.

Request To Include Additional Service Information

One commenter requests that the proposed AD be revised to require operators to incorporate Rolls-Royce Service Bulletin AE 3007A-72-253, dated September 13, 2002. The commenter states that the Rolls-Royce service bulletin includes procedures for installing a vented quick access drain (QAD) adapter. The QAD adapter alleviates a contributing cause of the ATS failure.

We partially agree. We agree that installing the QAD adapter alleviates a contributing cause of the ATS failure; however, we will not revise this AD to require operators to perform the actions in the Rolls-Royce service bulletin. The parallel Brazilian airworthiness directive does not require operators to incorporate the Rolls-Royce service bulletin, and the associated EMBRAER

service bulletins include procedures for operators that have incorporated the Rolls-Royce service bulletin and procedures for operators that have not incorporated the Rolls-Royce service bulletin. Also, operators may voluntarily incorporate the Rolls-Royce service bulletin. No change has been made to this AD regarding this issue.

The same commenter states that requiring the EMBRAER EMB-135 and -145 fleet to install P/N 3505910-6 within two years after the effective date of the proposed AD is an unnecessary hardship given the improvements made by incorporating the Rolls-Royce service bulletin. The commenter states that the procedures in the Rolls-Royce service bulletin include removing the drain cap, which would attenuate the oil migration and seal damage, making the potential for a low-oil/backdrive failure much less likely. The commenter notes that it took operators almost a year to accomplish the "simple" Rolls-Royce service bulletin. We infer that the commenter requests an extension of the compliance time specified in paragraph (e) of the proposed AD.

We do not agree to extend the compliance time in paragraph (e) of this AD. Although the preventative measures provided in the Rolls-Royce service bulletin address the primary cause of backdrive events, other contributing causes of backdrive events still exist. Also, the commenter did not provide data that substantiate that all operators have incorporated the Rolls-Royce service bulletin. Furthermore, the parallel Brazilian airworthiness directive specifies that all ATS P/Ns 3505910-4 and -5 should be replaced with ATS, P/N 3505910-6, before March 1, 2006. Since we do not use calendar dates in the compliance times for our ADs, we considered the safety implications, the manufacturer's recommendations, and the Brazilian airworthiness authority's recommendations, and determined that accomplishment of the part replacement within 26 months after the effective date of the AD represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. However, under the provisions of paragraph (g) of this AD, we may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Clarify Unsafe Condition

Two commenters mention that the unsafe condition statement in the proposed AD is inaccurate. One commenter states that the unsafe

condition statement implies that a fire in an engine section is a direct cause of the engine shutdown, when actually a fire started by an ATS would be detected by the fire detection system and annunciated to the flightcrew. The engine shutdown is a result of the flightcrew's response to the fire. The other commenter states that the phrases "prevent a flash fire" and "cause the engine to shut down" are incorrect. The commenter notes that the improved ATS, P/N 3505910-6, prevents ATS backdrive failures. The commenter states that backdrive failures do not necessarily result in a flash fire or always result in engine shutdown. We infer that the commenters are requesting that the unsafe condition statement in the proposed AD be revised.

We agree that the unsafe condition statement implies that a fire in an engine section directly causes an engine shutdown. We do not agree that the phrases "prevent a flash fire" and "cause the engine to shut down" are incorrect. The end result of the unsafe condition is the possibility of a flash fire and an engine shutdown. The intent of this AD is to require operators to install the new, improved ATS, P/N 3505910-6, which prevents the ATS backdrive failures. Therefore, until operators install P/N 3505910-6, the possibility of a flash fire and engine shutdown still exists. The unsafe condition statement in this AD has been revised to state: "To prevent a flash fire in the nacelle, which would result in the flightcrew shutting down the engine during flight, and consequent reduced controllability of the airplane."

Request To Allow Alternative Method for Repetitive Inspections

One commenter states that it services the ATS oil system of its fleet every routine check (7 days), as specified in Subtask 80-10-01-610-001-A00, dated August 28, 2004, in Chapter 80-10-01 of the EMBRAER EMB-145 Aircraft Maintenance Manual (AMM). The commenter asks if it is acceptable to the FAA to continue this practice. We infer that the commenter is requesting to perform the repetitive inspections in the AMM instead of the repetitive detailed inspections specified in paragraph (b) of this AD.

It is acceptable for the commenter to continue doing the procedures specified in Subtask 80-10-01-610-001-A00. However, after reviewing the subtask, we have determined that those procedures do not satisfy the requirements of this AD. The procedures in the subtask are for determining the oil level of the ATS, not for inspecting the oil in the ATS for

debris. As provided by paragraph (g) of this AD, the commenter may apply for an AMOC.

Request To Omit Repetitive Inspections

One commenter supports the issuance of the proposed AD but raises several questions. The commenter questions the purpose of including repetitive inspections in the proposed AD. The commenter also asks if 180 "hours" between inspections is too much time. The commenter notes that if abrasive particles become suspended in a lubricating substance within the first 90 days, there is an ineffective lubrication system for 90 more days. The commenter also proposes several solutions for addressing the unsafe condition of debris in the oil of the ATS. The commenter states that requiring the immediate replacement of the ATS when the AD is published would be more cost effective than requiring repetitive inspections and eventual replacement of the ATS. The commenter states that the immediate part replacement would also be safer. We infer that the commenter is requesting that the proposed AD be revised to omit the repetitive inspections specified in paragraph (b) of that AD, and to mandate only the replacement of any ATS having P/N 3505910-4 or P/N 3505910-5 with an ATS having P/N 3505910-6, as specified in paragraph (e) of that AD. We also infer that the commenter is requesting a reduction of the compliance time for the repetitive inspection intervals.

We do not agree that the repetitive inspections of the ATS oil should be deleted from paragraph (e) of this AD, or that the compliance time for the repetitive inspection intervals should be reduced. Also, the repetitive inspection interval specified in paragraph (b) of this AD is 180 days, not 180 hours. The commenter did not provide any data to substantiate the termination of the repetitive inspections of the oil in the ATS, or the reduction of the compliance time for the repetitive inspection intervals. Both the Brazilian airworthiness directive and EMBRAER Service Bulletins 145-80-0005, Revision 02, dated September 16, 2003; and 145LEG-80-0001, Revision 01, dated April 10, 2003; include provisions for repetitive inspections. The Brazilian airworthiness directive mandates the detailed inspections at intervals of 500 flight hours or 180 days, whichever occurs first. We have determined that the repetitive inspections are needed to ensure the continued operational safety of the affected airplanes. No change has been made to this AD regarding these issues.

Request To Delete Note Regarding Submission of Information

One commenter states that the proposed AD mentions that Honeywell Service Bulletin 3505910-80-1789, dated August 19, 2003, specifies to submit certain information to Honeywell. (That service bulletin was referenced as an additional source of service information in the proposed AD.) The commenter states that Service Bulletin 3505910-80-1789 has been revised and no longer requests operators to submit information to Honeywell. We infer that the commenter is requesting that the references to submitting certain information to Honeywell be deleted from the proposed AD.

We do not agree to revise this AD regarding the submission of information to Honeywell. To date, we have not received a copy of the revised service bulletin and to our knowledge the revised service bulletin has not been issued. Furthermore, when the revised service bulletin is issued, the requirements of this AD will not be affected by the omission of the request to submit information to Honeywell. Since the Honeywell service bulletin is cited as a secondary source of service information in this AD, it is referenced in a note. Notes in ADs provide additional information only and do not include requirements. No change has been made to this AD regarding this issue.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 459 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to inspect the oil in the ATS, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$29,835, or \$65 per airplane, per inspection cycle.

We estimate it will take approximately 2 work hours per airplane to replace the ATS, and that the average labor rate is \$65 per work hour. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be \$59,670, or \$130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2005-04-05 Empresa Brasileira De Aeronautica S.A. (Embraer):
Amendment 39-13977. Docket 2003-NM-237-AD.

Applicability: Model EMB-135 and -145 series airplanes, with air turbine starter (ATS) units having part numbers (P/N) 3505910-4 or -5; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a flash fire in the nacelle, which would result in the flightcrew shutting down the engine during flight, and consequent reduced controllability of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For the detailed inspection and replacements specified in paragraphs (b), (c) and (d) of this AD: For Model EMB-135 BJ series airplanes, EMBRAER Service Bulletin 145LEG-80-0001, Revision 01, dated April 10, 2003; and for all other affected airplanes, EMBRAER Service Bulletin 145-80-0005, Revision 02, dated September 16, 2003.

(2) For the replacement specified in paragraph (e) of this AD: For Model EMB-135 BJ series airplanes, EMBRAER Service Bulletin 145LEG-80-0002, dated October 2, 2003; and for all other affected airplanes, EMBRAER Service Bulletin 145-80-0006, dated October 2, 2003.

Note 1: These service bulletins refer to Honeywell Service Bulletin 3505910-80-1789, dated August 19, 2003, as an additional source of service information. The Honeywell service bulletin is included in the EMBRAER service bulletins. Although this Honeywell service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Repetitive Detailed Inspection

(b) Within 200 flight hours or 90 days after the effective date of this AD, whichever occurs first: Perform a detailed inspection of the oil in the air turbine starter (ATS) to determine the quantity of oil and to determine the amount of debris contamination in the oil in accordance with the applicable service bulletin. Repeat the inspection at intervals not to exceed 500 flight hours or 180 days, whichever occurs first.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Oil Replacement if Oil Quantity Is Correct and No Excessive Debris Is Found

(c) If, during the inspection required by paragraph (b) of this AD, no oil debris contamination is found that is in excess of the limits allowed by the applicable service bulletin; and if the amount of oil in the ATS is correct: Prior to further flight, replace the oil in the ATS with new oil, in accordance with the applicable service bulletin.

ATS Replacement if Oil Quantity Is Incorrect or if Excessive Debris Is Found

(d) If, during the inspection required by paragraph (b) of this AD, the oil quantity is found to be incorrect; or if oil debris contamination is found that is in excess of the limits allowed by the applicable service bulletin: Replace the ATS with a new or serviceable ATS having part number (P/N) 3505910-4, P/N 3505910-5, or P/N 3505910-6, at the times specified in and in accordance with the applicable service bulletin. If an affected ATS has less than 400 flight hours since new or last overhaul, the "penalty run" test may be performed before further flight and the ATS replaced at the times specified in and in accordance with the applicable service bulletin.

Terminating Action

(e) Within 26 months after the effective date of this AD, replace any ATS having P/N 3505910-4 or -5 with a new ATS having P/N 3505910-6 in accordance with the applicable service bulletin. This replacement constitutes terminating action for the repetitive detailed inspections required by paragraph (b) of this AD.

Actions Accomplished per Previous Issue of Service Bulletin 145-80-0005

(f) Actions accomplished before the effective date of this AD per EMBRAER Service Bulletin 145-80-0005, Revision 01, dated April 10, 2003, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM-116,

Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(h) The actions shall be done in accordance with the service information specified in Table 1 of this AD, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

EMBRAER service bulletin	Revision level	Date
145-80-0005	02	Sept. 16, 2003.
145-80-0006 145LEG-80-0001.	Original .. 01	Oct. 2, 2003. Apr. 10, 2003.
145LEG-80-0002.	Original ..	Oct. 2, 2003.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2003-07-01R1, dated December 23, 2003.

Effective Date

(i) This amendment becomes effective on March 24, 2005.

Issued in Renton, Washington, on February 2, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-2842 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 2003F-0023]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Acacia (Gum Arabic)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

food additive regulations to provide for the safe use of acacia (gum arabic) as a thickener, emulsifier, or stabilizer in alcoholic beverages at a maximum use level of 20 percent. This action is in response to a petition filed by Kerry, Inc.

DATES: This rule is effective February 17, 2005. Submit written objections and requests for a hearing by March 21, 2005. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 172.780 as of February 17, 2005.

ADDRESSES: You may submit written objections and requests for a hearing, identified by Docket No. 2003F-0023, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments on the agency Web site.

- E-mail: fdadockets@oc.fda.gov. Include Docket No. 2003F-0023 in the subject line of your e-mail message.

- FAX: 301-827-6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For detailed instructions on submitting objections, see the "Objections" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.fda.gov/ohrms/dockets/default.htm> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mical Honigfort, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1278.

SUPPLEMENTARY INFORMATION:

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I. Background

The petition was initially filed as a generally recognized as safe (GRAS) affirmation petition (GRASP 3G0287) as announced in a notice published in the **Federal Register** on October 13, 1983 (48 FR 46626). The GRAS affirmation petition was filed by Beatrice Foods Co. (now Kerry, Inc.) and proposed to amend part 184 (21 CFR part 184) in § 184.1330 *Acacia (gum arabic)* to permit the use of gum acacia (arabic) in alcoholic beverages up to a maximum level of 20 percent in the finished preparation (liqueur).

In a letter dated September 21, 2000, Kerry, Inc., requested that FDA convert the filed GRAS affirmation petition to a GRAS notice in accordance with the agency's proposed rule for Substances Generally Recognized as Safe published April 17, 1997 (62 FR 18938). Consistent with this request, FDA converted the GRAS affirmation petition to GRAS Notice No. GRN 000058. In its evaluation of this GRAS notice (Ref. 1), the agency considered that § 184.1(b)(2) was established at the same time that the GRAS status of some uses of acacia were affirmed and that the limitations in § 184.1(b)(2) were intended to apply to the GRAS listing for acacia. According to § 184.1(b)(2), if an ingredient is affirmed as GRAS with specific limitations on the conditions of use, any use of the ingredient not in full compliance with the limitations requires a food additive regulation. Given the options discussed in the agency response letter to GRN 000058 (Ref. 1), Kerry, Inc., requested in a letter dated September 6, 2001, that FDA convert GRN 000058 to a food additive petition.

In a notice published in the **Federal Register** on February 13, 2003 (68 FR 7381), FDA announced that a food additive petition (FAP 1A4730) had been filed by Kerry, Inc., c/o Bell, Boyd, and Lloyd, LLC, Three First National Plaza, 70 West Madison St., suite 3300, Chicago, IL 60602-4207. The petition proposes to amend the food additive regulations in part 172 (21 CFR part 172) to provide for the safe use of acacia (gum arabic) as a thickener, emulsifier, or stabilizer in the manufacture of

creamers for use in alcoholic beverages at a maximum use level of 20 percent.

II. Introduction

A. Identity

Acacia is the dried gummy exudate from stems and branches of trees of various species of the genus *Acacia*, family *Leguminosae*. Numerous species have been attributed to this genus. Most of the acacia used in the United States is obtained from *Acacia senegal*. The gum consists of the calcium, magnesium, and potassium salts of arabic acid, a polysaccharide acid. The polysaccharide is a sugar polymer that is composed of L-arabinose, D-galactose, L-rhamnose, and D-glucuronic acid. The relative proportions of the sugars differ among different species of acacia.

B. Regulated Food Uses

In the **Federal Register** of September 23, 1974 (39 FR 34203), FDA published a proposed rule to affirm that the use of acacia as a direct human food ingredient is GRAS, with specific limitations. In the **Federal Register** of December 7, 1976 (41 FR 53608), FDA issued a final rule based on this proposal, amending the regulations in part 121 (21 CFR part 121) to affirm that acacia (gum arabic) is GRAS. In the **Federal Register** of March 15, 1977 (42 FR 14302 at 14653), acacia (gum arabic) was redesignated from § 121.104(g)(19) to part 184 by adding § 184.1330 *Acacia (gum arabic)*. Under § 184.1330, acacia is affirmed as GRAS for use in various specific food categories at levels ranging from 1.3 to 85.0 percent. Use of acacia in all other food categories, including alcoholic beverages, is currently limited to not more than 1.0 percent.

The petitioner in this proceeding has requested the approval of the use of acacia as a thickener, emulsifier, or stabilizer in alcoholic beverages at a use level not to exceed 20 percent in the final beverage.

III. Safety Evaluation

In order to establish, with reasonable certainty, that a new food additive is not harmful under its intended conditions of use, FDA considers the projected human dietary exposure to the additive, the additive's toxicological data, and other relevant information available to the agency.

A. Proposed Use and Exposure

The petitioner proposes to use acacia in alcoholic beverages where a creamy consistency was desired. The petitioner relies on the 1973 report of the Select Committee on GRAS Substances (the Select Committee) (Ref. 2, p. 2) and the previously approved uses of acacia

under § 184.1330 to demonstrate that acacia is effective as a thickener, emulsifier, or stabilizer in alcoholic beverages.

The petitioner estimates that the exposure to acacia from the proposed use would be 0.75 gram per person per day (g/p/d) based on these factors: (1) The total number of cases of cordials, liqueurs, and prepared cocktails (which are the types of beverages likely to contain acacia) sold in the United States in 1992, (2) the portion of the population that could legally drink alcoholic beverages in the United States in 1980, and (3) the acacia use-level range in such beverages of 12 to 20 percent. Based on the legal drinking-age limit, only a subset of the population will be exposed to acacia in alcoholic beverages.

FDA has reviewed the petitioner's exposure data and concurs that the proposed use of acacia in alcoholic beverages will increase intake for that subset of the population that consumes these alcoholic beverages by no more than 0.75 g/p/d (Ref. 3), an increase of approximately 30 percent over the cumulative estimated daily intake of acacia for existing uses, estimated previously to be 2.5 g/p/d (Ref. 4).

B. Safety Assessment

The petitioner relied on toxicological data contained in the 1973 report of the Select Committee (Ref. 2) to support the safety of the use of acacia in alcoholic beverages. In its report, the Select Committee evaluated all of the available safety information on acacia and concluded that acacia poses no safety hazard to the public when it is used at the then current levels (Ref. 2, p. 10). The Select Committee believed, however, that because of the potential for allergies to acacia, it was not possible without additional data to determine whether significant increases in consumption of acacia would constitute a dietary hazard (Ref. 2, pp. 9 and 10).

FDA conducted literature searches that updated the information that had formed the basis of the Select Committee report. The agency reviewed toxicological data from a 1982 National Toxicology Program (NTP) report of 2-year carcinogenicity feeding studies on acacia in F344 rats and B6C3F1 mice. The agency evaluated the carcinogenicity of acacia and concluded that F344 rats and B6C3F1 mice consuming diets containing up to 5-percent acacia for 2 years showed no increased incidences of tumors at any site (Ref. 5).

The Joint FAO/WHO (Food and Agriculture Organization/World Health

Organization) Expert Committee on Food Additives (JECFA) evaluated acacia for acceptable daily intake and did not place a limit on acacia's dietary use beyond the criterion that it should be used within the bounds of good manufacturing practice, i.e., it should be technologically efficacious and should be used at the lowest level necessary to achieve this effect, it should not conceal inferior food quality or adulteration, and it should not create nutritional imbalance (Ref. 6).

In 1983, 1987, 1988, and 1992, the agency conducted searches of the scientific literature on acacia with a special emphasis on potential hypersensitivity and allergic reaction. Based on a review of the reference materials obtained through these literature searches, the agency concluded that while there was evidence that acacia is associated with dermal/bronchial hypersensitivity in workers handling acacia dust in the workplace (e.g., printing industry), the evidence for the allergic potential of acacia was extremely weak (Refs. 7 and 8).

Based on its review of the safety data (Ref. 9), FDA concludes that the additional use of acacia in alcoholic beverages is safe.

IV. Conclusions

From the review of the available information, the agency concludes that acacia may be safely used as a thickener, emulsifier, or stabilizer in alcoholic beverages at a maximum use level of 20 percent in the final beverage. Therefore, the regulations in part 172 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 1A4730 (68 FR 7381). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. References

The following references have been placed on display in the Division of Dockets Management (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from A. Rulis, Office of Food Additive Safety, to J. Lemker, Bell, Boyd, and Lloyd, LLC, "Agency Response Letter, GRAS Notice No. GRN 000058," October 1, 2001, Internet address: <http://www.cfsan.fda.gov/~rdb/opa-g058.html>.

2. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, "Evaluation of the Health Aspects of Gum Arabic as a Food Ingredient," March, 1973.

3. Memorandum from M. DiNovi, Chemistry Review Branch, to R. Martin, Direct Additives Branch, "GRP 3G0287: Beatrice Foods. Gum Arabic as a Stabilizer in Alcoholic Beverage Mixes," March 7, 1994.

4. Memorandum from J. Modderman, Food Additive Chemistry Review Branch, to L. Mansor, GRAS Review Branch, "GRASP 3G0287—Gum Arabic. Beatrice Foods Co.," November 21, 1983.

5. Memorandum of Conference, Cancer Assessment Committee Meeting, "Gum Arabic," January 6, 1998.

6. "Toxicological Evaluation of Certain Food Additives and Contaminants," WHO Food Additives Series 26, No. 686, 1990.

7. Memorandum from J. Griffiths, Additives Evaluation Branch, to C. Coker, Case and Advisory Branch, "Gum Arabic and Immunogenicity; updated literature survey," March 8, 1988.

8. Memorandum from J. Griffiths, Additives Evaluation Branch, to E. Flamm, Direct Additives Branch, "Gum Arabic and Immunogenicity; literature from Dr. D. M. W. Anderson," November 9, 1988.

9. Memorandum from C. Johnson, Additives Evaluation Branch #1, to R. Martin, Direct Additives Branch, "Gum Arabic in Alcoholic Beverages: Final Toxicology Evaluation," April 8, 1996.

VIII. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a

waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.780 is added to subpart H to read as follows:

§ 172.780 Acacia (gum arabic).

The food additive may be safely used in food in accordance with the following prescribed conditions:

(a) Acacia (gum arabic) is the dried gummy exudate from stems and branches of trees of various species of the genus *Acacia*, family Leguminosae.

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 5th Ed. (2004), pp. 210 and 211, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the National Academies Press, 500 Fifth St. NW., Washington, DC 20001 (Internet address: <http://www.nap.edu>). Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD

20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) The ingredient is used as a thickener, emulsifier, or stabilizer in alcoholic beverages at a use level not to exceed 20 percent in the final beverage.

Dated: November 16, 2004.

Leslye M. Fraser,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 05-3026 Filed 2-16-05; 8:45 am]

BILLING CODE 4160-01-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98-67, CG Docket No. 03-123; DA 05-141]

Clarification of Telecommunications Relay Service Marketing and Call Handling Procedures and Video Relay Service Procedures

AGENCY: Federal Communications Commission.

ACTION: Policy and procedures; Clarification.

SUMMARY: This document clarifies that certain telecommunications relay services (TRS) practices violate the TRS rules, and that video relay services (VRS) may not be used as a video remote interpreting service by persons at the same location. This document also instructs the TRS Fund administrator that, any provider found to be engaging in the improper marketing or call handling practices described herein will be ineligible for compensation from the Interstate TRS Fund (Fund).

DATES: Clarification of the TRS rules was effective January 26, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau at (202) 418-1475 (voice), (202) 418-0597 (TTY) or e-mail Thomas.Chandler@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 05-141, released January 26, 2005 in CC Docket No. 98-67 and CG Docket No. 03-123. The complete text of this document may be purchased

from the Commission's duplication contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customer may contact BCPI, Inc. at their Web site: www.bcpweb.com. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This Public Notice can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

Synopsis

The Commission has become aware that some TRS providers may be engaging in marketing practices that are inconsistent with the TRS statute and regulations. We have also become aware that some TRS providers may not be handling TRS calls in a manner that is consistent with the TRS statute and regulations, e.g., through the use of reservations systems. Finally, we are aware that VRS—a form TRS—is sometimes being used as a substitute for a live interpreter when a person who is deaf or hard of hearing seeks to communicate with a hearing person at the same location. Accordingly, we clarify that certain TRS practices violate the TRS rules, and that VRS may not be used as a video remote interpreting service. A provider found to be engaging in the improper marketing or call handling practices described herein will be ineligible for compensation from the Interstate TRS Fund. In addition, we will also consider appropriate enforcement action against providers that engage in any of the improper practices discussed herein.

Background

TRS, mandated by Title IV of the Americans with Disabilities Act (ADA) of 1990, enables an individual with a hearing or speech disability to communicate by telephone with a person without such a disability. Public Law Number 101-336, section 401, 104 statute 327, 336-69 (1990), adding section 225 to the Communications Act of 1934; see 47 U.S.C. 225. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons using a standard telephone. In a traditional text-based TRS call, for example, a TTY user types the number of the TRS facility and, after reaching the facility, types the number of the

party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the "link" in the conversation, converting text messages from the caller into voice messages, and voice messages from the called party into text messages for the TTY user.

VRS is a form of TRS that allows people with hearing and speech disabilities to communicate with the CA through sign language, rather than typed text. Video equipment links the VRS user and the CA so that they can see and communicate with each other in signed conversation. Presently, VRS services are accessed through a broadband connection and video equipment connected to a personal computer or a television.

The provision of TRS is "an accommodation that is required of telecommunications providers, just as other accommodations for persons with disabilities are required by the ADA of businesses and local and state governments." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, FCC 04-137, 69 FR 53346, September 1, 2004; 19 FCC Rcd 12475 at paragraph 182 n.521 (June 30, 2004) (*2004 TRS Report & Order*). To this end, section 225 is intended to ensure that TRS give[s] persons with hearing or speech disabilities "functionally equivalent" access to the telephone network.

Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 98-90, 63 FR 32798, June 16, 1998; 1998 WL251383 at paragraph 6 (May 20, 1998) (*1998 TRS NPRM*); see generally 47 U.S.C. 225 (a)(3). The statute and regulations provide that eligible TRS providers offering interstate services and certain intrastate services will be compensated for their just and "reasonable" costs of doing so from the Interstate TRS Fund, currently administered by the National Exchange Carrier Association (NECA). See, e.g., 47 CFR 64.604(c)(5)(iii)(E).

Section 225 and the TRS mandatory minimum standards contained in the regulations set forth the operational and technical standards TRS providers must meet. These standards reflect the functional equivalency mandate. We have repeatedly stated that, as a general matter, TRS providers seeking compensation from the Interstate TRS

Fund must meet all non-waived mandatory minimum standards. See, e.g., 47 CFR 64.604(c)(5)(iii)(E) ("The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in section 64.604."); *2004 TRS Report & Order* at paragraph 189. This is true whether the TRS service is a mandatory form of the TRS (like traditional TTY-based TRS) or a non-mandatory form of TRS (like IP Relay and VRS). See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 65 FR 38432, June 21, 2000; 15 FCC Rcd 5140 at paragraph 39 (March 6, 2000) (*2000 Improved TRS Order*) (all relay services either mandated by the Commission or eligible for reimbursement from the interstate TRS Fund must comply with the mandatory minimum standards).

Improper Marketing Practices

The Commission has received numerous complaints regarding improper marketing practices, particularly with regard to the provision of VRS. First, we understand that some providers install video equipment at a consumer's premise to enable the consumer to make VRS calls. We further understand that in the course of installing the equipment, the provider's installer may tell the consumer that he or she may only have one VRS provider, or that the consumer's broadband connection may be connected to only one piece of video equipment (generally the equipment of that provider). These statements have the effect of requiring the consumer to choose a single VRS provider. We also understand that some installers may adjust the consumer's hardware or software to restrict the consumer to using one VRS provider without the consumer's consent.

The TRS rules do not require a consumer to choose or use only one VRS (or TRS) provider. A consumer may use one of several VRS providers available on the Internet or through VRS service hardware that attaches to a television. Therefore, VRS consumers cannot be placed under any obligation to use only one VRS provider's service, and the fact that they may have accepted VRS equipment from one provider does not mean that they cannot use another VRS provider via other equipment they may have. In addition, a VRS provider (or its installers) should not be adjusting a consumer's hardware or software to restrict access to other

VRS providers without the consumer's informed consent.

Second, we understand that some providers use their customer database to contact prior users of their service and suggest, urge, or tell them to make more VRS calls. This marketing practice constitutes an improper use of information obtained from consumers using the service, is inconsistent with the notion of functional equivalency, and may constitute a fraud on the Interstate TRS Fund because the Fund, and not the consumer, pays for the cost of the VRS call. See 47 CFR

64.604(a)(2)(i). As we have noted, the purpose of TRS is to allow persons with certain disabilities to use the telephone system. Entities electing to offer VRS (or other forms of TRS) should not be contacting users of their service and asking or telling them to make TRS calls. Rather, the provider must be available to handle the calls that consumers choose to make. In this regard, we question whether there are any circumstances in which it is appropriate for a TRS provider to contact or call a prior user of their service. Again, the role of the provider is to make available a service to consumers as an accommodation under the ADA when a consumer may choose to use that service. For this reason as well, VRS providers may not require consumers to make TRS calls, impose on consumers minimum usage requirements, or offer any type of financial incentive for consumers to place TRS calls. See *Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, CG Docket No. 03-123, DA 05-140 (January 26, 2005).

Finally, we understand that some VRS (or TRS) providers may selectively answer calls from preferred consumers or locations, rather than answer the calls in the order they are received. For example, the VRS provider may monitor a list of incoming callers waiting for a CA and, rather than handling the calls in order, will first handle calls from preferred customers or from a specific location. This practice also constitutes an improper use of information obtained from consumers using the service and is inconsistent with the notion of functional equivalency. Providers must handle incoming calls in the order that they are received. We will continue to carefully monitor the provision of all forms of TRS to the public. To the extent providers offer TRS services in violation of our rules, they will be ineligible for compensation from the Interstate TRS Fund.

Improper Handling of TRS Calls

We understand that some providers permit TRS consumers (particularly VRS users) to make advance reservations so that the consumer can reach a CA without delay at a specific time to place a call. This practice is inconsistent with the functional equivalency mandate of Section 225 and the TRS regulations. Under the functional equivalency mandate, TRS is intended to permit persons with hearing and speech disabilities to access the telephone system to call persons without such disabilities. As we have frequently noted, "for a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone." See *2000 Improved TRS Order* at paragraph 60. Therefore, TRS is intended to operate so that when a TRS user wants to make a call, a CA is available to handle the call. For this reason, for example, the TRS regulations presently require TRS providers (except in the case of VRS) to answer 85% of all calls within 10 seconds. See 47 CFR 64.604(b)(2). This requirement has presently been waived for VRS, and has been raised in the Further Notice of Proposed Rulemaking (*FNPRM*) in the *2004 TRS Report & Order*. See *2004 TRS Report & Order* at paragraphs 119-123 (extending speed of answer waiver until January 1, 2006, or until such time as the Commission adopts a speed of answer rule for VRS, whichever is sooner); *2004 TRS Report & Order* at paragraph 246 (raising issue in *FNPRM*). See also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 01-3029, 17 FCC Rcd 157 at paragraphs 15-16 (December 31, 2001) (*VRS Waiver Order*) (original VRS waiver order, which waived the speed of answer requirement for VRS to encourage more entrants into the VRS market, stimulate the growth of VRS, and provide more time for technology to develop). This "speed of answer" requirement was adopted so that the experience of a TRS caller in reaching a CA to place his or her call would be functionally equivalent to the experience of an individual without a hearing or speech disability placing a call. See *1998 TRS NPRM* at paragraph 49. The Commission has noted that the "ability of a TRS user to reach a CA prepared to place his or her call * * * is fundamental to the concept of 'functional equivalency.'" (Emphasis added).

As a result, we find that the practice of permitting TRS consumers to reserve in advance a time at which a CA will

handle a call is inconsistent with the nature of TRS and the functional equivalency mandate. TRS providers must have available CAs that can handle the calls as they come in (to, by analogy, provide the "dial tone") consistent with our rules. Handling calls by prior reservation is a different kind of service. For the same reason, calls must be handled in the order in which they are received (as we have also stated above). The fact that VRS is not a mandatory service, or that speed of answer has presently been waived for VRS, does not affect the application of these principles to VRS. In addition, TRS providers may not offer their service in such a way so that when a TRS consumer (including a hearing person) contacts the TRS provider the consumer reaches only a message or recording that asks the caller to leave certain information so that the provider can call the consumer back when the provider is able (or desires) to place the call. This type of "call back" arrangement is impermissible because it relieves the provider of its central obligation to be available when a caller desires to make a TRS call, and permits the provider, and not the caller, to ultimately be in control of when a TRS call is placed. As we have noted, the functional equivalency mandate rests in part on the expectation that when a TRS user reaches a CA that is the equivalent of receiving a dial tone. We distinguish this situation from the use of a "call back" service whereby a consumer, who has called the relay center to make a TRS call and reaches the provider but has to wait for an available CA, has the choice of either waiting for an available CA (i.e., without disconnecting) or having the TRS provider call the consumer back when a CA is available to handle the call. Nevertheless, we are concerned that the use of "call back" option in any context is inconsistent with the functional equivalency mandate, and therefore we will closely monitor the use of this feature. We also recognize that, given the speed of answer rule, use of a call back feature will be an issue only for those forms of TRS not subject to such a rule (e.g., VRS). Accordingly, because we interpret section 225 and the implementing regulations to prohibit any practice that undermines the functional equivalency mandate, effective March 1, 2005, any provider offering or utilizing advance call reservations, or a recording that greets all calls to the TRS provider and takes information so that the provider can call the consumer back, will be ineligible for compensation from the Interstate TRS Fund.

VRS Cannot Be Used as a Substitute for Video Remote Interpreting (VRI)

We again remind providers (and consumers) that VRS is not the same as Video Remote Interpreting (VRI), even though both services use the Internet and a video connection to permit persons with hearing disabilities to communicate with persons without such disabilities. See generally 2004 TRS Report & Order at paragraphs 162 n.466 & 172 n.490. VRI is a service that is used when an interpreter cannot be physically present to interpret for two persons who are together at the same location (for example, at a meeting or in a doctor's office). In that situation, an interpreter at a remote location may be used via a video connection. A fee is generally charged by companies that offer this service.

By contrast, VRS, like all forms of TRS, is a means of giving access to the telephone system. Therefore, VRS is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system (or if, in the reverse situation, the hearing person desires to make such a call to a person with a hearing disability). VRS calls are compensated from the Interstate TRS Fund, which is overseen by the Commission. In circumstances where a person with a hearing disability desires to communicate with someone in person, he or she may not use VRS but must either hire an "in-person" interpreter or a VRI service.

We will continue to carefully scrutinize the provision and use of VRS to ensure that it is being used only as a means of accessing the telephone system, not as a substitute for VRI.

Federal Communications Commission.

Jay Keithley,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05-3066 Filed 2-16-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AT57

Endangered and Threatened Wildlife and Plants; Final Rule To Designate Critical Habitat for the Santa Ana Sucker (*Catostomus santaanae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: On January 4, 2005, we, the U.S. Fish and Wildlife Service, published a final rule to designate critical habitat for the threatened Santa Ana sucker (*Catostomus santaanae*) pursuant to the Endangered Species Act of 1973, as amended. Because we made an error in use of amendatory language, one of the final rule's two regulatory amendments could not be properly reflected in the Code of Federal Regulations. This correction document rectifies that error.

DATES: Effective February 3, 2005.

FOR FURTHER INFORMATION CONTACT: Sara Prigan, Federal Register Liaison, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, at (703) 358-2508.

Regulation Correction

■ For reasons set forth in the preamble, we correct the final rule published on January 4, 2005, at 70 FR 426 by correcting amendatory instruction #3 on page 448, column 1, to read as follows:

PART 17—[CORRECTED]**§ 17.95 [Corrected]**

■ 3. Amend § 17.95(e) by revising critical habitat for the Santa Ana sucker (*Catostomus santaanae*) in the same alphabetical order as this species occurs in § 17.11(h).

Dated: February 11, 2005.

Sara Prigan,

Fish and Wildlife Service Federal Register Liaison.

[FR Doc. 05-3047 Filed 2-16-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 050209033-5033-01; I.D. 020405D]

RIN 0648-AS97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Commercial Trip Limits for Gulf of Mexico Grouper Fishery

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues this emergency rule to establish trip limits for the commercial shallow-water and deep-water grouper fisheries in the exclusive economic zone of the Gulf of Mexico. The intended effect of this emergency rule is to moderate the rate of harvest of the available quotas and, thereby, reduce the adverse social and economic effects of derby fishing, enable more effective quota monitoring, and reduce the probability of overfishing.

DATES: This rule is effective March 3, 2005 through August 16, 2005.

Comments on this emergency rule must be received no later than 5 p.m., eastern time, on March 21, 2005.

ADDRESSES: You may submit comments on this emergency rule by any of the following methods:

- E-mail: 0648-AS97.Emergency@noaa.gov. Include in the subject line the following document identifier: 0648-AS97.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

- Fax: 727-570-5583, Attention: Phil Steele.

Copies of the documents supporting this emergency rule may be obtained from the NMFS Southeast Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Phil Steele, 727-570-5305; fax: 727-570-5583, e-mail: Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Gulf of Mexico Fishery Management Council (Council). This FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

On June 15, 2004, NMFS published a final rule (69 FR 33315) to end overfishing of red grouper in the Gulf of Mexico and to implement a stock rebuilding plan as provided in Secretarial Amendment 1 to the FMP. That final rule established a red grouper commercial quota; reduced the shallow-water and deep-water grouper commercial quotas; and included a provision to close the entire shallow-water grouper commercial fishery when either the red grouper quota or the shallow-water grouper quota is reached.

As a result of these more restrictive measures, the quotas were reached before the end of the 2004 fishing year. NMFS closed the commercial fishery for deep-water grouper on July 15, 2004, and closed the shallow-water grouper on November 15, 2004, when the quotas for these fisheries were reached.

Two of the principal fishing associations involved in the commercial grouper fishery, Southern Offshore Fishing Association (SOFA) and Gulf Fishermen's Association (GFA), have indicated the 2004 closure of both the deep-water grouper and shallow-water grouper fisheries, combined with the damaging effects of four hurricanes, severely impacted the Florida economy, especially regions along the west coast and Panhandle. Although data are not yet available to quantify the adverse effects of these recent grouper closures, there is ample evidence from other high-value fisheries, e.g., Gulf red snapper, Alaskan halibut, that quotas resulting in closures well before the end of the fishing season have substantial adverse economic and social impacts. Typically, restrictive quotas result in a derby fishing effect, i.e., a race for the fish. Problems associated with derby fishing and the resultant early closure of fisheries include: market gluts and associated depressed prices for fish landed; disruption and potential loss of established markets due to lack of a constant supply of fish; loss of fresh product for retailers and consumers; financial strain due to cash flow constraints in fisheries that have few, if any, economically viable fishing alternatives during closures; inability to retain experienced fishing crew members; and competitive pressure to fish in marginal or unsafe weather. Timely and appropriately structured trip limits have the potential to mitigate many of these issues.

At the November 7–12, 2004, Council meeting, SOFA and GFA requested an interim or emergency rule to establish commercial trip limits for shallow-water and deep-water grouper to slow the rate of harvest and extend the 2005 fishing season, thus reducing potential adverse economic consequences for all sectors of the commercial grouper fishery, including affected fishing communities. The trip limits proposed by the SOFA and GFA were structured as follows: (1) On January 1, all vessels will be limited to a 10,000-lb (4,536-kg), gutted-weight (GW), trip limit for deep-water grouper and shallow-water grouper combined; (2) if on or before August 1 the fishery is estimated to have landed more than 50 percent of either the shallow-water grouper or the red grouper quota, then a 7,500-lb (3,402-kg) GW trip limit

takes effect; and (3) if on or before October 1 the fishery is estimated to have landed more than 75 percent of either the shallow-water grouper or the red grouper quota, then a 5,500-lb (2,495-kg) GW trip limit takes effect.

The Council is concerned the rate of commercial grouper harvest may increase in 2005 due to industry reaction to the 2004 closures (i.e., a derby effect) and because of improvement in the status of the red grouper resource as a result of the rebuilding plan and recently implemented management measures. Sufficient data are not available to evaluate the rate of harvest this early in the 2005 fishing season. However, based on experiences in the Gulf red snapper fishery and other high-value quota-managed fisheries, there is a high probability of an increased harvest rate. Without some mechanism to slow the rate of harvest, it is likely the quotas in 2005 would be reached earlier than in 2004 resulting in an even shorter fishing season and significant adverse economic and social impacts on affected fishermen and the dependent fishing communities. The recommended trip limits will slow the rate of harvest, help to extend the fishing season, and facilitate accurate monitoring of the quotas, thus, lessening the likelihood of overfishing. To be most effective, trip limits must be implemented as near the beginning of the fishing season as possible.

For these reasons, the Council requested NMFS develop an emergency rule establishing the proposed trip limits for the commercial grouper fishery in the Gulf of Mexico for the 2005–fishing year. NMFS concurs with the need for emergency implementation of the trip limits.

NMFS issues this emergency rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. The emergency rule may be extended for an additional 180 days, provided the public has had an opportunity to comment on the emergency rule and provided the Council is actively preparing proposed regulations to address the emergency on a permanent basis. Public comments on this emergency rule are invited and will be considered in determining whether to extend this emergency rule. The Council is preparing a regulatory amendment under the FMP framework procedure to address, on a permanent basis, trip limits for the commercial grouper fishery in the Gulf of Mexico that are the subject of this rule. Trip limits are needed on a longer-term basis to control harvest rate until such time as the Council is able to evaluate and

possibly implement a more comprehensive management strategy for controlling effort in this fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to minimize adverse social and economic impacts, (i.e., derby fishing, market gluts, lower ex-vessel prices, potential safety-at-sea issues, and a shortened fishing season). The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The AA finds good cause to waive the requirement to provide prior notice and opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. This emergency rule will establish commercial trip limits to moderate the rate of harvest of the available quotas, thereby helping to keep the fishery open for more of the fishing year and reducing the effects of derby fishing and the associated adverse social and economic impacts. Preliminary January 2005 data from the commercial deep-water grouper fishery indicate landings are approximately 23 percent higher than landings for the comparable time period in 2004, thus making immediate action necessary to prevent the adverse consequences this rule is intended to reduce. For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds good cause to establish an effective date less than 30 days after the date of publication. For the reasons stated above, a 30-day delay in the effective date of this emergency rule would be contrary to the public interest. However, to ensure that vessels at sea will have adequate time to return to port and offload prior to the effectiveness of trips limits established by this emergency rule, the effectiveness of this emergency rule will be delayed until March 3, 2005.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 11, 2005.

John Oliver,

*Deputy Assistant Administrator for
Operations, National Marine Fisheries
Service.*

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622—FISHERIES OF THE
CARIBBEAN, GULF, AND SOUTH
ATLANTIC**

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.44, paragraph (g) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(g) *Gulf deep-water and shallow-water grouper, combined.* (1) For vessels operating under the quotas in § 622.42(a)(1)(ii) or § 622.42(a)(1)(iii), the following trip limits apply to Gulf deep-water and shallow-water grouper combined. (See § 622.42(a)(1)(ii) and § 622.42(a)(1)(iii) for the species included in the deep-water and shallow-water grouper categories, respectively).

(i) Beginning March 3, 2005—10,000 lb (4,536 kg).

(ii) If on or before August 1 more than 50 percent of either the shallow-water grouper quota or red grouper quota specified in § 622.42(a)(1)(iii) is reached

or is projected to be reached—7,500 lb (3,402 kg).

(iii) If on or before October 1 more than 75 percent of either the shallow-water grouper quota or red grouper quota specified in § 622.42(a)(1)(iii) is reached or is projected to be reached—5,500 lb (2,495 kg).

(2) The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (g)(1)(ii) and (iii) of this section when the applicable conditions have been met.

[FR Doc. 05-3092 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 70, No. 32

Thursday, February 17, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 170

[Docket No. TM-04-09]

USDA Farmers Market Operating Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is seeking comments on procedures to administer the USDA Farmers Market at 12th Street & Independence Avenue, SW., Washington, DC. These procedures would allow AMS the means to demonstrate and experiment with direct marketing techniques (operate a farmers market), while at the same time educate consumers on the significance of small farms, the nutritional benefits of fresh fruits and vegetables, and the merits of food recovery. Included in this proposed rule is the establishment of vendor criteria, selection procedures, and guidelines for governing the operation of the USDA Farmers Market. Information collection requirements are also included to establish a one-time yearly submission on a required application form.

DATES: Comments on this proposed rule must be received by April 18, 2005. Comments on the information collection requirements of this proposed rule must be received by April 18, 2005 to be considered.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed regulations and information collection requirements. All comments should be sent to Errol R. Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 2646-South, 1400 Independence Avenue, SW., Washington, DC, 20250. Comments

may also be sent by e-mail to USDAFMComments@usda.gov or by fax to 202/690-0031. State that your comments refer to Docket No. TM-04-09 or Internet: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Errol R. Bragg, Associate Deputy Administrator, Marketing Services Branch on 202/720-8317, fax 202/690-0031, or by e-mail USDAFMComments@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized under the Agricultural Marketing Act of 1946. The Act directs and authorizes the Secretary of Agriculture to conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market packaging, handling, transporting, distributing, and marketing agricultural products, 7 U.S.C. 1622(a). Moreover, 7 U.S.C. 1622(f) directs and authorizes the Secretary to conduct and cooperate in consumer education for more effective utilization and greater consumption of agricultural products. In addition, 7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels. Pursuant to 7 CFR 2.79, the Under Secretary for Marketing and Regulatory Programs has re-delegated these authorities to the Administrator of AMS.

Executive Order 12866

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this proposed rule also announces that AMS is seeking approval from the Office of Management and Budget (OMB) for a new information collection request.

Title: USDA Farmers Market Operating Procedures.

OMB Number: 0581-New.

Expiration Date of Approval: 3 years from date of approval.

Type of Request: New information collection.

Abstract: AMS is seeking to establish procedures to administer the USDA Farmers Market at 12th & Independence Avenue, SW., Washington, DC, under the authority of the Agricultural Marketing Act of 1946 (Act). These procedures would allow AMS the means to demonstrate and experiment with direct marketing techniques (operate a farmers market), while at the same time educate consumers on the significance of small farms, the nutritional benefits of fresh fruits and vegetables, and the merits of food recovery. Included in this proposed rule would be the establishment of vendor criteria, selection procedures, and guidelines for governing the operation of the USDA Farmers Market.

In this proposed rule, information collection requirements include a one-time yearly submission of the required information on the application form which is included in an Appendix at the end of this action.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: Farmers and/or vendors completing the application to participate in the USDA Farmers Market.

Number of Responses per respondent: 1.

Number of Respondents: 20.

Estimated Total Annual Burden on Respondents: 1.66 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 would 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference the Docket Number TM-04-

09, together with the date and page number of this issue of the **Federal Register**. Comments on this proposed collection of information may be sent to Errol R. Bragg at the address listed above or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. Comments must be received by April 18, 2005. All comments received by AMS will be available for public inspection during regular business hours, 8 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the same address.

Executive Order 13132

AMS has analyzed this rule under Executive Order 13132, Federalism, and have determined that it does not have Federalism implications to warrant the preparation of a Federalism assessment under that order.

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 regulatory actions not specifically required by law on state, local and tribal governments. This proposed rule contains no Federal mandates that would result in the expenditure of \$100 million or more for these groups or for the private section. Therefore, no written statement or cost-benefit analysis is required under this act.

Regulatory Flexibility Act

AMS has reviewed this proposed rule under the Regulatory Flexibility Act, 5 U.S.C. 601–612, and determined that it will not have a significant economic impact on a substantial number of small entities. This program does not impose requirements on small entities that are not eligible to participate in the program, and imposes on small entities applying for and participating in the program only minimum requirements necessary for proper administration and oversight of this program. Therefore, a regulatory flexibility analysis is not required and was not performed.

Background

Farmers markets are more than just a place to buy fruits and vegetables; they are intermediate social structures linking the urban and rural sectors of the economy. They provide consumers with locally-grown, good-value farm products at a convenient location and provide farmers with a profitable, well-organized and operated retail marketplace. Farmers markets not only give members of the public direct contact with producers, but also provide alternatives to the uniform and

standardized mass produced, mass marketed products that dominate the U.S. economy. Farmers markets are usually located within or near urban centers and may be owned and maintained by community development groups, farmers cooperative associations or by local, state or the federal governments. Generally open for a specific time period seasonally or throughout the year, farmers markets may range from an open outdoor lot where farmers park their vehicles and display products, to enclosed buildings with display counters, lights, heat, and refrigeration. The number of farmers markets operating in the United States has seen a steady growth in recent years, increasing from 1,755 in 1994 to over 3,600 operating in 2004.

AMS developed a Farmer Direct Marketing Action Plan to identify USDA's role in supporting marketing opportunities for small farmers and to enhance farmers' ability to thrive in their businesses by facilitating the marketing of agricultural products. Farmer direct marketing, or growers selling their products directly to consumers, has become increasingly popular in recent years with farmers markets being one of the leading methods for this type of marketing. Farmers markets also play a vital role in accomplishing USDA's mission of ensuring that all Americans have access to reasonably priced, high-quality, and nutritious foods.

To further this mission, USDA began its own farmers market in August of 1996, which has continued to operate and grow progressively since that time. The USDA Farmers Market is a producers-only market which offers a wide range of farm products such as fruits, vegetables, herbs, honey, maple products, baked goods, cut flowers, meats and fresh fish. With spiraling interest among consumers and a steady supply of farmers products, the market's season increased from four market days in 1996 to five months in 2003. In addition to local farmers from Maryland, Virginia, and Pennsylvania selling at the market, outreach was expanded to include regional farmers from a wider geographical area, including the states of West Virginia, Delaware, and North Carolina.

This rule applies only to the USDA Farmers Market at headquarters on the corner of 12th Street and Independence Avenue, SW, Washington, DC. When the farmers market program began in 1996, and for several years thereafter, USDA co-sponsored several farmers markets at neighboring Federal agencies in the DC metropolitan area, including the Departments of Transportation

(DOT), Labor, Energy, State, and the USDA Carver Center. Since that time three markets have closed. The DOT and USDA Carver Center markets continue to operate, having acquired substantial startup and technical assistance from USDA and are now self-sustaining.

In an effort to further educate market customers about the nutritional benefits of fresh fruits and vegetables, and the merits of food recovery, an informational booth displaying various literature and educational materials is set up on the market each week. Materials displayed in the informational booth include "How-To-Buy" produce guides, food pyramids, brochures about the Women, Infants, and Children (WIC) program and Food Stamp program and other program-related publications. This dissemination of information is joined by several USDA agencies, including the Food and Nutrition Service (FNS). One successful educational activity is the cooking demonstrations organized by FNS. During a cooking demonstration, chefs purchase fresh produce from the market and teach how to prepare the foods for a healthy meal. In addition, the USDA Employee Services and Recreation Association sponsors special activities and events at the market.

The USDA Farmers Market contributes to other USDA-sponsored programs, such as the Food Recovery and Gleaning Initiative, the Women, Infants, and Children Farmers Market Nutrition Program, as well as other programs of FNS and the Food Safety and Inspection Service.

List of Subjects in 7 CFR Part 170

Agricultural commodities, Farmers.

For the reasons set forth in the preamble, it is proposed that title 7, chapter 1 of the Code of Federal Regulations be amended as follows:

1. A new subchapter G, consisting of part 170 is added to read as follows:

SUBCHAPTER G—MISCELLANEOUS MARKETING PRACTICES UNDER THE AGRICULTURAL MARKETING ACT OF 1946

PART 170—USDA FARMERS MARKET

Sec.

170.1 To which farmers market does this rule apply?

170.2 Is the USDA Farmers Market a producer-only market?

170.3 What products may be sold at the USDA Farmers Market?

170.4 Who may participate in the USDA Farmers Market?

170.5 Is there a fee to participate in the USDA Farmers Market?

170.6 How are potential market participants identified for the USDA Farmers Market?

170.7 Can I apply if I am not recruited?

170.8 What are the application procedures?

- 170.9 What type of information does the application require?
- 170.10 Must a participant in the market have insurance?
- 170.11 How are farmers and vendors selected for participation in the USDA Farmers Market?
- 170.12 What are the selection criteria for participation in the USDA Farmers Market?
- 170.13 What are the operating guidelines for the USDA Farmers Market?
- 170.14 What circumstances will prevent participation in the USDA Farmers Market?

Authority: 5 U.S.C. 301; 7 U.S.C. 1621–1627.

PART 170—USDA FARMERS MARKET

§ 170.1 To which farmers markets does this rule apply?

This rule applies only to the USDA Farmers Market at headquarters on the corner of 12th Street & Independence Avenue, SW., Washington, DC.

§ 170.2 Is the USDA Farmers Market a producer-only market?

Yes. A producer-only market is one that does not offer agricultural products that are commercially made, created, or produced, and only allows agricultural products that are grown by a principal farmer. A producer-only market offers raw agricultural products such as fruits, vegetables, flowers, bedding plants, and potted plants. The USDA Farmers Market is a producer-only market since only farmers who may sell products that they grow or produce will be selected for participation. It also allows the sale of value-added products and other specialized nonproduce items.

§ 170.3 What products may be sold at the USDA Farmers Market?

Products that may be sold at the market include, but are not limited to, fresh, high-quality fruits, vegetables, herbs, honey, jams and jellies, cheese, vinegars, cider, maple syrup, fish, flowers, bedding plants, and potted plants. USDA inspected meats and poultry items also may be sold.

§ 170.4 Who may participate in the USDA Farmers Market?

Members of three groups may participate in the USDA Farmers Markets:

(a) *Principal farmers or producers who sell their own agricultural products.* The principal farmer must be in full control and supervision of the individual steps of production of crops including tilling, planting, cultivating, fertilizer and pesticide applications (if applicable), harvesting and post-harvest handling on its own farm with its own machinery and labor.

(b) *Principal farmer or producers who sell their own value-added agricultural products.* Value-added products may include agricultural products that have been enhanced through a modification of the product, such as braiding, weaving, hulling, extracting, handcrafting, and the like. It also may result from growing the product in a way that is acknowledged as safer. Farmers and vendors selling these types of products must prepare them predominately with material they have grown or gathered.

(c) *Nonproduce vendors.* A limited number of nonproduce vendors may be selected by the Market Management to sell specialized products that enhance the market atmosphere and historically attract customers to a farmers market. These specialized vendors, such as bakers, may be exempted from the reselling restrictions that apply to the farmers and vendors described in paragraphs (a) and (b) of this section.

§ 170.5 Is there a fee to participate in the USDA Farmers Market?

No, there are no fees charged to participate in the market.

§ 170.6 How are potential market participants identified for the USDA Farmers Market?

Potential market participants are recruited by the AMS Market Management through local farm organizations in the Washington D.C. metropolitan area and regional state departments of agriculture including, Virginia, West Virginia, Maryland, Delaware, and Pennsylvania. Upon receiving a list of potential farmers and vendors from the organizations and the state departments of agriculture, an information packet, which includes an application and this rule, will be mailed to each potential participant identified by the contacts.

§ 170.7 Can I apply if I am not recruited?

Yes. Interested persons may call or write USDA to request an information packet even if they are not recruited. Those interested may write USDA/AMS/TM/MSB, Room 2646-South Building, 1400 Independence Avenue, SW., Washington, DC, 20250, or call (202) 720–8317. They may also call the USDA Farmers Market Hotline at 1–800–384–8704 to leave a message to have a packet mailed or faxed. They may also visit the Web site at <http://www.ams.usda.gov/farmersmarkets/> to review the selection criteria, the operating rules, and to receive an application electronically.

§ 170.8 What are the application procedures?

In January of each year, prospective and returning participants must submit to USDA a completed application for participation in the upcoming market season. Each application will include a copy of this rule, which includes the selection criteria and operating guidelines. Each applicant also will certify that each is the owner or representative of the farm or business submitting the application.

§ 170.9 What type of information does the application require?

The application for participation in the USDA Farmers Market will provide Market Management with information on contacts, farm location, type of farming operation, types of products grown, and business practices, including insurance coverage.

§ 170.10 Must a participant in the market have insurance?

There is no requirement for a participant to have insurance; however, USDA asks that participants with insurance provide insurance information for our records.

§ 170.11 How are farmers and vendors selected for participation in the USDA Farmers Market?

USDA reviews all applications and selects participants based primarily on the type of farmer or vendor (*i.e.* fruit, vegetable, herb, baker) and secondly, on the specific types of products to be sold. The selection of the participants is conducted by the Market Management to ensure a balanced product mix of fruits, vegetables, herbs, value-added products, and baked goods.

§ 170.12 What are the selection criteria for participation in the USDA Farmers Market?

The selection criteria are designed to ensure a consistently high level of quality and diverse products, while operating in the constraints of space available at the market site. The criteria are:

(a) *Member of one of the three participant groups specified in § 170.4 of this part.* The participant must be a producer-only farmer or producer, seller of value-added products, or specialized nonproduce vendor.

(b) *Participant offers a product that adds to a product mix.* Market Management will ensure that a balanced mix of fresh fruits and vegetables will be maintained throughout the season. Final selection of fruit and vegetable producers will be made based on their ability to ensure a wide range of fresh farm products throughout the season.

(c) *Willingness to glean.* Participants should commit to supporting the USDA food gleaning/food recovery initiative. This commitment requires farmers and vendors to donate surplus food and food products at the end of each market day to a local nonprofit organization identified by USDA. Questions about tax deductions for gleaning should be referred to the Internal Revenue Service or a tax advisor. Receipts for donated foods may be obtained from the receiving nonprofit organization.

(d) *Commitment to market.* Participants must commit to the entire market season and be willing to participate on a regular basis.

(e) *Grandfather provision.* Market Management reserves the right to select several farmers or vendors based on previous participation in the program, consistency in providing quality products, and compliance with operating guidelines.

§ 170.13 What are the operating guidelines for the USDA Farmers Market?

(a) *Market operation.* The Market will be held in parking court #9 of the USDA Headquarters Complex located on the corner of 12th Street and Independence Avenue, SW., Washington, DC. Selling will not begin before 10 a.m. and will end promptly at 2 p.m. each market day. All participants must be in place, setup and ready to sell by 10 a.m. Due to space restrictions at the site, late arrivals will be located at Market Management's discretion. All vehicles must vacate the market site no later than 3:00 p.m.

(b) *Notification of attendance.* Each participant must call USDA within 48 hours of a market day if they cannot attend. Failure to provide proper and timely notification may result in termination of the participation in the market.

(c) *Participant space.* One vehicle is permitted per space; all other vehicles must be removed from the immediate market premises. One space is 16w x 17d feet, and all trucks must fit within that area. There is only room for 15 spaces.

(d) *Signage.* Participants must clearly display the name of their farm/business and post prices for all items being sold.

(e) *Clean-up.* Participants are responsible for cleaning all trash and waste within and around their allotted space. Garbage bins are provided on the market site for this purpose.

(f) *Cooperative marketing.* Participants are permitted to share space with another participant or sell another's products if the arrangement is deemed by Market Management as beneficial to the market. A co-op must be pre-approved by Market Management

and will not be accepted if similar products are already sold by existing farmers or vendors.

(g) *Farm/business visits.* Market Management may visit farm/business locations to verify compliance with market criteria and guidelines. Participants should submit a map and directions to their farm/businesses with their market applications.

(h) *Conduct on Federal property.* Participants must comply with Subpart 20.3 of the Federal Property Management Regulations, "Conduct on Federal Property," 41 CFR 20.3.

§ 170.14 What circumstances will prevent participation in the USDA Farmers Market?

(a) Efforts will be made to accommodate all who apply to participate in the market. However, Market Management may deny participation in the market because of insufficient space or excess supply of the products to sell, failure to meet the stated criteria, or the participant's noncompliance with the operating guidelines or regulations.

(b) Participants who sell before the 10 a.m. opening time will be restricted from participating in the market following their second violation. A written warning will be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand will be given to the participant restricting their participation for the next immediate market day.

(c) Participants who arrive after the 10 a.m. opening time may be restricted from participating in the market following their second violation. A written warning may be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand may be given to the participant restricting their participation for the next immediate market day.

Dated: February 14, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-3072 Filed 2-16-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO-166-A72; DA-05-01]

Milk in the Mideast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would amend certain provisions of the Mideast Federal milk marketing order. Proposals under consideration address: Eliminating the ability of the same milk to be simultaneously pooled on the Mideast order and on a State operated order with marketwide pooling; Changing the supply plant performance standards and diversion limits; Increasing the number of days a dairy farmer's milk production must be delivered to a pool plant for the milk of the dairy farmer to be eligible for diversion; Limiting the pooling of producer milk that was not pooled in a prior month(s); Establishing a "dairy farmer for other markets" provision; Establishing a transportation credit for milk; and Changing the producer-handler definition.

DATES: The hearing will convene at 8:30 a.m. on Monday, March 7, 2005.

ADDRESSES: The hearing will be held at the Shisler Conference Center, Ohio Agricultural Research and Development Center, 1625 Wilson Road, Wooster, Ohio 44691, (330) 287-1424. Hotel accommodations can be made at the Hilton Garden Inn Wooster, 959 Dover Road, Wooster, Ohio 44691, (330) 202-7701.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: gino.tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber at 330-225-4758 or via e-mail at pheber@fmnaclev.com before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and,

therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Shisler Conference Center, Ohio Agricultural Research and Development Center, 1625 Wilson Road, Wooster, Ohio 44691, (330) 287-1424, beginning at 8:30 a.m., on Monday, March 7, 2005, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast milk marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may

request modification or exemption from such order by filing with the Department of Agriculture (Department) 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This public hearing is being conducted to collect evidence for the record concerning the inequities among producers arising from order provisions that allow reserve milk, which is used in cheese or butter and nonfat dry milk production, to share in the benefits of pooling, but does not require such milk to pool when there is a cost (when the Class III price or Class IV price is above the blend price). Evidence will also be collected to consider amending the order's supply plant performance standards and diversion limitations to better identify the milk of producers that should be eligible to receive the order's blend price, increasing the number of days that a dairy farmer's milk production would need to be delivered to a pool plant before such milk would be eligible for diversion to nonpool plants but have such diverted milk pooled on the order, establishing a transportation credit to partially reimburse handlers for the cost of transporting milk intended for use in Class I products, eliminating the ability to simultaneously pool the same milk on the Mideast Federal order and on a State operated order with marketwide pooling, and changing the producer-handler definition for the order.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

The authority citation for 7 CFR Part 1033 continues to read as follows:

Authority: 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Department.

Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association

Proposal No. 1

This proposal seeks to eliminate the ability of the same milk to be pooled on the Mideast order and on a State operated order with marketwide pooling.

1. Amend § 1033.13 by adding a new paragraph (e), to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to a marketwide equalization pool under a milk classification and pricing plan under the authority of a State government.

Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association

Proposal No. 2

This proposal seeks to amend the order's pooling provisions by changing the supply plant and the cooperative association operated plant performance standards and diversion limit standards to better identify the milk of producers who are providing consistent service to the Class I needs of the Mideast milk marketing order.

1. Amend § 1033.7 by revising paragraphs (c), (d) introductory text, (d)(2) and (e)(1), to read as follows:

§ 1033.7 Pool Plant.

* * * * *

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1000.9(c), as reported in § 1033.30(a), is not less than 40 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

* * * * *

(d) A plant operated by a cooperative association if, during the months of August through November 40 percent and during the months of December through July 30 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer

from such association's plant, subject to the following conditions:

(1) * * *

(2) The 30 percent delivery requirement for December through July may be met for the current month or it may be met on the basis of deliveries during the preceding twelve (12) month period ending with the current month.

* * * * *

(e) * * *

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the months of August through November is not less than 45 percent and during the months of December through July is not less than 35 percent; and

* * * * *

2. Amend § 1033.13 by revising paragraph (d)(4), to read as follows:

§ 1033.13 Producer milk.

* * * * *

(d) * * *

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 50 percent in each of the months of August through February and 60 percent in each of the months of March through July.

* * * * *

Proposed by Dean Foods Company

Proposal No. 3

This proposal seeks to amend the "touch-base" standard and provide an exact definition for temporary loss of Grade A approval.

1. Amend § 1033.13 by revising paragraphs (d)(1) through (d)(3), to read as follows:

§ 1033.13 Producer milk.

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of loss of Grade A approval not to exceed 21 days in a calendar year, unless it is determined by the market administrator to be unavoidable circumstances beyond the control of the dairy farmer such as a natural disaster (ice storm, wind storm,

flood)) the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least four days milk production in each of the months of August through November and two days milk production in each of the months of December through January is caused by the handler to be physically received at the pool plant;

(3) The equivalent of at least two days milk production is caused by the handler to be physically received at a pool plant in each of the months of February through July if the requirement of paragraph (d)(2) of this section (§ 1033.13) in each of the prior months of August through January are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through January.

* * * * *

Proposed by Ohio Dairy Producers and the Ohio Farmers Union

Proposal No. 4

This proposal seeks to establish a *dairy farmer for other markets* provision that would encourage a year-round pooling commitment and specify conditions for milk that was depooled to be repooled.

1. Amend § 1033.12 by adding a new paragraph (b)(5), to read as follows:

§ 1033.12 Producer.

* * * * *

(b) * * *

(5) For any month, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined in the order in this part or any other Federal milk order, during the same month or any of the preceding 11 months, unless the equivalent of at least ten days milk production has been physically received otherwise as producer milk at a distributing plant during the month.

Proposed by Continental Dairy Products, Inc.

Proposal No. 5

This proposal seeks to limit the ability to pool the milk of a producer on the order during the month if such milk had not been pooled for at least twelve consecutive prior months.

1. Amend § 1033.13 by revising the introductory paragraph and adding a new paragraph (e), to read as follows:

§ 1033.13 Producer milk.

Except as provided in paragraph (e) of this section, producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

* * * * *

(e) Producer milk shall not include any milk which comes from a dairy farm whose milk was not producer milk under the provisions of this part during the previous twelve (12) months or § _____.13 of any other Federal milk marketing order. This exception shall not apply if

(1) Milk was not marketed from that farm during the previous 12 months in which case all milk that it did market for what ever part of the preceding 12 months must have been producer milk.

(2) Milk was not marketed from that farm because the Grade A milk producers permit was suspended during some of the period and the producer did not market milk under any other grade of milk permit.

(3) Milk from the farm has not been producer milk for at least 12 consecutive months.

Proposed by Ohio Dairy Producers and the Ohio Farmers Union

Proposal No. 6

This proposal seeks to establish a *dairy farmer for other markets* provision that would establish a maximum pooling limit of 115 percent of a prior month's pooled milk volume that could be pooled in any subsequent month.

1. Amend § 1033.13 by adding a new paragraph (e), to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) The quantity of milk reported by a handler pursuant to § 1033.30(a)(1) and/or § 1033.30(c)(1) may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool by the market administrator. Milk received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b)(3)(v). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions will apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 115 percent limitation;

(2) Producer milk qualified pursuant to § _____.13 of any other Federal order and continuously pooled in any Federal order for the previous six months shall not be included in the computation of the 115 percent limitation;

(3) The market administrator may waive the 115 percent limitation utilizing;

(i) For a new handler on the order, subject to the provision of § 1033.13(e)(3), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) The market administrator may increase or decrease the applicable limitation for a month consistent with the procedures in § 1033.7(g); and

(5) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association

Proposal No. 7

This proposal, like Proposal 6, seeks to establish a *dairy farmer for other markets* provision that would establish a maximum pooling limit of 115 percent of a prior month's pooled milk volume that could be pooled in a subsequent month. It has minor order language differences from Proposal 6.

1. Amend § 1033.13 by adding a new paragraph (e), to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) The quantity of milk reported by a handler pursuant to § 1033.30(a)(1) and/or § 1033.30(c)(1) for the current month may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall not be producer milk. Milk received at pool plants in excess of the 115 percent limit, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v). The handler must designate, by producer pick-up, which milk shall not be producer milk. If the handler fails to provide this information the provisions of § 1033.13(d)(6) shall apply. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants and allocated to Class I use in excess of the prior month's volume allocated to Class I use shall not be subject to the 115 percent limitation;

(2) Producer milk qualified pursuant to § _____.13 of any other Federal order in the previous month shall not be included in the computation of the 115 percent limitation, provided that the producers comprising the milk supply have been continuously pooled on any Federal order for the entirety of the most recent three consecutive months.

(3) The market administrator may waive the 115 percent limitation:

(i) For a new handler on the order, subject to the provisions of § 1033.13(e)(4), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) Milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

Proposed by Dean Foods Company

Proposal No. 8

This proposal seeks to establish a *dairy farmer for other markets* provision that would specify a 2-month to 7-month exclusion from the pool if milk is depooled.

1. Amend § 1033.12 by adding new paragraphs (b)(5) and (b)(6), to read as follows:

§ 1033.12 Producer.

* * * * *

(b) * * *

(5) For any month of February through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the month, any of the 3 preceding months, or during any of the preceding months of July through January, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing plant during the month; and

(6) For any month of July through January, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the month or the

preceding month unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing plant during the month.

Proposed by Dairy Farmers of America, Inc.

Proposal No. 9

This proposal seeks to establish a transportation credit provision on milk delivered from farms to pool distributing plants. The initial 75 miles and that portion of the milk movement beyond 400 miles would not be eligible for the credit.

1. Add a new § 1033.55, to read as follows:

§ 1033.55 Transportation credits.

(a) Each handler operating a pool distributing plant described in § 1033.7(a) or (b) that receives milk from dairy farmers, and each handler described in § 1033.9(c) that delivers milk to a pool distributing plant described in § 1033.7(a) or (b) shall receive a transportation credit on the portion of such milk eligible for the credit pursuant to paragraph (b) of this section.

(1) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77.

(2) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1033.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Transportation credits shall apply to the pounds of bulk milk received directly from the farms of producers at pool distributing plants determined as follows:

(1) Determine the total pounds of producer milk physically received at the pool distributing plant;

(2) Subtract from the pounds of milk described in paragraph (b)(1) of this section the pounds of bulk milk transferred or diverted from the pool plant receiving the milk if milk was transferred or diverted to a nonpool plant on the same calendar day that the milk was received. For this purpose, the transferred or diverted milk shall be subtracted from the most distant load of milk received, and then in sequence

with the next most distant load until all of the transfers have been offset; and

(3) Multiply the pounds determined in (b)(2) by the Class I utilization of all producer milk at the pool plant operator as described in § 1000.44. The resulting pounds are the pounds upon which transportation credits, as determined in paragraph (c) of this section, shall be applicable.

(c) Transportation credits shall be computed as follows:

(1) Determine an origination point for each load of milk by locating the county seat of the closest producer's farm from which milk was picked up for delivery to the receiving pool plant;

(2) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(3) Subtract 75 miles from the lesser of the mileage so determined in paragraph (c)(2) or 400 miles;

(5) Multiply the remaining miles so computed by 0.4 cent (\$0.004);

(6) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(7) Subtract any positive difference computed in paragraph (c)(6) of this section from the amount computed in paragraph (c)(5) of this section; and

(8) Multiply any positive remainder computed in paragraph (c)(7) by the hundredweight of milk described in paragraph (b)(3) of this section.

(d) The rate and mileage limits of paragraphs (c)(4) and (5) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to better reflect actual conditions present in the marketplace. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that an adjustment might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views, and arguments. Any decision to revise either figure must be issued in writing at least one day before the effective date.

(e) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a

redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligation resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

2. Amend § 1033.60 by revising the introductory paragraph and adding a new paragraph (k), to read as follows:

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraphs (j) and (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

* * * * *

(k) Compute the amount of credits applicable pursuant to § 1033.55.

Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association

Proposal No. 10

This proposal seeks to amend the current producer-handler definition.

1. Revise § 1033.10, to read as follows:

§ 1033.10 Producer-handler.

Producer-handler means a person who operates a dairy farm(s) and a distributing plant(s) from which there is route disposition in the marketing area and the total route disposition and transfers in the form of packaged fluid milk products to other distributing plants during the month does not exceed 3 million pounds (or such lesser maximum volume that the record may

so establish) and who provides proof satisfactory to the market administrator that it meets all the requirements of this section for designation.

(a) *Requirements for designation.*

Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting all the conditions set forth in paragraphs (a)(1) through (6) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, and management of the producer-handler and are operated as the producer-handler's own enterprise and its sole risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities, nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide

equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part to a nonpool distributing plant.

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1033.7(a) and (b) or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute the person's milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely or partially owned by, and directly or indirectly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (6) of this section are not met, or under any of the conditions described in paragraph (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month in which the conditions were not met.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designation in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Loss of producer-handler status.* Notwithstanding paragraph (a) of this section, loss of producer-handler status for exceeding the limits in (c)(2) or for having more than three million pounds (or such lesser maximum volume that the record may so establish) of total route disposition and transfers in the form of packaged fluid milk products to other distributing plants during the month shall only be effective in the months where the limits are exceeded.

(e) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm locations(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each.

(f) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish by proof satisfactory to the market administrator through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

**Proposed by Dairy Programs,
Agricultural Marketing Service**

Proposal No. 11

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the aforesaid

marketing area, or from the Hearing Clerk, United States Department of Agriculture, Room 1083-STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250-9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;
Office of the Administrator,
Agricultural Marketing Service;
Office of the General Counsel;
Dairy Programs, Agricultural
Marketing Service (Washington Office)
and the Office of the Market
Administrator of the Mideast Milk
Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 14, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-3070 Filed 2-14-05; 4:17 pm]

BILLING CODE 3410-02-P

**NATIONAL CRIME PREVENTION AND
PRIVACY COMPACT COUNCIL**

28 CFR Part 904

[NCPPC 108]

**Criminal History Record Screening for
Authorized Noncriminal Justice
Purposes**

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed rule, with request for comments.

SUMMARY: The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is publishing a rule proposing to establish criminal history record screening standards for criminal history record information received from the Interstate Identification Index (III) for authorized noncriminal justice purposes.

DATES: Submit comments on or before March 21, 2005.

ADDRESSES: Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304)625-5388. To ensure proper handling, please reference "Record Screening Procedures Docket No. 108" on your correspondence. You may view an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via electronic mail at tcommodo@leo.gov or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include NCPPC Docket No. 108 in the subject box.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, PO Box 1489, Tallahassee, FL 32302, telephone number (850) 410-7100.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611-16, establishes uniform standards and processes for the interstate and Federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998, (Pub. L. 105-251) and became effective on April 28, 1999, when ratified by the second state.

Article VI of the Compact establishes a Compact Council "which shall have the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes". The Council is proposing this rule under the authority of Compact Article VI.

The Compact requires that each Party State appoint a Compact officer to regulate the in-state use of records received by means of the III system from the FBI or from other Party States. Since January 2003, Nonparty States may sign a memorandum of understanding (MOU) with the Compact Council voluntarily binding the Signatory Nonparty States to the Council's rules, procedures, and standards for the noncriminal justice use of the III System. The MOUs between Nonparty States and the Compact Council are one mechanism to ensure system policy compliance until the states become Compact signatories. In order to implement Article IV(c), which provides

inter alia that records obtained under the Compact by the requesting jurisdiction may only be used for the purpose requested and that the receiving jurisdiction must delete entries that may not legally be used for a particular noncriminal justice purpose, the Compact Council is proposing this rule to ensure that only legally authorized records are used for particular noncriminal justice purposes. This proposed rule will also facilitate national uniformity in criminal history record screening and editing practices applicable to information received via the III System for noncriminal justice purposes.

Administrative Procedures and Executive Orders

Administrative Procedure Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/Federal compact which was approved and enacted into law by Congress pursuant to Pub. L. 105-251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives). The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the **Federal Register**. See 42 U.S.C. 14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this Rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801-804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

List of Subjects in 28 CFR Part 904

Crime, Health, Privacy.

Accordingly, title 28 of the Code of Federal Regulations, chapter IX is proposed to be amended by adding part 904 to read as follows:

PART 904—STATE CRIMINAL HISTORY RECORD SCREENING STANDARDS

Sec.

- 904.1 Purpose and authority.
- 904.2 Interpretation of the criminal history record screening requirement.
- 904.3 State criminal history record screening standards.

Authority: 42 U.S.C. 14616.

§ 904.1 Purpose and authority.

Pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616, Article IV (c), the Compact Council hereby establishes record screening standards for criminal history record information received by means of the III System for noncriminal justice purposes.

§ 904.2 Interpretation of the criminal history record screening requirement.

Compact Article IV(c) provides that "Any record obtained under this Compact may be used only for the official purposes for which the record was requested." Further, Article III(b)(1)(C) requires that each Party State appoint a Compact officer who shall "regulate the in-State use of records received by means of the III System from the FBI or from other Party States." To ensure compliance with this requirement, Compact Officers receiving records from the FBI or other Party

States are specifically required to “ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate ‘no record’ response is communicated to the requesting official.” Compact Article IV(c)(3).

§ 904.3 State criminal history record screening standards.

The following record screening standards relate to criminal history record information received for noncriminal justice purposes as a result of a national search subject to the Compact utilizing the III System.

(a) The State Criminal History Record Repository or an authorized agency in the receiving state will complete the record screening required under § 904.2 for all noncriminal justice purposes.

(b) Authorized officials performing record screening under § 904.3(a) shall screen the record to determine what information may legally be disseminated for the authorized purpose for which the record was requested. Such record screening will be conducted pursuant to the receiving state’s applicable statute, executive order, regulation, formal determination or directive of the state attorney general, or other applicable legal authority.

(c) If the state receiving the record has no law, regulation, executive order, state attorney general directive, or other legal authority providing guidance on the screening of criminal history record information received from the FBI or another state as a result of a national search, then the record screening under § 904.3(a) shall be performed in the same manner in which the state screens its own records for noncriminal justice purposes.

Dated: January 29, 2005.

Donna M. Uzzell,

Compact Council Chairman.

[FR Doc. 05–3041 Filed 2–16–05; 8:45 am]

BILLING CODE 4410–02–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 907

[NCPPC 108]

Compact Council Procedures for Compliant Conduct and Responsible Use of the Interstate Identification Index (III) System for Noncriminal Justice Purposes

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed rule.

SUMMARY: The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is publishing a rule proposing to establish a procedure for ensuring compliant conduct and responsible use of the Interstate Identification Index (III) System for noncriminal justice purposes as authorized by Article VI of the Compact.

DATES: Comments must be received on or before March 21, 2005.

ADDRESSES: Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625–5388. To ensure proper handling, please reference “Compliant Conduct and Responsible Use of the Interstate Identification Index (III) for Noncriminal Justice Purposes” on your correspondence. You may view an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via electronic mail at tcommodo@leo.gov or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically you must include NCPPC Docket No. 108 in the subject box.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, 2331 Philips Road, Tallahassee, Florida 32308–5333, telephone number (850) 410–7100.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact, 42 U.S.C. 14616, establishes uniform rules, procedures, and standards for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was signed into law on October 9, 1998, (Pub. L. 105–251) and became effective on April 28, 1999, when ratified by the second state. The Compact provides for the expeditious provision of Federal and State criminal history records to governmental and nongovernmental agencies that use such records for noncriminal justice purposes authorized by pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the information contained therein from unauthorized disclosure or use.

To carry out its responsibilities under the Compact, the Compact Council is authorized under Article III and Article

VI to establish III System rules, procedures, and standards concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection and other aspects of III System operation for noncriminal justice purposes. Access to records is conditional upon the submission of the subject’s fingerprints or other approved forms of positive identification with the record check request as set forth in Article V of the Compact. Further, any record obtained under the Compact may be used only for the official purposes for which the record was requested.

Article III(a) of the Compact requires the Director of the FBI to appoint a Compact Officer (herein referred to as the FBI Compact Officer) to administer the Compact within the Department of Justice (DOJ) and among Federal agencies and other agencies and organizations that submit search requests to the FBI and to ensure that Compact provisions and Compact Council rules, procedures, and standards are complied with by DOJ and other Federal agencies and other agencies and organizations. Article III(b) requires each Party State to appoint a Compact Officer (herein referred to as the State Compact Officer) who shall administer the Compact within the state, ensure that Compact provisions and Compact Council rules, procedures, and standards are complied with, and regulate the in-state use of records received by means of the III System from the FBI or from other Party States.

Background

Pursuant to Articles VI and XI respectively, the Compact Council has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes and has the initial authority to make determinations with respect to any dispute regarding interpretation of the Compact, any rule or standard established by the Compact Council pursuant to Article VI of the Compact, and any dispute or controversy between any parties to the Compact. Based upon its authority under the Compact, the Compact Council may impose appropriate sanctions against agencies that do not operate in accordance with the Compact and rules and procedures promulgated by the Compact Council.

The Compact Council is establishing this rule to protect and enhance the accuracy and privacy of III System records, to ensure that only authorized access to records is permitted, and to ensure that records are used and disseminated only for particular authorized noncriminal justice

purposes. The procedures established by the rule will be used in determining compliant conduct and responsible use of III System records and in addressing any violations that may be detected.

This rule acts as public notice that unauthorized access to the III System for noncriminal justice purposes or misuse of records obtained by means of the System for such purposes may result in the imposition of sanctions by the Compact Council, which may include the suspension of noncriminal justice access to the III System should the violation be found egregious or constitute a serious risk to the integrity of the System.

The Compact requires the FBI Director to appoint an FBI Compact Officer to ensure that federal agencies comply with rules, procedures, and standards established by the Compact Council but does not directly address the FBI's responsibility to ensure state compliance. The Act adopting the Compact, however, provides that all United States departments and agencies shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. Pursuant to this direction and authority, the FBI Criminal Justice Information Services (CJIS) Division has agreed to regularly conduct systematic compliance reviews of state repositories and selected agencies for compliance with the Compact and Compact Council rules on use of the III System. The Compact Council established the audit team and approved the audit methodology that will be used to conduct periodic reviews of the FBI and agencies that submit record check requests to the FBI under federal authority. (For a copy of the FBI Audit Methodology, contact the FBI Compact Council Office). The Compact Council and its Sanctions Committee intend to work in concert with the CJIS Advisory Policy Board's (APB) Ad Hoc Sanctions Subcommittee to examine findings from FBI CJIS Division staff reviews and determine the proper arbiter over the sanctions process for each finding or instance of violation. The APB will continue to serve in its role as an advisor to the FBI, which has exclusive jurisdiction in matters regarding the use of the III System for criminal justice purposes. This advisory capacity includes recommending sanctions to the FBI Director related to violations by criminal justice agencies using the III System for criminal justice purposes. If it is determined that a sanction should be imposed on a criminal justice agency for misusing the III System for a noncriminal justice purpose, the Compact Council will

request that the Director of the FBI take appropriate action.

In determining applicable actions or sanctions for noncompliance with Compact provisions or Compact Council rules, the Compact Council shall take into consideration: (1) Any meritorious, unusual or aggravating circumstances which affect the seriousness of the violation; (2) circumstances that could not reasonably have been foreseen by the FBI, state repository, user agency, or others; and (3) the nature and seriousness of the violation, including whether it was intentional, technical, inadvertent, committed maliciously, committed for gain, or repetitive. A pattern or practice of noncompliance by an agency may be grounds for the imposition of sanctions. The Compact Council may evaluate relevant documentary evidence available from any source.

If, as a result of a compliance review or on the basis of other credible information, the Compact Council determines that an agency is not operating in accordance with the Compact and applicable rules, procedures, and standards, prompt notice will be given of the nature of the noncompliance and the possible consequences of failure to take effective corrective action. A concerted effort will be made to persuade the offending agency to comply voluntarily. Efforts to secure voluntary compliance will be undertaken at the outset in every noncompliance situation and will be pursued through each stage of corrective action. However, where a noncompliant agency fails to provide adequate assurance of compliance or apparently breaches the terms of such assurance, the Compact Council will take the appropriate actions which could include imposing sanctions or requiring corrective action necessary to ensure compliance. The Compact Council will be flexible in determining what corrective actions or sanctions are appropriate and generally will require the minimal action or impose the least severe sanction necessary to ensure compliance and deter violations.

Administrative Procedures and Executive Orders

Administrative Procedure Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate and Federal-State compact which was approved and enacted into legislation by Congress pursuant to Pub. L. 105-251. The Compact Council is composed of 15

members (with 11 State and local governmental representatives).

The Compact Council is not a federal agency as defined in the Administrative Procedure Act. Accordingly, rulemaking by the Compact Council pursuant to the Compact is not subject to the Act. However, the Compact specifically provides that the Compact Council shall prescribe rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Compact Council be published in the **Federal Register**. See 42 U.S.C. 14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. No actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (title 5, U.S.C. 801-804) is not applicable to the Compact Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (subtitle E

of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

List of Subjects in 28 CFR Part 907

Privacy, Accounting, Auditing.

For the reasons set forth above, the National Crime Prevention and Privacy Compact Council proposes to reserve parts 903, 904, and 905 and add part 907 to chapter IX of title 28 Code of Federal Regulations to read as follows:

PART 907—COMPACT COUNCIL PROCEDURES FOR COMPLIANT CONDUCT AND RESPONSIBLE USE OF THE INTERSTATE IDENTIFICATION INDEX (III) SYSTEM FOR NONCRIMINAL JUSTICE PURPOSES

Sec.

- 907.1 Purpose and authority.
- 907.2 Applicability.
- 907.3 Assessing compliance.
- 907.4 Methodology for resolving noncompliance.
- 907.5 Sanction adjudication.

Authority: 42 U.S.C. 14616.

§ 907.1 Purpose and authority.

The purpose of this part 907 is to establish policies and procedures to ensure that use of the III System for noncriminal justice purposes complies with the National Crime Prevention and Privacy Compact (Compact) and with rules, standards, and procedures established by the Compact Council regarding application and response procedures, record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation for noncriminal justice purposes. The rule is established pursuant to Article VI of the Compact, which authorizes the Compact Council to promulgate rules, procedures, and standards governing the use of the III System for noncriminal justice purposes. The rule requires responsible authorized access to the System and use of records obtained by means of the System. It provides a comprehensive procedure for a coordinated compliance effort among the Compact Council, the FBI, and local, state and federal government agencies, and encourages the cooperation of all affected parties.

§ 907.2 Applicability.

This rule applies to access to the III System for noncriminal justice purposes as covered by the Compact, See 42 U.S.C. 14614 and 14616, and the use of information obtained by means of the System for such purposes. The rule establishes procedures for ensuring that the FBI and the criminal history record repositories of Compact Party States

carry out their responsibilities under the Compact, as set out in the National Fingerprint File (NFF) Qualification Requirements, and that federal, state and local agencies that use the III System for noncriminal justice purposes comply with the Compact and with applicable Compact Council rules.

§ 907.3 Assessing compliance.

(a) The FBI CJIS Division staff shall regularly conduct systematic compliance reviews of state repositories. These reviews may include, as necessary, reviews of III System user agencies, including governmental and nongovernmental noncriminal justice entities that submit fingerprints to the state repositories and criminal justice and noncriminal justice entities with direct access to the III System. These reviews may include, as necessary, the governmental and nongovernmental noncriminal justice agencies authorized to submit fingerprints directly to the FBI. The reviews may consist of systematic analyses and evaluations, including on-site investigations, and shall be as comprehensive as necessary to adequately ensure compliance with the Compact and Compact Council rules. Violations may also be reported or detected independently of a review.

(b) The FBI CJIS Division staff or the audit team established to review the FBI shall prepare a draft report describing the nature and results of each review and setting out all findings of compliance and noncompliance, including any reasons for noncompliance and the circumstances surrounding the noncompliance. If the agency under review is the FBI or another federal agency, the draft report shall be forwarded to the FBI Compact Officer. If the agency under review is a state agency in a Party State, the draft report shall be forwarded to the State Compact Officer. If the agency under review is a state agency in a Nonparty State, the draft report shall be forwarded to the chief administrator of the state repository.

(c) The Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State shall be afforded the opportunity to forward comments and supporting materials to the FBI CJIS Division staff or to the audit team.

(d) The FBI CJIS Division staff or the audit team shall review any comments and materials received and shall incorporate applicable revisions into a final report. The final report shall be provided to the Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State to whom the draft

report was sent. If the agency under review is a state agency, a copy of the report shall be provided to the FBI Compact Officer. If the agency under review is being reviewed for the first time, the letter transmitting the report shall provide that sanctions will not be imposed regarding any deficiencies set out in the report. The letter shall also advise, however, that the deficiencies must be remedied and failure to do so before the agency is reviewed again will result in the initiation of remedial action pursuant to § 907.4.

§ 907.4 Methodology for resolving noncompliance.

(a) Subsequent to each compliance review that is not a first-time agency review, the final report shall be forwarded to the Compact Council Sanctions Committee (Sanctions Committee). The Sanctions Committee shall review the report and if it concludes that no violations occurred or no violations occurred that are serious enough to require further action, it shall so advise the Compact Council Chairman. The Compact Council Chairman shall send a letter to this effect to the FBI or Party State Compact Officer or the chief administrator of the state repository in a Nonparty State which has executed a Memorandum of Understanding. For all remaining states, the FBI Director or Designee shall send the letter to the chief administrator of the state repository. If the agency under review is a state agency, a copy of the letter shall be provided to the FBI Compact Officer.

(b) Should the Sanctions Committee conclude that a violation has occurred that is serious enough to require redress, the Sanctions Committee shall recommend to the Compact Council a course of action necessary to bring the offending agency into compliance and require the offending agency to provide assurances that subsequent violations will not occur. In making its recommendation, the Sanctions Committee shall consider the minimal action necessary to ensure compliance or shall explain why corrective action is not required. This may include, but not be limited to, requiring a plan of action by the offending agency to achieve compliance, with benchmarks and performance measures, and/or requiring the agency to seek technical assistance to identify sources of the problem and proposed resolutions. If the Compact Council approves the Sanctions Committee's recommendations, the following progressive actions shall be initiated:

(1) The Compact Council Chairman shall send a letter to the Compact

Officer of the FBI or Party State or the chief administrator of the state repository in a Nonparty State which has executed a Memorandum of Understanding. For all remaining states, the FBI Director or Designee shall send the letter to the chief administrator of the state repository. The letter shall identify the violations and set out the actions necessary to come into compliance. The letter shall provide that if compliance is not achieved and assurances provided that minimize the probability that subsequent violations will occur, and non-compliance is not excused, the Compact Council may authorize the FBI to refuse to process requests for criminal history record checks for noncriminal justice purposes from the offending agency and, if the offending agency is a criminal justice agency, may request the Director of the FBI to take appropriate action against the offending agency consistent with the recommendations of the Compact Council. The letter shall direct the Compact Officer of the FBI or Party State or the chief administrator of the state repository in a Nonparty State to submit a written response within 30 calendar days from the date of the letter, unless a more expeditious response is required. If the offending agency is a state agency, a copy of the letter shall be provided to the FBI Compact Officer. Written responses from the FBI, Party States, and Nonparty States that have executed a Memorandum of Understanding shall be sent to the Compact Council Chairman. The written response for all remaining states shall be sent to the FBI Director or Designee. The offending agency's response letter shall go to the Compact Officer of the FBI or Party State or the chief administrator of the state repository in a Nonparty State and shall outline the course of action it will undertake to correct the deficiencies and provide assurances that subsequent violations will not recur. Response letters that are received by the FBI Director or Designee shall be made available to the Compact Council Chairman. The Compact Council Chairman shall refer the response to the Sanctions Committee for appropriate action.

(2) If the Sanctions Committee deems the response letter under paragraph (b)(1) of this section to be insufficient, or if no response is received within the allotted time, the Sanctions Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Sanctions Committee's finding, it shall direct the Compact Council Chairman to send a letter to the Director of the FBI (if the offending agency is the

FBI or another federal agency) or to the head of the state agency in which the state repository resides (if the offending agency is a state agency), requesting assistance in correcting the deficiencies. The letter shall provide that the offending agency is being placed on probationary status. A copy of the letter shall be sent to the Compact Officer of the FBI or Party State or the chief administrator of the state repository in a Nonparty State. If the offending agency is a state agency, a copy of the letter shall be provided to the FBI Compact Officer. The offending agency's written response to the letter shall be required within 20 calendar days from the date of the letter unless the Compact Council requires a more expeditious response. The Compact Council Chairman shall refer the response letter to the Sanctions Committee for appropriate action.

(3) If the Sanctions Committee deems the response letter under paragraph (b)(2) of this section to be insufficient, or if no response is received within the allotted time, the Sanctions Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Sanctions Committee's finding, it shall direct the Compact Council Chairman to send a letter to the U.S. Attorney General (if the offending agency is the FBI or another federal agency) or to the elected/appointed state official who has oversight of the department in which the state repository resides (if the offending agency is a state agency), requesting assistance in correcting the deficiencies. If the state official is not the Governor, a copy of the letter shall be sent to the Governor. A copy of the letter shall also be sent to the FBI Compact Officer and (if the offending agency is a state agency) to the State Compact Officer or the chief administrator of the state repository in a Nonparty State. The letter shall provide that a written response is required within 20 calendar days of the date of the letter, and that if a sufficient response is not received within that time, sanctions may be imposed that could result in suspension of the offending agency's access to the III System for noncriminal justice purposes. The Compact Council Chairman shall refer the response letter to the Sanctions Committee for appropriate action.

(4) If no response letter is received under paragraph (b)(3) of this section within the allotted time, or if the Sanctions Committee deems the response to be insufficient, the Sanctions Committee shall report its finding to the Compact Council. If the Compact Council agrees with the

Sanctions Committee's finding, the Compact Council Chairman shall direct the FBI Compact Officer to take appropriate action to suspend noncriminal justice access to the III System by the offending agency. If the offending agency is a criminal justice agency, the Compact Council Chairman shall request the Director of the FBI to take appropriate action to suspend noncriminal justice access to the III System by the offending agency.

(5) Reinstatement of full service by the FBI shall occur after the Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State provides to the Compact Council Chairman and the Sanctions Committee satisfactory documentation that the deficiencies have been corrected or a process has been initiated and approved by the Sanctions Committee and the Compact Council Chairman to correct the deficiencies. If the Sanctions Committee approves the documentation in consultation with the Compact Council Chairman, the Compact Council Chairman shall request the FBI Compact Officer to take appropriate action to reinstate full service. Letters to this effect shall be sent to all persons who have previously received letters relating to the deficiencies and resulting suspension of service. The decision to reinstate full service shall be considered for ratification by the Compact Council at its next regularly scheduled meeting.

(c) For good cause, the Compact Council Chairman shall be authorized to extend the number of days allowed for the response letters required by paragraphs (b) (1) through (3) of this section.

§ 907.5 Sanction adjudication.

A Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State may dispute a sanction under this Part by asking the Compact Council Chairman for an opportunity to address the Compact Council.

Unresolved disputes based on the Compact Council's issuance of sanctions under this Part may be referred to the Compact Council Dispute Adjudication Committee when pertaining to disputes described under ARTICLE XI(a) of the Compact.

Nothing prohibits the Compact Council from requesting the FBI to exercise immediate and necessary action to preserve the integrity of the III System pursuant to Article XI(b) of the Compact.

Dated: January 28, 2005.

Donna M. Uzzell,

Compact Council Chairman.

[FR Doc. 05-3045 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-02-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-77; MB Docket No. 05-8, RM-11142; MB Docket No. 05-9, RM-11141; MB Docket No. 05-10, RM-11140; MB Docket No. 05-11, RM-11144; MB Docket No. 05-12, RM-11145]

Radio Broadcasting Services; Goldendale, WA, Ione, OR, Monument, OR, Port Angeles, WA, and Ty Ty, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes five new allotments in Goldendale, WA, Ione, OR, Monument, OR, Port Angeles, WA, and Ty Ty, Georgia. The Audio Division requests comment on a petition filed by Klickitat Broadcasting proposing the allotment of Channel 240A at Goldendale, Washington, as the community's third local aural transmission service. Channel 240A can be allotted to Goldendale in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.3 kilometers (5.8 miles) southeast to avoid a short-spacing to the license site of FM Station KXXO, Channel 241C, Olympia, Washington and the application site of Channel 241C2 at Stanfield, Oregon. The reference coordinates for Channel 240A at Goldendale are 45-46-12 North Latitude and 120-43-48 West Longitude. See Supplementary Information, *infra*.

DATES: Comments must be filed on or before March 21, 2005, and reply comments on or before April 5, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC, 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: John J. McVeigh, Esq., c/o Klickitat Broadcasting, 12101 Blue Paper Trail, Columbia, Maryland 21044-2787, John J. McVeigh, Esq., c/o Plan 9 Broadcasting, 12101 Blue Paper Trail, Columbia, Maryland 21044-2787 and Dan J. Alpert, c/o Sutton Communications Company, The Law Office of Dan J. Alpert, 2120 N. 21st Road, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 05-8, 05-9, 05-10, 05-11, 05-12, adopted January 26, 2005 and released January 28, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20054, telephone 1-800-378-3160 or www.BCPIWEB.com. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

The Audio Division requests comments on a petition filed by Klickitat Broadcasting proposing the allotment of Channel 295A at Ione, Oregon, as the community's first local aural transmission service. Channel 295A can be allotted to Ione in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.8 miles) southwest to avoid a short-spacing to the license site of FM Station KEGX, Channel 293C, Richland, Washington. The reference coordinates for Channel 295A at Ione are 45-24-46 North Latitude and 119-55-21 West Longitude.

The Audio Division requests comments on a petition filed by Klickitat Broadcasting proposing the allotment of Channel 266A at Monument, Oregon, as the community's first local aural transmission service. Channel 266A can be allotted to Monument in compliance with the Commission's minimum distance separation requirements at city reference coordinates at 44-49-40 NL and 119-25-12 WL.

The Audio Division requests comment on a petition filed by Plan 9 Broadcasting proposing the allotment of Channel 229A at Port Angeles, Washington as the community's fifth local aural transmission service.

Channel 229A can be allotted to Port Angeles in compliance with the Commission's minimum distance separation requirements at city reference coordinates at 48-06-54 North Latitude and 123-26-36 West Longitude. Port Angeles is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Canadian concurrence has been requested, as a specially negotiated short-spaced allotment because the proposed Port Angeles allotment is short-spaced to Canadian Station CJJR-FM, Channel 229C, Vancouver, BC and vacant Channel 230A at Port Renfrew, BC.

The Audio Division requests comment on a petition filed by Sutton Communications Company proposing the allotment of Channel 249A at Ty Ty, Georgia, as the community's first local aural transmission service. Channel 249A can be allotted to Ty Ty in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 kilometers (6.7 miles) north to avoid short-spacing to the application site of Station WDMG-FM, Channel 250A, Ambrose, Georgia and license site of Station WRAK-FM, Channel 247C, Bainbridge, Georgia. The reference coordinates for Channel 249A at Ty Ty are 31-34-01 North Latitude and 83-40-07 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Ty Ty, Channel 249A.

3. Section 73.202(b), the Table of FM Allotments under Oregon, is amended

by adding Ione, Channel 294A and by adding Monument, Channel 266A.

4. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 240A at Goldendale and Port Angeles, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-3063 Filed 2-16-05; 8:45 am]

BILLING CODE 6712-01-P

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections 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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before April 18, 2005.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07-106, RRB, Washington, DC 20523, (202) 712-1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412-0510.

Form No.: N/A

Title: Administration of Assistance Awards to U.S. Non-Governmental Organizations—22 CFR 226 and USAID ADS Chapter 303.

Type of Review: Renewal of Information Collection.

Purpose: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (1) Whether the proposed or continuing collections 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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Annual Reporting Burden:

Respondents: 400.

Total Annual Responses: 1,100.

Total Annual Hours Requested: 37,437 hours.

Dated: February 11, 2005.

Joanne Paskar,

*Chief, Information and Records Division,
Office of Administrative Services, Bureau for
Management.*

[FR Doc. 05-3078 Filed 2-16-05; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS-05-01]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as cattle or beef importer organizations, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's

Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business March 21, 2005.

ADDRESSES: Certification form as well as copies of the certification and nomination procedures may be requested from Kenneth R. Payne, Chief, Marketing Programs Branch, LS, AMS, USDA; STOP 0251—Room 2638-S; 1400 Independence Avenue, SW.; Washington, DC 20250-0251. The form may also be found on the Internet at <http://www.ams.usda.gov/lsg/mpb/beef/LS-25fill.pdf>.

FOR FURTHER INFORMATION CONTACT:

Kenneth R. Payne, Chief, Marketing Programs Branch at 202/720-1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 96 cattle producers and 8 importers appointed by USDA. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that USDA shall either certify or otherwise determine the eligibility of State cattle producer organizations or associations and general farm organizations, as well as any importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of

USDA that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 2006:

State or unit	Number of vacancies
Arkansas	1
California	1
Colorado	1
Florida	1
Idaho	1
Kansas	3
Kentucky	1
Missouri	1
Montana	1
Nebraska	2
New Mexico	1
North Dakota	1
Oklahoma	2
Pennsylvania	1
South Dakota	1
Texas	5
Virginia	1
Importers	5

Since there are no anticipated vacancies on the Board for the remaining States' or units, nominations will not be solicited from the certified organizations or associations in those States or units.

Uncertified eligible producer organizations and general farm organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business March 21, 2005. Uncertified eligible importer organizations that are

interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this Notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530 are eligible for certification. Those criteria are:

- (a) For State organizations or associations:
 - (1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.
 - (2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.
 - (3) There must be a history of stability and permanency, and
 - (4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

- (b) For organizations or associations representing importers, the determination by USDA as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:
 - (1) The number and type of members represented (*i.e.*, beef or cattle importers, etc.),
 - (2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle,
 - (3) The stability and permanency of the importer organization or association,
 - (4) The number of years in existence, and
 - (5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those that were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date

will be submitted to USDA for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581-0093, except Board member nominee information sheets are assigned OMB No. 0505-0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: February 14, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05-3071 Filed 2-16-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04-136-1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Cooperative State-Federal Bovine Tuberculosis Eradication Program.

DATES: We will consider all comments that we receive on or before April 18, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04-136-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 04-136-1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For information regarding the Cooperative State-Federal Bovine Tuberculosis Eradication Program, contact Dr. Michael Dutcher, National Tuberculosis Program Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734-5467. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS Information Collection Coordinator, at (301) 734-7477.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis.

OMB Number: 0579-0084.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the interstate spread of serious diseases and pests of livestock, and for eradicating such diseases from the United States when feasible.

In connection with this mission, APHIS participates in the Cooperative State-Federal Bovine Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis from the United States. Bovine tuberculosis is a serious disease of livestock that also affects humans through contact with infected animals or their byproducts.

The Cooperative State-Federal Bovine Tuberculosis Eradication Program is conducted under the various States' authorities supplemented by Federal regulations on the interstate movement of affected animals. A concerted effort (State and Federal) requires that we conduct epidemiologic investigations to locate the disease and provide an

effective means of controlling it. Federal regulations also provide for the payment of indemnity to owners of animals that must be destroyed because of tuberculosis.

This program necessitates the use of a number of information-gathering documents, including various forms needed to properly identify, test, and transport animals that have been infected with tuberculosis, or that may have been exposed to tuberculosis. We also employ national epidemiology forms for the purposes of recording, reporting, and reviewing epidemiological data. Still other documents provide us with the information we need to pay indemnity to the owners of animals destroyed because of tuberculosis.

The information provided by these documents is critical to our ability to locate herds infected with tuberculosis and to prevent the interstate spread of tuberculosis. The collection of this information is therefore crucial to the success of the Cooperative State-Federal Bovine Tuberculosis Eradication Program.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.324473748 hours per response.

Respondents: State animal health protection personnel, accredited veterinarians, livestock inspectors, shippers, herd owners, and slaughter establishment personnel.

Estimated annual number of respondents: 6,897.

Estimated annual number of responses per respondent: 7.762650427.

Estimated annual number of responses: 53,539.

Estimated total annual burden on respondents: 17,372 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington DC, this 11th day of February 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-3056 Filed 2-16-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02-046N]

Generic *E. coli* and *Salmonella* Baseline Results

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making available and publishing the results of baseline studies that it has conducted on generic *Escherichia coli* (*E. coli*) and *Salmonella*. Although these studies were conducted between 1997 and 2000, FSIS has decided to make the results available because they may assist inspected establishments in assessing their processes. The publication of these baseline results does not affect the current generic *E. coli* criteria and *Salmonella* standards listed in the regulations.

ADDRESSES: FSIS invites interested persons to submit comments on these baseline results. Comments may be submitted by the following methods:

- Mail, including floppy disks or CD-ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 02-046N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be

available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at <http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm>.

FOR FURTHER INFORMATION CONTACT: For further information contact Daniel Engeljohn, Ph.D., Deputy Assistant Administrator for Office of Policy, Program and Employee Development, FSIS, U.S. Department of Agriculture, Room 3147, South Building, 14th and Independence SW., Washington, DC 20250-3700; telephone (202) 205-0495, fax (202) 401-1760.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1996, FSIS published a final rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806). The final rule required that all establishments slaughtering cattle, swine, chickens, or turkeys test for generic *E. coli* at a frequency based on production volume to verify that the plants are meeting the established performance criteria. The final rule also established pathogen reduction performance standards for *Salmonella* for certain slaughter establishments and for establishments producing certain raw ground products.

FSIS developed the criteria and standards by conducting nationwide baseline programs or surveys on different classes of product. While the final rule provided generic *E. coli* criteria and *Salmonella* standards for certain classes of product, the Agency committed to conducting additional baseline studies to develop additional criteria and standards in the future. The term "baseline studies" covers both the FSIS Nationwide Microbiological Baseline Data Collection Programs and its Nationwide Microbiological Surveys as referenced in the existing regulations.

FSIS regulations require that all inspected slaughter establishments conduct generic *E. coli* testing. FSIS has established criteria for evaluating cattle and swine test results only from samples collected by the excision sampling method, which in commercial practice would unfortunately result in defacement of carcasses and economic loss. Cattle and swine establishments, however, can meet their testing requirements by using the sponge method of sample collection as part of a statistical process control system. Sheep, goat, horse, and mule or other equine establishments are required to use the sponge method of sample

collection as part of a statistical process control (SPC) system (64 FR 66553, Nov. 29, 1999). Establishments can sample young chicken or goose carcasses by the rinse method of sample collection and can sample turkey carcasses for generic *E. coli* by either the sponge or rinse method. Because there are no existing FSIS-established criteria for either goose or turkey carcasses, establishments must use statistical process control techniques to assess their processes.

Statistical process control initially involves evaluating data to determine process capability (the typical process performance level), then checking subsequent data to see whether they are consistent with this baseline level to ensure the process is in control and variations are within normal and acceptable limits. The value of microbiological testing is not negated by the lack of national m and M criteria against which to evaluate results. *E. coli* testing is intended to provide verification of process control for fecal contamination within individual establishments by use of a microbiological measure rather than solely relying upon a visual observation of carcasses for fecal contamination.

FSIS is responsible for conducting the *Salmonella* sampling program for carcasses and raw product. The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) in its report of August 8, 2002 stated that *Salmonella* test results are useful measures of the level of process controls (Final—Response to the Questions Posed by FSIS Regarding Performance Standards with Particular Reference to Ground Beef Products). In addition, in the most recent report on broilers (adopted February 13, 2004), NACMCF said the following about *E. coli* and broilers: "*Escherichia coli* has been viewed by FSIS as a direct measure of control of fecal contamination and, by implication, *Salmonella* or other enteric pathogens. However, recent information indicates that this may not be a valid assumption for *E. coli* in broilers. For example, in broilers, its presence may also be a result of infectious process and air sacculitis, in addition to fecal contamination" [Response To The Questions Posed By FSIS Regarding Performance Standards With Particular Reference To Broilers (Young Chickens), p. 8]. FSIS therefore believes that broiler operations, in particular, should take into account increased levels of *E. coli* and ensure that fecal contamination and infectious process and air sacculitis are not contributors.

Additional Baseline Results

FSIS is making available the results of baseline studies of generic *E. coli* and *Salmonella* that the Agency conducted over the past seven years but has not incorporated into regulations. These baseline studies are the *Nationwide Sponge Microbiological Baseline Data Collection Programs* for Young Chickens, November 1999–October 2000; Young Turkeys, July 1997–June 1998; Goose, September–November 1997; Cattle, June 1997–May 1998; and Swine, June 1997–May 1998. FSIS is not proposing to use these baseline results as performance standards because of their age and because it intends to conduct new baseline studies in coming years. Nevertheless, FSIS believes that publishing the results of these baseline studies, which have been used by the Agency to evaluate trends, can serve as a valuable support to an establishment's process control efforts. These results can be used by establishments in assessing the effectiveness of their processes, using their own test results. These baselines are for use as guidance to establishments and do not replace the criteria and standards incorporated in the regulations (Title 9 CFR 310.25(a)(5)(i), 310.25(b)(1), 381.94(a)(5)(i), and 381.94(b)(1)). Establishments using SPC may find this guidance to be helpful in gauging their process control.

The generic *E. coli* results are for cattle, swine, and goose carcasses sampled using the sponge method of sample collection; for young chicken carcasses using the rinse method; and for turkey carcasses using the sponge and rinse methods of sample collection (see Table 1).

These results increase the number of product classes and sampling methods for which baseline information is now available. For example, for generic *E. coli*, the results that FSIS is making available provide measures of process control for cattle and swine production using the sponge sampling method rather than the excision sampling method that was used in setting the PR/HACCP Rule performance standards. Baseline *E. coli* information on turkeys and geese is being made available by the Agency for the first time, for both sponge and rinse sampling methods. The baseline results include data for young chickens, using the rinse method, that are more recent than the data, also collected by the rinse method, that were available for the PR/HACCP Rule.

One way that baseline results being made available in this document can support or supplement an establishment's process control efforts is

through their use in tandem with SPC, as required by the PR/HACCP Rule, to help define when a process may be out of control. SPC for generic *E. coli* is required with products that were not represented in the PR/HACCP Rule by a performance standard, because no relevant baseline studies were available

at the time (62 FR 26219, May 13, 1997; 64 FR 66549, Nov. 29, 1999). These *E. coli* results can complement SPC by providing establishments with an additional measure of process control. For example, SPC principles require corrective action when sample results reach a certain threshold, such as three

Standard Deviations above a running mean average. As a complement to such SPC criteria, the 80th and 98th percentile results can be used as an additional "early warning" for taking corrective action.

TABLE 1.—GENERIC E. COLI BASELINE RESULTS^a

Class of product	Method	80th percentile	98th percentile
Cattle carcasses	sponge	0.0 CFU/cm ²	3.1 CFU/cm ²
Swine carcasses	sponge	0.46 CFU/cm ²	400 CFU/cm ²
Turkey carcasses	sponge	7.8 CFU/cm ²	190 CFU/cm ²
Turkey carcasses	rinse	89 CFU/ml	1,700 CFU/ml
Goose carcasses	sponge	7.0 CFU/cm ²	43 CFU/cm ²
Young Chicken carcasses	rinse	35 CFU/ml	390 CFU/ml

^a The corresponding 80th and 98th percentile values for the previously published baseline studies were defined as the performance criteria *m* and *M* for generic *E. coli*. The criteria defined a marginal range of values in which no more than 3 out of 13 samples were allowed to fall.

The *Salmonella* baseline results are for cattle, swine, young turkey, and goose carcasses by sponge sampling, and for young chickens by whole bird rinse sampling (see Table 2). These baseline results do not replace the *Salmonella* standards incorporated in

the regulations (9 CFR 310.25(b)(1) and 381.94(b)(1)). As with *E. coli*, the *Salmonella* baseline results provide new information for young turkeys and geese, and more recent data for categories of livestock carcasses that are already partially covered by PR/HACCP

Rule performance standards. Although FSIS, rather than the industry, takes *Salmonella* samples under the regulations, the Agency believes that establishments can benefit from comparing data obtained about their processes to the national baseline data.

TABLE 2.—SALMONELLA BASELINE RESULTS

Class of product	Method	Baseline prevalence (percent positive for salmonella)	Number of samples to test if implemented as a standard	Maximum number of positives to achieve if used as a standard
Young Turkey carcasses	sponge	19.6	56	13
Goose carcasses	sponge	13.7	54	9
Cattle carcasses	sponge	1.2	68	1
Swine carcasses	sponge	6.9	57	5
Young Chicken carcasses	rinse	8.7	55	6

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at http://www.fsis.usda.gov/regulations/2005_Notices_Index/.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of

industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/ and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves

and have the option to password protect their account.

Done at Washington, DC on February 7, 2005.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 05-3030 Filed 2-16-05; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB93

Forest Service Outdoor Recreation Accessibility Guidelines and Integration of Direction on Accessibility Into Forest Service Manual 2330

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed interim directive; request for comment.

SUMMARY: The Forest Service is proposing to issue an interim directive to guide its employees regarding compliance with the draft Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG). The interim directive would ensure that new or reconstructed developed outdoor recreation areas on National Forest System lands are developed to maximize accessibility, while recognizing and protecting the unique characteristics of the natural setting. The interim directive, to be issued to Forest Service Manual 2330, Publicly Managed Recreation Opportunities, would direct that new or reconstructed outdoor developed recreation areas, including campgrounds, picnic areas, beach access routes, and outdoor recreation access routes, comply with these agency guidelines and applicable Federal accessibility laws, regulations, and guidelines.

The Architectural and Transportation Barriers Compliance Board (Access Board) is preparing to publish for public comment proposed accessibility guidelines for outdoor developed areas that would apply to Federal agencies subject to the Architectural Barriers Act. The Forest Service will finalize the direction in this interim directive regarding compliance with the FSORAG when the Access Board finalizes its accessibility guidelines for outdoor developed areas. The final FSORAG would contain the Access Board's final accessibility guidelines for outdoor developed areas managed by Federal agencies, as supplemented by the Forest Service to ensure the agency's continued application of universal design, as well as agency terminology and processes.

The America the Beautiful—The National Parks and Federal Recreational Lands Pass established by the Federal Lands Recreation Enhancement Act replaced the Golden Access Passport authorized by the Land and Water Conservation Fund Act. The proposed interim directive would enumerate eligibility requirements for the new pass for people with permanent disabilities. In addition, the proposed interim directive would clarify existing internal agency procedures and policies related to the accessibility of outdoor developed recreation areas.

Comments received in response to this notice will be considered in development of the final interim directive. In a related notice published elsewhere in this part of today's **Federal Register**, the Forest Service is requesting

comment on a proposed interim directive to guide its employees regarding compliance with the Forest Service Trail Accessibility Guidelines (FSTAG).

DATES: Comments must be received in writing by April 18, 2005.

ADDRESSES: Send written comments by mail to USDA Forest Service, Attn: Director, Recreation and Heritage Resources Staff, Mail Stop 1125, 1400 Independence Avenue, SW., Washington, DC 20250-0003; by electronic mail to rhwrdevrec@fs.fed.us; or by facsimile to (202) 205-1145. Comments also may be submitted by following the instructions at the Federal e-Rulemaking portal, <http://www.regulations.gov>. If comments are sent by electronic means or by facsimile, the public is requested not to send duplicate comments via regular mail.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed interim directive in the Office of the Director, Recreation and Heritage Resources Staff, USDA, Forest Service, 4th Floor-Central, Sidney R. Yates Federal Building, 201 14th Street, SW., Washington DC, between 8:30 a.m. and 4 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead at (202) 205-1706 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janet Zeller, Recreation and Heritage Resources Staff, USDA, Forest Service, (202) 205-9597.

SUPPLEMENTARY INFORMATION:

Background

Although the Forest Service is committed to ensuring the accessibility of agency facilities and programs in order to serve all employees and visitors, as well as to comply with the Architectural Barriers Act of 1968 (ABA) and Section 504 of the Rehabilitation Act of 1973, agency accessibility requirements for outdoor developed recreation areas have not been integrated into the Forest Service Directives System.

The ABA requires facilities that are designed, constructed, altered, or leased by, for, or on behalf of a Federal agency to be accessible. To emphasize the need for accessibility guidelines for outdoor recreation areas, in 1993 the Forest Service developed *Universal Access to Outdoor Recreation, A Design Guide*. This guidebook blended accessibility into the recreation opportunity spectrum, ranging from urban areas in

full compliance with the Uniform Federal Accessibility Standard, the ABA accessibility standards in place at that time, to primitive and Congressionally designated wilderness areas.

The Architectural and Transportation Barriers Compliance Board (Access Board) is the agency responsible for issuing accessibility guidelines for newly constructed and altered facilities subject to the ABA. The Forest Service served on the Access Board's Regulatory Negotiation Committee on Outdoor Developed Areas (Reg Neg Committee). In 1999, the Reg Neg Committee proposed accessibility guidelines for outdoor recreation facilities and trails. While awaiting the completion of the rulemaking process for these guidelines, the Forest Service began developing internal guidelines for both trails and outdoor recreation facilities that would apply only within National Forest System boundaries and that would comply with the public notice and comment process for Forest Service directives pursuant to 36 CFR part 216. This action was undertaken to meet the agency's need to provide a consistent and reliable method for determining application and design of accessible outdoor recreation facilities and trails and is based on the Reg Neg Committee's proposed guidelines. These internal guidelines incorporate the Forest Service's terminology and processes, and establish greater accessibility requirements for certain areas. The Forest Service's proposed guidelines are in two parts, the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG) and the Forest Service Trail Accessibility Guidelines (FSTAG), both of which are available at <http://www.fs.fed.us/recreation/programs/accessibility>.

The Access Board plans to publish a notice of proposed rulemaking (NPRM) in the spring of 2005 seeking public comment on proposed accessibility guidelines for outdoor developed areas. The NPRM will contain proposed accessibility guidelines developed by the Reg Neg Committee, and will apply to Federal agencies subject to the ABA.

The Forest Service is proposing to issue an interim directive to Forest Service Manual (FSM) 2330, Publicly Managed Recreation Opportunities, that would require compliance with the FSORAG. The FSORAG would apply to newly constructed or altered camping facilities, picnic areas, beach access routes, outdoor recreation access routes, and other constructed features, including benches, trash and recycling containers, viewing areas at overlooks, telescopes and periscopes, mobility device storage, pit toilets, warming huts,

and outdoor rinsing showers in the National Forest System.

The FSORAG would maximize the accessibility of outdoor developed recreation areas for all people, while recognizing and protecting the unique characteristics of the natural setting of each outdoor developed recreation area within the National Forest System. The FSORAG would integrate the Forest Service policy of universal design to ensure the development of programs and facilities to serve all people, to the greatest extent possible. Universal design requires that all new or reconstructed facilities and associated constructed features, rather than only a certain percentage of those facilities, be accessible to all people. Universal design provides for the integration of all people in outdoor developed recreation areas, without separate or segregated access for people with disabilities. In addition, the proposed interim directive would clarify internal agency procedures and policies related to the accessibility of outdoor developed recreation areas, including compliance with the FSORAG.

Like the proposed accessibility guidelines developed by the regulatory negotiation committee established by Access Board, the FSORAG establishes only one level of accessibility for all outdoor developed recreation areas. The FSORAG would provide for application of specific conditions of departure and exceptions, also contained in the proposed accessibility guidelines developed by the regulatory negotiation committee established by the Access Board, when necessary to preserve the uniqueness of each recreation area and when application of the FSORAG would cause a change in the area's setting. Compliance with the FSORAG, however, would not always result in facilities that are accessible to all persons with disabilities, because at some locations the natural environment might prevent full compliance with some of the FSORAG's technical provisions.

The Forest Service will work with the Access Board as it develops final accessibility guidelines for outdoor developed areas. The Forest Service will finalize the direction in this interim directive regarding compliance with the FSORAG when the Access Board finalizes its accessibility guidelines for outdoor developed areas. The final FSORAG will contain the Access Board's final accessibility guidelines for outdoor developed areas managed by Federal agencies, as supplemented by the Forest Service to ensure the agency's continued application of universal

design, as well as agency terminology and processes.

In a related notice published elsewhere in this part of today's **Federal Register**, the agency is requesting comment on a proposed interim directive to guide its employees regarding compliance with the Forest Service Trail Accessibility Guidelines (FSTAG), which would apply to pedestrian hiking trails. The FSORAG and the FSTAG are both available electronically on the World Wide Web at <http://www.fs.fed.us/recreation/programs/accessibility>. Copies may also be obtained by writing to USDA, Forest Service, Attn: Accessibility Program Manager, Recreation and Heritage Resources Staff, Mail Stop 1125, 1400 Independence Avenue, SW., Washington, DC 20250-0003.

Regulatory Certifications

Environmental Impact

Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary conclusion is that this proposed interim directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed interim directive has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that the accessibility guidelines portion of the proposed interim directive is not economically significant because it would not have an annual economic impact of \$100 million or more. However, the accessibility guidelines portion of the proposed interim directive was determined by OMB to be significant because of its relationship to the accessibility guidelines to be issued by the Access Board. Accordingly, this proposed interim directive has been reviewed by OMB pursuant to Executive Order 12866. The regulatory impact analysis is available at <http://www.fs.fed.us/recreation/programs/accessibility>.

Moreover, this proposed interim directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C.

602 *et seq.*). It has been determined that this proposed interim directive would not have a significant economic impact on a substantial number of small entities as defined by the act because the proposed interim directive would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market. The proposed interim directive would establish accessibility guidelines that would apply internally to the Forest Service and that would have no direct effect on small businesses. No small businesses have been awarded contracts for construction or reconstruction of recreation facilities covered by these accessibility guidelines.

No Takings Implications

This proposed interim directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that this proposed interim directive would not pose the risk of a taking of private property.

Civil Justice Reform

This proposed interim directive has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this proposed interim directive, (1) all State and local laws and regulations that conflict with this interim directive or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this interim directive; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed interim directive on State, local, and Tribal governments and the private sector. This proposed interim directive would not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed interim directive under the requirements of Executive Order 13132 on federalism, and has made an

assessment that the proposed interim directive conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this proposed interim directive does not have Tribal implications as defined by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," and therefore advance consultation with Tribes is not required.

Energy Effects

This proposed interim directive has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed interim directive does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

The information an applicant for an America the Beautiful—The National Parks and Federal Recreational Lands Pass would have to submit to document eligibility for receiving the pass free of charge pursuant to Forest Service Manual (FSM) 2331.21b, paragraph 4, constitutes an information collection requirement as defined by the Paperwork Reduction Act and its implementing regulations at 5 CFR part 1320. Information collection requirements require OMB approval before their adoption. This information collection requirement was approved by OMB on December 22, 2003, and was assigned OMB control number 0596–0173.

Dated: February 11, 2005.

Sally Collins,
Acting Chief.

Text of Proposed Interim Directive

Note: The Forest Service organizes its directives system by alphanumeric codes and subject headings. Only those sections of the FSM that are the subject of this notice are set out here. The intended audience for this proposed interim direction is agency employees charged with management of Forest Service outdoor recreation facilities. Only new and revised direction from FSM 2330 is set out in the proposed interim

directive. The asterisks indicate that parent text direction unchanged by this proposed interim directive is not set out in this notice. The full text of FSM 2330 is available electronically on the World Wide Web at <http://www.fs.fed.us/im/directives>.

Forest Service Manual

Chapter 2330—Publicly Managed Recreation Opportunities

2330.1—Authority

See FSM 2301 for general authorities on developing and managing Forest Service recreation sites and facilities. For direction on authorities and technical guidelines related to accessibility of trails, see FSM 2353.01c.

2330.11—Recreation Fees

The Federal Lands Recreation Enhancement Act, Title VIII, Div. J., of the Consolidated Appropriations Act for 2005, Pub. L. 108–447, authorizes the Forest Service to charge standard amenity recreation fees and expanded amenity recreation fees at certain sites or for certain recreational services and retain and spend revenues collected under the act without further appropriation, in accordance with the provisions of the act.

2330.12—Federal and Agency Requirements for Accessibility of Recreation Programs, Sites, and Facilities

Additional information regarding laws, regulations, standards, guidelines, and publications relating to accessibility is available electronically on the World Wide Web at the Access Board's Web site (<http://www.access-board.gov>) and at the Forest Service's Web site (<http://www.fs.fed.us/recreation/programs/accessibility>).

1. *Architectural Barriers Act (ABA) of 1968, as amended (42 U.S.C. 4151 et seq.)*. This act requires that all facilities designed, constructed, altered, or leased by a Federal agency be accessible to persons with disabilities.

2. *Architectural Barriers Act Accessibility Guidelines (36 CFR part 1191, Appendices C and D)*. These guidelines were issued by the Architectural and Transportation Barriers Compliance Board (Access Board) in 2004 and apply to buildings and facilities subject to the Architectural Barriers Act of 1968. When adopted as standards by the General Services Administration, they will apply to Forest Service buildings and facilities.

3. *Architectural Barriers Act Accessibility Guidelines for Outdoor Developed Areas (36 CFR part 1190)*.

These guidelines will be issued by the Architectural and Transportation Barriers Compliance Board (Access Board) in 2005 and apply to outdoor developed areas managed by Federal agencies subject to the Architectural Barriers Act of 1968. When adopted as standards by the General Services Administration, they will apply to outdoor developed areas managed by the Forest Service.

4. *Rehabilitation Act of 1973, as amended, sections 504 and 508 (29 U.S.C. 794 and 794d)*. Section 504 of this act (29 U.S.C. 794) prohibits Federal agencies and recipients of Federal financial assistance from discriminating against any person with a disability. Section 508 of this act (29 U.S.C. 794d) requires that all electronic and information technology purchased or developed by a Federal agency allow persons with disabilities to have access to and use of the information and data that is comparable to that provided to persons without disabilities.

5. *Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities of USDA (7 CFR parts 15e and 15b)*. The USDA regulations implementing section 504 of the Rehabilitation Act as it applies to programs and activities conducted by USDA are found at 7 CFR part 15e. The USDA regulations implementing section 504 of the Rehabilitation Act as it applies to USDA-assisted programs are found at 7 CFR part 15b. These provisions address program accessibility; requirements for accessible programs in new, altered, or existing facilities; accessibility transition planning; accessible communication requirements; and compliance procedures.

6. *Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101 et seq.)*. This act prohibits discrimination on the basis of disability by State or local governments, public accommodations, and public transportation. The ADA does not apply to Federal agencies, with the exception of Title V, section 507c. This section clarifies that the Wilderness Act of 1964 is preeminent in federally designated wilderness areas, contains a definition of a wheelchair, and states that a device that meets that definition can be used wherever foot travel is permitted in federally designated wilderness areas.

7. *Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG)*. The FSORAG contains the accessibility guidelines for outdoor developed areas issued by the Architectural and Transportation Barriers Compliance Board (Access Board), as supplemented by the Forest Service to ensure the

agency's continued application of universal design, as well as agency terminology and processes. The FSORAG is available electronically on the World Wide Web at <http://www.fs.fed.us/recreation/programs/accessibility>. Copies may also be obtained by writing to the Accessibility Program Manager, Recreation and Heritage Resources Staff, Washington Office.

* * * * *

[FSM 2330.2 is unchanged.]

2330.3—Policy

* * * * *

[Paragraphs 1–7 are unchanged.]

8. Ensure that all new or rehabilitated facilities, sites, and programs comply with Federal and Forest Service accessibility guidelines and standards (FSM 2330.12, para. 1–7). Facilities, sites, and programs are to utilize universal design (FSM 2330.5) to accommodate the abilities of all people, to the greatest extent possible, including people with disabilities.

* * * * *

[Paragraph 9 and exhibit 01 of FSM 2330.3 and FSM 2330.4–2330.42c are unchanged.]

2330.5—Definitions

Accessible. In compliance with the Federal or Forest Service accessibility guidelines and standards at the time of construction or alteration, whichever is higher.

Universal design. Designing programs and facilities so that all new or reconstructed facilities and associated constructed features, rather than only a certain percentage of those facilities, are accessible to all people, thereby providing for the integration of all people in outdoor developed recreation areas, without separate or segregated access for people with disabilities.

* * * * *

[FSM 2331–2331.21a, paragraph 3, are unchanged.]

2331.21b—Recreation Passes

4. *America the Beautiful—The National Parks and Federal Recreational Lands Pass.*

a. *Privileges.* The America the Beautiful—The National Parks and Federal Recreational Lands Pass (Pass) is a lifetime, nontransferable pass that allows the holder to use any National Forest System lands for which a standard amenity recreation fee is charged in accordance with the Federal Lands Recreation Enhancement Act (Title VIII, Div. J, of the Consolidated Appropriations Act for 2005, Pub. L. 108–447).

b. *Eligibility.* The Pass may be issued free of charge only to citizens of, or persons domiciled in, the United States who have been medically determined to be permanently disabled for purposes of section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)) and who apply for the Pass and provide adequate documentation of a permanent disability and citizenship or residency.

c. *Requirements for Issuance.* Issue the Pass only to applicants who apply in person and who sign the Pass in the presence of the issuing officer. Inform applicants that they are required to provide one of the following forms of documentation to establish proof of permanent disability:

(1) A document issued by a Federal agency providing Federal benefits, such as the Veteran's Administration, which attests that the applicant has been medically determined to be eligible to receive Federal benefits as a result of a permanent disability. Other acceptable Federal agency documents include proof of receipt of Social Security Disability Income (SSDI) or Supplemental Security Income (SSI);

(2) A statement signed by a licensed physician attesting that the applicant has been medically determined to have a permanent physical, mental, or sensory impairment that severely limits one or more major life activities, and specifying the nature of the impairment;

(3) A document issued by a State agency, such as a vocational rehabilitation agency, which attests that the applicant is eligible to receive vocational rehabilitation agency benefits or services as a result of medically determined permanent disability. Showing a State motor vehicle department disability sticker, license plate, or hang tag is not acceptable documentation for purposes of obtaining the Pass;

(4) A signed Statement of Disability on Forest Service Form FS–2300–42.

* * * * *

[FSM 2331.21c–2332.5 are unchanged.]

2333—Site and Facility Planning and Design

The direction in this section applies to all Federal recreation sites and facilities on National Forest System lands.

2333.03—Policy

* * * * *

[Paragraphs 1–4e are unchanged.]

4. Design and install facilities that are:
f. In compliance with the authorities at FSM 2330.12 setting out Federal and agency requirements related to the

accessibility and design of recreation programs, sites, and facilities.

* * * * *

[Paragraphs 4g and 4h are unchanged.]

5. Comply with the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG) (FSM 2330.12, para. 7):

a. When agency programs, sites, and facilities are not addressed in Federal accessibility standards (FSM 2330.12, para. 2 and 3) or

b. When the FSORAG establishes a higher standard than Federal accessibility standards (FSM 2330.12, para. 2 and 3).

* * * * *

[FSM 2333.1–2333.32 are unchanged.]

2333.33—Integrated Accessibility/Universal Design

Ensure that new or rehabilitated recreation sites, facilities, and elements utilize universal design to accommodate all people, to the greatest extent possible, including persons with disabilities. Eliminate architectural barriers that limit use or enjoyment of recreation opportunities (FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

* * * * *

[FSM 2333.34–2333.48 are unchanged.]

2333.5—Design Criteria

Use the criteria in FSM 2333.51 through 2333.58 to determine need, location, and type of recreation site improvements.

2333.51—Toilets

1. Locate toilets conveniently; the maximum distance a user should have to travel to a toilet is 500 feet.

2. Provide a sufficient number of toilets. As a general rule, provide one toilet for every 35 persons.

3. Design each toilet to prevent unsanitary conditions and pollution with a minimum of maintenance and to comply with FSM 2330.3, paragraph 8, and FSM 2333.03, paragraph 4f. The design narrative must address the type of toilet facility desirable for a particular site. In determining the type of toilet facility to install, consider initial cost, future operation and maintenance costs, accessibility, and the recreation opportunity spectrum class of the site (FSM 2330.3, ex.01).

2333.52—Recreational Vehicle Sanitary Stations and Waste Water Disposal

Design and install Forest Service recreational vehicle (RV) dump stations only where there is environmental pollution from indiscriminate roadside

dumping by persons using Forest Service facilities and/or where commercial RV dump stations are not available within a reasonable driving distance. Encourage the private sector to develop these facilities, and provide the private sector with every opportunity to do so before the Forest Service develops them. Gray water collection and handling systems may be provided on-site when necessary to prevent environmental pollution. Comply with the accessibility requirements for such facilities (FSM 2330.12, para. 7, FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

2333.53—Refuse and Garbage Disposal

Provide adequate numbers of receptacles, and position them to facilitate litter control. Large, centralized containers or clusters of containers are usually more cost-effective than scattered small containers; use large or clustered containers where practical. Comply with the accessibility requirements for such receptacles and containers (FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

2333.54—Drinking Water

All water facilities where water is intended for human consumption must meet the standards in FSM 7421, FSM 2330.3, paragraph 8, and FSM 2333.03, paragraph 4f.

* * * * *

[FSM 2333.55–2333.56 are unchanged.]

2333.57—Convenience Facilities

Convenience facilities serve as a source of comfort to forest visitors, rather than meeting their health and safety needs or protecting resources. Design and install convenience facilities to be suitable for the site where they will be located and the use they will receive. FSM 2330.3, exhibit 01, displays the types of convenience facilities normally provided, depending on the planned recreation opportunity spectrum class and development scale. Facilities must comply with FSM 2330.3, paragraph 8, and FSM 2333.03, paragraph 4f.

2333.58—Information Facilities

Install signs and posters where necessary or helpful to visitors, but keep them to a minimum. Provide bulletin boards at a central location for rules, regulations, time limits, and other special information. Information facilities shall comply with FSM 2330.3, paragraph 8, and FSM 2333.03, paragraph 4f.

* * * * *

[FSM 2333.6–2334.22 are unchanged.]

2334.23—Parking Areas and Spurs

Each campground unit must be served by a parking spot or spur that allows safe vehicle parking off the main campground loop road. The last 25 feet of each parking spur should be level, except for the 1-to-2-percent slope necessary for drainage, and as close to the natural grade as possible. Parking spurs required to be accessible shall comply with section 5.0 of the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG) and other applicable authorities set out at FSM 2330.12, paragraph 7, FSM 2330.3, paragraph 8, and FSM 2333.03, paragraph 4f.

2334.24—Water Access Facilities

Install facilities for boat moorings when campgrounds and picnic grounds are accessible only by boats and when lake bottom and shoreline characteristics do not permit boats to be drawn up safely on the beach for short-term or overnight storage. Boat moorings consisting of docks, piers, jetties, or tie-up anchorages located along the shore shall be in compliance with Federal and Forest Service boating and fishing accessibility guidelines (FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

* * * * *

[FSM 2334.25 is unchanged.]

2334.26—Camping Units

A standard camping unit consists of a table, fire grill or ring, parking spur, and space for a tent or expansion space to accommodate a recreational vehicle. Locate units at least 25 feet from the edge of the campground road and at least 100 feet from lakes, streams, toilets, and main roads.

Camping units must provide for use of the maximum variety of camping equipment without separate loops or areas for tent or recreational vehicle use, except where local terrain or patterns of use indicate that segregation is practical and desirable. All site furnishings provided in camping units shall comply with the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG) (FSM 2330.12, para. 7, FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

1. *Tent Camping Units.* Tent camping units are appropriate where terrain restrictions preclude development of a spur to accommodate recreational vehicles (RVs). The parking spur is not the focal point of use. A tent camping unit normally should include a 30-foot parking spur, 12-by-16-foot, level tent pad, table, and fireplace. Parking and all tent camping elements shall comply

with the FSORAG (FSM 2330.12, para. 7, FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

2. *RV Camping Units.* The parking spur is the focal point of use for RV camping units. Provide at least 210 square feet of usable camping space next to the spur.

a. RV camping units should include a parking spur that is at least 50 feet long or a pull-through spur, a picnic table, and a stove, grill, or fire ring. Parking and all camping unit elements shall comply with the FSORAG (FSM 2330.12, para. 7, FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

b. Where feasible and appropriate to the setting, the remaining parking spurs not included in figure 5.1 of the FSORAG (FSM 2330.12, para. 7, FSM 2330.3, para. 8, and FSM 2333.03, para. 4f) should be at least 16 feet wide.

* * * * *

[FSM 2334.26, paragraph 3, is unchanged.]

2334.27—Picnic Units

A standard single picnic unit consists of one picnic table and, in some cases, a stove, grill, or fireplace. All site furnishings provided in picnic units shall comply with the FSORAG (FSM 2330.12, para. 7, FSM 2330.3, para. 8, and FSM 2333.03, para. 4f). Some of the sites may be provided with 16-foot stationary tables to accommodate two-family use. Space picnic units to permit privacy and prevent overuse.

2334.28—Group Campgrounds and Picnic Grounds

* * * * *

[The unnumbered introductory paragraph and paragraph 1 are unchanged.]

2. *Cooking Facilities.* Provide each site or component in a group campground or picnic area with a large, open fire grill. A food preparation table may be needed in most group campgrounds, and a food service table is needed in both group campgrounds and picnic areas. All site furnishings provided in group use sites shall comply with the FSORAG (FSM 2330.12, para. 7, FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

* * * * *

[The text from paragraph 3 of FSM 2334.28 through FSM 2334.33 are unchanged.]

2334.34—Special Public Services

In general, do not permit stores, restaurants, and other commercial developments within campgrounds and picnic grounds. If the public requires special services, such as equipment rental (for example, rental of boats,

bathing suits, or towels), clothes lockers, or shuttle transportation, they may be authorized under a special use authorization (FSM 2343.7). Before these services are authorized, a determination shall be made that there is a need for them that cannot be met on nearby private lands, that it would be financially viable to provide these services, and that they can be furnished at reasonable rates. If facilities are provided, they shall comply with FSM 2330.3, paragraph 8, and FSM 2333.03, paragraph 4f.

* * * * *

[FSM 2334.35 is unchanged.]

2335—Development of Sites Other Than Campgrounds and Picnic Areas

2335.1—Boating Sites

Develop suitable boating sites along lakes, reservoirs, and rivers primarily to launch boats. Sites may also offer boating services, including mooring space, repair services, boat rental, and the sale of gasoline, oil, and miscellaneous items. When these types of services are desirable, allow concessionaires to provide them under a special use authorization (FSM 2343.2 and 2721.52). Facilities that are provided shall comply with the Federal and Forest Service accessibility guidelines for boating and fishing (FSM 2330.3, para. 8, and FSM 2333.03, para. 4f).

2335.11—Design

* * * * *

[Paragraphs 1–5 are unchanged.]

6. Design facilities in accordance with FSM 2330.3, paragraph 8, and FSM 2333.03, paragraph 4f.

* * * * *

[FSM 2335.12–2335.13 and the unnumbered paragraph in FSM 2335.2, Swimming Sites, are unchanged.]

2335.21—Design

5. Ensure that new or reconstructed beach access routes comply with the beach access routes section of the FSORAG (FSM 2330.12, para. 7, and FSM 2333.03, para. 4f).

* * * * *

[The remainder of the chapter (FSM 2335.22–2336) is unchanged.]

[FR Doc. 05–3069 Filed 2–16–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB92

Forest Service Trail Accessibility Guidelines and Integration of Direction on Accessibility Into Forest Service Manual 2350

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed interim directive; request for comment.

SUMMARY: The Forest Service is proposing to issue an interim directive to guide its employees regarding compliance with the Forest Service Trail Accessibility Guidelines (FSTAG). The interim directive would ensure that new or altered trails managed for pedestrian use on National Forest System lands are developed to maximize accessibility for all people, including people with disabilities, while recognizing and protecting the unique characteristics of the natural setting of each trail. The interim directive, to be issued to Forest Service Manual 2350, Trail, River, and Similar Recreation Opportunities, would direct that these trails comply with the FSTAG and applicable Federal laws, regulations, and guidelines. The interim directive also would incorporate the definition of a wheelchair and clarify that a mobility device meeting this definition may be used anywhere foot travel is permitted. In addition, the interim directive would clarify existing internal agency procedures and policies related to the accessibility of trails.

The Architectural and Transportation Barriers Compliance Board (Access Board) is preparing to publish for public comment proposed accessibility guidelines for outdoor developed areas that would apply only to Federal agencies subject to the Architectural Barriers Act. The Forest Service will finalize the direction in this interim directive regarding compliance with the FSTAG when the Access Board finalizes its accessibility guidelines for outdoor developed areas. The final FSTAG would contain the Access Board’s final accessibility guidelines for outdoor developed areas managed by Federal agencies, as supplemented by the Forest Service.

Comments received in response to this notice will be considered in development of the final interim directive. In a related notice published elsewhere in this part of today’s **Federal Register**, the Forest Service is requesting comment on a proposed interim directive to guide its employees regarding compliance with the Forest

Service Outdoor Recreation Accessibility Guidelines (FSORAG).

DATES: Comments must be received in writing by April 18, 2005.

ADDRESSES: Send written comments by mail to USDA Forest Service, Attn: Director, Recreation and Heritage Resources Staff, Mail Stop 1125, 1400 Independence Avenue, SW., Washington, DC 20250–0003; by electronic mail to rhwtrail@fs.fed.us; or by facsimile to (202) 205–1145. Comments also may be submitted by following the instructions at that Federal e-Rulemaking portal, <http://www.regulations.gov>. If comments are sent by electronic means or by facsimile, the public is requested not to send duplicate comments via regular mail.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed interim directive in the Office of the Director, Recreation and Heritage Resources Staff, USDA, Forest Service, 4th Floor-Central, Sidney R. Yates Federal Building, 201 14th Street, SW., Washington, DC, between 8:30 a.m. and 4 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1706 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janet Zeller, Recreation and Heritage Resources Staff, USDA, Forest Service, (202) 205–9597.

SUPPLEMENTARY INFORMATION:

Background

Although the Forest Service is committed to ensuring the accessibility of agency facilities and programs in order to serve all employees and visitors, as well as to comply with the Architectural Barriers Act of 1968 (ABA) and Section 504 of the Rehabilitation Act of 1973, agency accessibility requirements for outdoor recreation areas have not been integrated into the Forest Service Directives System.

The ABA requires facilities that are designed, constructed, altered, or leased by, for, or on behalf of a Federal agency to be accessible. To emphasize the need for accessibility guidelines for outdoor recreation areas, in 1993 the Forest Service developed Universal Access to Outdoor Recreation, A Design Guide. This guidebook blended accessibility into the recreation opportunity spectrum, ranging from urban areas in full compliance with the Uniform Federal Accessibility Standard, the ABA accessibility standards in place at that

time, to primitive and Congressionally designated wilderness areas.

The Access Board is the agency responsible for issuing accessibility guidelines for newly constructed and altered facilities subject to the ABA. The Forest Service served on the Access Board's Regulatory Negotiation Committee on Outdoor Developed Areas (Reg Neg Committee). In 1999, the Reg Neg Committee proposed accessibility guidelines for outdoor recreation facilities and trails. While awaiting the completion of the rulemaking process for these guidelines, the Forest Service began developing internal guidelines for both trails and outdoor recreation facilities that would apply only within National Forest System boundaries and that would comply with the public notice and comment process for Forest Service directives pursuant to 36 CFR part 216. This action was undertaken to meet the agency's need to provide a consistent and reliable method for determining application and design of accessible outdoor recreation facilities and trails and is based on the Reg Neg Committee's proposed guidelines. These internal guidelines incorporate the Forest Service's terminology and processes, and establish greater accessibility requirements for certain areas. The Forest Service's proposed guidelines are in two parts, the Forest Service Outdoor Recreation Accessibility Guidelines (FSORAG) and the Forest Service Trail Accessibility Guidelines (FSTAG), both of which are available at <http://www.fs.fed.us/recreation/programs/accessibility>.

The Access Board plans to publish a notice of proposed rulemaking (NPRM) in the spring of 2005 seeking public comment on proposed accessibility guidelines for outdoor developed areas, including trails. The NPRM will contain proposed accessibility guidelines developed by the Reg Neg Committee, and will apply to Federal agencies subject to the ABA.

The Forest Service is proposing to issue an interim directive to Forest Service Manual (FSM) 2350, Trail, River, and Similar Recreation Opportunities, that would provide direction for maximizing the accessibility of new or altered trails managed for pedestrian use within the National Forest System, while recognizing and protecting the unique characteristics of the natural setting of each trail. In addition, the interim directive would define a wheelchair or mobility device; would define an all-terrain vehicle and an off-highway vehicle; and would clarify internal agency procedures and existing policies

related to the accessibility of outdoor recreation areas.

Application of the FSTAG would ensure that the full range of trail opportunities continue to be provided, from primitive long-distance trails to highly developed trails to popular scenic overlooks. All Forest Service trail classes would remain intact.

The FSTAG would provide for the specific conditions of departure and exceptions, also contained in the proposed accessibility guidelines developed by the regulatory negotiation committee established by the Access Board, when necessary to preserve the uniqueness of each trail or when application of the accessibility standards would cause a change in the trail's setting or in the purpose or function for which the trail was designed. In all likelihood this means most existing primitive trails would not be subject to the FSTAG. However, the FSTAG could apply to portions of these trails where they pass through a more urban area. The FSTAG contains exceptions that would prevent accessibility from being pointlessly applied piecemeal throughout a trail when access between segments is not possible, and requires providing accessibility to special features where possible.

The Forest Service will work with the Access Board as it develops final accessibility guidelines for outdoor developed areas. The Forest Service will finalize the direction in this interim directive regarding compliance with the FSTAG when the Access Board finalizes its accessibility guidelines for outdoor developed areas. The final FSTAG will contain the Access Board's final accessibility guidelines for outdoor developed areas managed by Federal agencies, as supplemented by the Forest Service to ensure the agency's continued application of universal design, as well as agency terminology and processes.

In a related notice published elsewhere in this part of today's **Federal Register**, the agency is requesting comment on a proposed interim directive to guide its employees regarding compliance with the FSORAG, which would apply to new or reconstructed outdoor developed recreation areas. The FSTAG and the FSORAG are both available electronically on the World Wide Web at <http://www.fs.fed.us/recreation/programs/accessibility>. Copies also may be obtained by writing to the USDA, Forest Service, Attn: Accessibility Program Manager, Recreation and Heritage Resources Staff, Mail Stop

1125, 1400 Independence Avenue, SW., Washington, DC 20250-0003.

Regulatory Certifications

Environmental Impact

Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's preliminary conclusion is that this proposed interim directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed interim directive has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that the accessibility guidelines portion of the proposed interim directive is not economically significant because it would not have an annual economic impact of \$100 million or more. However, the accessibility guidelines portion of the proposed interim directive was determined by OMB to be significant because of its relationship to the accessibility guidelines to be issued by the Access Board. Accordingly, this proposed interim directive has been reviewed by OMB pursuant to Executive Order 12866. The regulatory impact analysis is available at <http://www.fs.fed.us/recreation/programs/accessibility>.

Moreover, this proposed interim directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this proposed interim directive would not have a significant economic impact on a substantial number of small entities as defined by the act because the proposed interim directive would not impose recordkeeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market. The proposed interim directive would establish accessibility guidelines that would apply internally to the Forest Service and that would have no direct effect on small businesses. No small businesses have been awarded contracts for construction or reconstruction of recreation facilities

covered by these accessibility guidelines.

No Takings Implications

This proposed interim directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that this proposed interim directive would not pose the risk of a taking of private property.

Civil Justice Reform

This proposed interim directive has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this proposed interim directive, (1) all State and local laws and regulations that conflict with this interim directive or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this interim directive; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed interim directive on State, local, and Tribal governments and the private sector. This proposed interim directive would not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed interim directive under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed interim directive conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Moreover, this proposed interim directive does not have Tribal implications as defined by Executive Order 13175, "Consultation and Coordination With Indian Tribal

Governments," and therefore advance consultation with Tribes is not required.

Energy Effects

This proposed interim directive has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed interim directive does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This proposed interim directive does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: February 11, 2005.

Sally Collins,
Acting Chief.

Text of Proposed Interim Directive

Note: The Forest Service organizes its directives system by alphanumeric codes and subject headings. Only those sections of the Forest Service Manual (FSM) that are the subject of this notice are set out here. The intended audience for this proposed interim direction is agency employees charged with the management of trails on National Forest System lands. Only new and revised direction from FSM 2350 is set out in the proposed interim directive. The asterisks indicate that parent text direction unchanged by this proposed interim directive is not set out in this notice. The full text of the current FSM 2350 is available electronically on the World Wide Web at <http://www.fs.fed.us/im/directives>.

Forest Service Manual

Chapter 2350—Trail, River, and Similar Recreation Opportunities

* * * * *

[The uncoded introductory paragraph to this Chapter and FSM 2350.2 are unchanged.]

2350.3—Policy

* * * * *

[Paragraphs 1–6 are unchanged.]

7. Comply with the FSTAG (FSM 2353.01c, para. 7) when the FSTAG establishes a higher standard for trails than Federal accessibility standards (FSM 2353.01c, para 3).

* * * * *

[FSM 2352–2352.1 are unchanged.]

2353—National Forest System Trails

2353.01—Authority

See FSM 2350.1 for general authorities on developing and managing trails. For the authorities and technical guidelines related to the accessibility of trails, see FSM 2353.01c.

* * * * *

[FSM 2353.01–2353.01b are unchanged.]

2353.01c—Federal and Agency Requirements for Accessibility of Trails

For related direction on the authorities for the accessibility of recreation programs, sites, and facilities, see FSM 2330.12.

1. *Architectural Barriers Act (ABA) of 1968, as amended (42 U.S.C. 4151 et seq.)*. This act requires that all facilities designed, constructed, altered, or leased by a Federal agency be accessible to persons with disabilities.

2. *Architectural Barriers Act Accessibility Guidelines (36 CFR part 1191, Appendices C and D)*. These guidelines were issued by the Architectural and Transportation Barriers Compliance Board (Access Board) in 2004 and apply to buildings and facilities subject to the Architectural Barriers Act of 1968.

When adopted as standards by the General Services Administration, they will apply to Forest Service buildings and facilities.

3. *Architectural Barriers Act Accessibility Guidelines for Outdoor Developed Areas (36 CFR part 1190)*. These guidelines will be issued by the Architectural and Transportation Barriers Compliance Board (Access Board) in 2005 and apply to outdoor developed areas, including trails, managed by Federal agencies subject to the Architectural Barriers Act of 1968. When adopted as standards by the General Services Administration, they will apply to outdoor developed areas, including trails, managed by the Forest Service.

4. *Rehabilitation Act of 1973, as amended, Sections 504 and 508 (29 U.S.C. 794 and 794d)*. Section 504 of this act (29 U.S.C. 794) prohibits Federal agencies and recipients of Federal financial assistance from discriminating against any person with a disability. Section 508 of this act (29 U.S.C. 794d) requires that all electronic and information technology purchased or developed by a Federal agency allow persons with disabilities to have access to and use of the information and data that is comparable to that provided to persons without disabilities.

5. *Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities of USDA (7 CFR parts 15e and 15b)*. The USDA regulations implementing section 504 of the Rehabilitation Act as it applies to programs and activities conducted by USDA are found at 7 CFR part 15e. The USDA regulations implementing section 504 of the Rehabilitation Act as it applies to USDA-assisted programs are found at 7 CFR part 15b. These provisions address program accessibility; requirements for accessible programs in new, altered, or existing facilities; accessibility transition planning; accessible communication requirements; and compliance procedures.

6. *Americans With Disabilities Act of 1990 (ADA) (42 U.S.C. 12101 et seq.)*. This act prohibits discrimination on the basis of disability by State or local governments, public accommodations, and public transportation. The ADA does not apply to Federal agencies, with the exception of Title V, section 507c. This provision clarifies that the Wilderness Act of 1964 is preeminent in federally designated wilderness areas, contains a definition of a wheelchair, and states that a device that meets that definition can be used wherever foot travel is permitted in federally designated wilderness areas (FSM 2353.05, para. 10).

7. *Forest Service Trail Accessibility Guidelines (FSTAG)*. The FSTAG contains the accessibility guidelines for outdoor developed areas, including trails, issued by the Architectural and Transportation Barriers Compliance Board (Access Board), as supplemented by the Forest Service to ensure the agency's continued application of universal design, as well as agency terminology and processes. The FSTAG is available electronically on the World Wide Web at <http://www.fs.fed.us/recreation/programs/accessibility>. Copies also may be obtained by writing to the Accessibility Program Manager, Recreation and Heritage Resources Staff, Washington Office.

* * * * *

[FSM 2353.02 and FSM 2553.03, paragraphs 1–6, are unchanged.]

2553.03—Policy

7. Ensure that all new or reconstructed trails comply with Federal and Forest Service accessibility guidelines and standards for trails managed for pedestrian use (FSM 2353.01c, para. 1–7). The FSTAG applies to trails managed for pedestrian use when the FSTAG establishes a higher standard for those trails than

Federal accessibility standards (FSM 2353.01c, para. 2 and 3).

* * * * *

[FSM 2353.04–2353.04g and FSM 2353.05, paragraphs 1–9, are unchanged.]

2353.05—Definitions

10. *Wheelchair or Mobility Device*. A device, including one that is battery-powered, that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area. A person whose disability requires use of a wheelchair or mobility device may use a wheelchair or mobility device that meets this definition anywhere foot travel is permitted (Title V, sec. 507c, of the ADA).

* * * * *

[FSM 2353.1–2353.26 are unchanged.]

2353.27—Accessibility

Ensure that all new or reconstructed trails comply with Federal and Forest Service accessibility guidelines and standards for trails managed for pedestrian use (FSM 2353.01c, para. 1–7). The FSTAG applies to trails managed for pedestrian use when the FSTAG establishes a higher standard for those trails than Federal accessibility standards (FSM 2353.01c, para. 2 and 3). The FSTAG is available electronically on the World Wide Web at <http://www.fs.fed.us/recreation/programs/accessibility>. Copies also may be obtained by writing to the Accessibility Program Manager, Recreation and Heritage Resources Staff, Washington Office.

* * * * *

[FSM 2353.3–2354 and FSM 2355.01–2355.04d are unchanged.]

2355—Management of Off-Highway Vehicle Use

[Alphabetize existing definitions, insert the following new definitions for all-terrain vehicle, off-highway vehicle, and wheelchair or mobility device, and renumber the paragraphs accordingly.]

2355.05—Definitions

* * * * *

2. *All-Terrain Vehicle (ATV)*. A type of off-highway vehicle that travels on three or more low-pressure tires; has handle-bar steering; and has a seat designed to be straddled by the operator.

* * * * *

8. *Motor Vehicle*. Any vehicle which is self-propelled, other than:
 (1) a vehicle operated on rails; and
 (2) any wheelchair or mobility device, including one that is battery-powered,

that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

9. *Off-Highway Vehicle (OHV)*. Any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain.

* * * * *

13. *Wheelchair or Mobility Device*. See the definition at FSM 2353.05, paragraph 10.

* * * * *

[The remainder of the chapter (FSM 2355.11–2356.6) is unchanged.]

[FR Doc. 05–3068 Filed 2–16–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Human Dimensions of Marine Resource Management.

Form Number(s): None.

OMB Approval Number: 0648–0488.

Type of Request: Regular submission.

Burden Hours: 3,000.

Number of Respondents: 4,800.

Average Hours per Response: 38 minutes.

Needs and Uses: In order to address National Environmental Policy Act (NEPA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements, NOAA Fisheries social scientists must collect a broad range of social, cultural and economic information currently unavailable. NOAA Fisheries social scientists both conduct social science research and apply research findings to fishery management needs. This research is designed to improve social science data related to the human dimensions of fisheries management by: (1) Investigating social, cultural and economic issues/processes related to marine fishery stakeholders including but not limited to commercial and recreational fishermen, subsistence fishermen, fishing vessel owners, fishermen's families, fish processors and processing workers, related fishery support businesses, and fishing

communities as defined in MSA section 3(16); (2) improving the current knowledge of baseline information related to marine fishery stakeholders, as described in (1) above; and (3) monitoring and measuring trends among marine fishery stakeholders, as described in (1) above, affected by fishery management decisions.

Affected Public: Business or other for-profit organizations; Individuals or households; Not-for-profit institutions; Federal government; State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395-7285, or David_Rostker@omb.eop.gov.

Dated: February 10, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-3039 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Award for Excellence in Economic Development

ACTION: Proposed collection, comment request.

SUMMARY: The Department of Commerce, 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 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: Written comments must be submitted on or before April 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625,

14th and Constitution Avenue, NW., Washington, DC 20230 or via Internet at dhynnek@doc.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Barbara Earman, Intergovernmental Affairs Division, Room 7816, Washington, DC 20230, telephone: (202) 482-2900.

SUPPLEMENTARY INFORMATION:

I. Abstract

EDA provides a broad range of economic development assistance to help distressed communities design and implement effective economic development strategies. Part of this assistance includes disseminating information about best practices and encouraging collegial learning among economic development practitioners. EDA has created the Award for Excellence in Economic Development to recognize outstanding economic development activities of national importance. In order to make Awards for Excellence in Economic Development, EDA must collect two kinds of information: (a) information identifying the nominee and contacts within the organization being nominated and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the preannounced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The award is strictly honorary.

II. Method of Collection

As part of the development of the Award for Excellence in Economic Development, EDA has designed a short nomination form. Nominees will submit the form to EDA, where they will be screened for completeness and forwarded to the Selection Panel for review. The information will be used by the Selection Panel to determine those applicants best meeting the reannounced selection criteria. The Selection Panel will include: three representatives of the economic development practitioner community; one member from academe; three representatives of the Economic Development Administration; and up to two at large members.

III. Data

OMB Number(s):

Form Number: Not applicable.

Burden: 150 hours.

Type of Review: New.

Affected Public: State, local, or Tribal Government and not-for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 150.

Estimated Total Annual Cost: \$11,180.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection, they also will become a matter of public record.

Dated: February 10, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-3034 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-34-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Data Collection for Compliance With Government Performance and Results Act of 1993

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce 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 or continuing information collections, as required by the Paperwork Reduction

Act of 1994, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230, or via the Internet at dhynek@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Steven Haley, Senior Program Analyst, Budgeting and Performance Evaluation Division, Economic Development Administration, Room 7106, Washington, DC 20230, telephone 202-482-3873.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. The Economic Development Administration (EDA) accomplishes its mission by helping our partners across the nation (states, regions, and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and jobs through world-class capacity building, planning, infrastructure, research grants, and strategic initiatives.

EDA's strategic investments in public infrastructure and local capital markets provide lasting benefits for economically disadvantaged areas. Acting as catalysts to mobilize public and private investments, EDA's investments address problems of high unemployment, low per capita income, and other forms of severe economic distress in local communities. EDA also provides special economic adjustment assistance to help communities and businesses respond to major layoffs, plant shutdowns, trade impacts, natural disasters, military facility closures, and other severe economic dislocations.

EDA must comply with the Government Performance and Results Act of 1993 which requires Federal agencies to develop performance measures, and report to Congress and stakeholders the results of the agency's performance. EDA must collect specific data from grant recipients to report on its performance in meeting its stated goals and objectives.

II. Method of Collection

EDA has developed four short data collection forms; one for each type of respondent. Respondents will submit the form to the appropriate EDA regional office for compilation and transmission to EDA headquarters.

III. Data

OMB Number(s): 0610-0098.

Form Numbers: ED-915, ED-916, ED-917, ED-918.

Burden: \$1,017,056 to respondents.

Type of Review: Renewal of currently approved forms.

Affected Public: EDA-funded grantees; State, local and tribal governments; community organizations; not-for-profit organizations.

Estimated Number of Respondents: 2,737.

Estimated Time per Response: 7.2 hours average.

Estimated Total Annual Burden Hours: 19,768.

Estimate Total Annual Cost: \$738,990 to EDA.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 10, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Office.

[FR Doc. 05-3036 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-34-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-833, A-580-854]

Notice of Termination of Antidumping Duty Investigations: Certain Circular Welded Carbon Quality Line Pipe from Mexico and the Republic of Korea

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

EFFECTIVE DATE: February 17, 2005.

SUMMARY: On February 1, 2005, American Steel Pipe Division of ACIPCO, IPSCO Tubulars Inc., Lone Star Steel Company, Maverick Tube Corporation, Northwest Pipe Company, and Stupp Corporation (collectively, "petitioners") withdrew their antidumping petitions, filed on March 3, 2004, regarding certain circular welded carbon quality line pipe from Mexico and the Republic of Korea ("Korea"). Based on this withdrawal, the Department of Commerce ("the Department") is now terminating these investigations.

FOR FURTHER INFORMATION CONTACT: John Drury at 202-482-0195, Brandon Farlander at 202-482-0195, or Abdelali Elouaradia at 202-482-1374, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2004, the Department received antidumping duty petitions filed in proper form by the petitioners for the imposition of antidumping duties on certain circular welded carbon quality line pipe from Mexico, Korea, and the People's Republic of China ("PRC"), alleging that line pipe from these countries were being sold, or were likely to be sold, in the United States at less than fair value. The petitioners are domestic producers of certain circular welded carbon quality line pipe ("line pipe"). On March 24, 2004, the Department initiated antidumping duty investigations of line pipe from Mexico, Korea, and the PRC. See *Initiation of Antidumping Duty Investigations: Certain Circular Welded Carbon Quality Line Pipe From Mexico, The Republic of Korea, and the People's Republic of China*, 69 FR 16521 (March 30, 2004) ("Initiation Notice"). On April 27, 2004, the International Trade Commission ("ITC") issued its determination that there is a reasonable indication that an industry in the United States is

materially injured or threatened with material injury by reason of imports of line pipe from Mexico, Korea, and the PRC.

On October 6, 2004, we published in the **Federal Register** the preliminary determination in the Korean investigation, concurrently postponing the final determination until no later than February 18, 2005, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"). See *Notice of Affirmative Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Circular Welded Carbon Quality Line Pipe from the Republic of Korea*, 69 FR 59885 (October 6, 2004) ("Preliminary Determination"). After receiving a timely allegation of ministerial error in the preliminary determination with regard to the calculated margin for Hyundai HYSCO CO., Ltd. ("HYSCO"), a respondent in this proceeding, we published in the **Federal Register** the amended preliminary determination. See *Notice of Amended Preliminary Determination of Sales at Not Less Than Fair Value: Certain Circular Welded Carbon Quality Line Pipe from the Republic of Korea*, 69 FR 64027 (November 3, 2004).

On October 6, 2004, we published in the **Federal Register** the preliminary determination in the Mexican investigation, concurrently postponing the final determination until no later than February 18, 2005, pursuant to section 751(a)(3)(A) of the Act. See *Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Circular Welded Carbon Quality Line Pipe from Mexico*, 69 FR 59892 (October 6, 2004).

On December 8, 2004, petitioners withdrew their petition with regard to the investigation of imports of line pipe from the PRC, and the Department subsequently terminated the investigation. See *Notice of Termination of Antidumping Duty Investigation: Certain Circular Welded Carbon Quality Line pipe from the People's Republic of China*, 69 FR 75511 (December 17, 2004).

Scope of Investigations

The scope of these investigations include certain circular welded carbon quality steel line pipe of a kind used in oil and gas pipelines, over 32 mm (1 ¼ inches) in nominal diameter (1.660 inch actual outside diameter) and not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or coated with any coatings compatible with line pipe), and regardless of end finish (plain end,

beveled ends for welding, threaded ends or threaded and coupled, as well as any other special end finishes), and regardless of stenciling. The merchandise subject to these investigations may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at heading 7306 and subheadings 7306.10.10.10, 7306.10.50, 7306.10.50.10, and 7306.10.50.50. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of the investigation is dispositive.

Termination of Antidumping Investigations

On February 1, 2004, the Department received a letter from petitioners notifying the Department that they are no longer interested in seeking relief and are withdrawing their petitions on line pipe from Mexico and Korea. Under section 734(a)(1)(A) of the Act of 1930, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigations. Further, section 351.207(b)(1) of the Department's regulations states that the Department may terminate an investigation upon withdrawal of a petition, provided it concludes that termination is in the public interest. We notified all interested parties to the investigations of our intent to terminate these investigations, and provided them an opportunity to comment on the proposed termination. On February 7, 2005, Hylsa S.A de CV, a respondent in this investigation, submitted comments stating that termination of these investigations is in the public interest. We have received no further comments from any party to these investigations.

As no party objects to this termination and the Department is not aware of evidence to the contrary, the Department finds that termination of these investigations is in the public interest. As such, we are terminating these antidumping investigations and will issue instructions directly to U.S. Customs and Border Protection ("CBP") to terminate the suspension of liquidation of subject merchandise and release all bond and any cash deposits that have been posted, where applicable.

This notice serves as a 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 the return or 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.

This determination and notice are published in accordance with section 734(a) of the Act and section 19 CFR 351.207(b) of the Department's regulations.

Dated: February 10, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05-3081 Filed 2-16-05; 8:45 am]

BILLING CODE: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-824]

Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On August 12, 2004, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from India. The review covers PET film exported to the United States by Jindal Polyester Ltd. (Jindal) during the period from December 21, 2001, through June 30, 2003. We provided interested parties with an opportunity to comment on the preliminary results of review. After analyzing the comments received, we have made changes to the margin calculation. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled, "Final Results of Review."

EFFECTIVE DATE: February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Drew Jackson, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2769 or (202) 482-4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2004, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on PET film from India. See *Certain*

Polyethylene Terephthalate Film, Sheet and Strip From India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 69 FR 49872 (August 12, 2004) (*Preliminary Results*). In response to the Department's invitation to comment on the Preliminary Results, Jindal, the sole respondent, Valencia Specialty Films (Valencia), a U.S. importer, and the petitioners filed ¹ case briefs on September 13, 2004. Jindal, Valencia, and the petitioners filed rebuttal briefs on September 23, 2004. In response to requests from Valencia and Jindal, a hearing was held on September 30, 2004.

On December 14, 2004, the Department published in the **Federal Register** a notice of extension of the final results of review. See *Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 69 FR 74495.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by the order are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Period of Review

The period of review (POR) is December 21, 2001, through June 30, 2003.

Analysis of Comments Received

All issues raised by interested parties in their case briefs are addressed in the "Issues and Decision Memorandum" from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration (*Issues and Decision Memorandum*). The *Issues and Decision*

Memorandum is dated concurrently with this notice and is hereby adopted by this notice. A list of the issues which the parties have raised is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this administrative review, and the corresponding recommendations, in the *Issues and Decision Memorandum* which is on file in the Central Records Unit, room B-099 of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at "http://ia.ita.doc.gov." The paper copy and the electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we made the following changes in the comparison and margin calculation programs.

1. Based on import data supplied by U.S. Customs and Border Protection (CBP), we have found that certain importers did not deposit countervailing duties (CVDs) on their imports of PET film. The entries that we examined correspond with the U.S. sales reported to the Department by Jindal. Because the evidence on the record indicates no CVDs will be "imposed" for these entries, for the final results of review, we will not increase the U.S. prices of particular sales in accordance with the export subsidy offset provision, section 772(c)(1)(C) of the Act.

2. We corrected ministerial errors related to the treatment of excise duties, billing adjustments and the application of exchange rates to marine insurance and inland freight to the Indian port.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period December 21, 2001, through June 30, 2003:

Manufacturer/Exporter	Margin (percent)
Jindal Polyester Ltd.	6.28

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PET film from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Jindal will be the rate shown above; (2) for previously investigated companies not listed above,

the cash deposit rate will continue to be the company-specific rate published in the investigation; (3) if the exporter is not a firm covered in this 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) if neither the exporter nor the manufacturer is a firm covered by any segment of this proceeding, the cash deposit rate will be the "all others" rate of 24.14 percent established in the LTFV investigation, adjusted for the export subsidy rate found in the CVD investigation, which results in a cash deposit rate of 5.71 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. § 351.212(b)(1), the Department has calculated importer/customer-specific assessment rates for merchandise subject to this review. Where the importer/customer-specific assessment rate is above *de minimis*, we will instruct CBP to assess the calculated assessment rate against the entered customs value (or quantity if we do not have entered value) of the subject merchandise on each of the importer's/customer's entries during the POR. The Department will issue the appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 C.F.R. § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties or CVDs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or CVDs occurred and the subsequent increase in antidumping duties by the full amount of the antidumping and/or CVDs reimbursed.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305.

¹ The petitioners in this review are Dupont Teijin Films, Mitsubishi Polyester Film of America, Toray Plastics (America) and SKC America, Inc.

Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 8, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Comment 1: Whether Jindal Polyester Limited and Valencia Specialty Films Were Affiliated During the First Three Months of the Period of Review

Comment 2: Whether Jindal and Valencia Were Affiliated During the Remainder of the Period of Review

Comment 3: Whether it is Appropriate to Apply Partial Adverse Facts Available

Comment 4: Whether the Department Applied the Appropriate Adverse Facts Available Rate

Comment 5: Whether Jindal Polyester Limited Properly Classified Certain Merchandise as Non-prime Merchandise

Comment 6: Whether the Department Incorrectly Converted the Currency of Certain Movement Expenses

Comment 7: Whether the Department Incorrectly Calculated Home Market Billing Adjustments

Comment 8: Whether the Department Incorrectly Calculated the Net Home Market Price

Comment 9: Whether the Department Should Offset its Calculations for Negative Dumping Margins

Comment 10: Whether to Increase the Price of Certain U.S. Sales by Countervailing Duties Imposed to Offset Export Subsidies

[FR Doc. E5-658 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Vessel Monitoring System (VMS) Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before April 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907-586-7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NMFS Alaska Region manages the U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMPs). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation & Management Act. The regulations implementing the FMPs are at 50 CFR part 679.

The recordkeeping and reporting requirements at 50 CFR part 679 form the basis for this collection of information. NMFS Alaska Region requests information from participating groundfish participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the groundfish fisheries of the EEZ off Alaska.

II. Method of Collection

Internet and facsimile transmission of paper forms. Paper applications, electronic reports, and telephone calls are required.

III. Data

OMB Number: 0648-0445.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 539.

Estimated Time per Response: 6 hours to install a VMS; 4 hours per year to maintain a VMS; 5 seconds for an automated position report; 12 minutes to fax a check-in report; and 12 minutes to fax a reimbursement form.

Estimated Total Annual Burden Hours: 13,152.

Estimated Total Annual Cost to Public: \$491,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 10, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-3033 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before April 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, National Marine Fisheries Service (NMFS), Highly Migratory Species Management Division, 1 Blackburn Drive, Gloucester, MA 01930 (phone (978) 281-9397).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. In addition, NMFS must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). NMFS permits fishing vessels and dealers in order to collect the information necessary to comply with domestic and international obligations, secure compliance with regulations, and disseminate necessary information.

Current regulations at 50 CFR part 635.4 require that vessels participating in commercial and recreational fisheries for highly migratory species (HMS), dealers purchasing Atlantic HMS from a vessel, and dealers importing or exporting bluefin tuna or importing swordfish obtain a permit from NMFS. A final rule which will go into effect on July 1, 2005, (69 FR 67268, November 17, 2004) will also require the HMS International Trade Permit (ITP) for international trade of frozen bigeye tuna, southern bluefin tuna, and export of swordfish.

This action addresses the renewal of permit applications currently approved under 0648-0327, including vessel permits for Atlantic tunas, HMS charter/headboats, and HMS angling, and the HMS ITP. In addition, vessel permits for swordfish (directed, incidental, and hand gear) and sharks (directed and incidental) currently approved under collection 0648-0205 will be merged into this collection and renewed; dealer permits for sharks and swordfish currently approved under collection 0648-0205 will be merged into this

collection and renewed; and dealer permits for Atlantic tunas, currently approved under collection 0648-0202 will be merged into this collection and renewed.

II. Method of Collection

Applications for Atlantic Tunas, HMS Angling, and HMS Charter/Headboat Vessel Permits may be submitted online at www.nmfspermits.com, mailed, or faxed. All other applications including dealer permits and other vessel permits must be mailed.

III. Data

OMB Number: 0648-0327.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (vessel owners and dealers).

Estimated Number of Respondents: 45,520.

Estimated Time Per Response: 5 minutes for the HMS ITP Application, initial and renewal of Shark and Swordfish Dealer Permit Applications, and renewal of Atlantic Tunas Dealer Permit Application; 6 minutes for renewal application for the following vessel permits: Atlantic Tunas, HMS Charter/Headboat, and HMS Angling; 15 minutes for initial Atlantic Tunas Dealer Permit Application; 20 minutes for initial and renewal of Shark and Swordfish Vessel Permit Applications; and 30 minutes for initial applications for the following vessel permits: Atlantic Tunas, HMS Charter/Headboat, and HMS Angling.

Estimated Total Annual Burden Hours: 5,506.

Estimated Total Annual Cost to Public: \$1,477,988.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: February 11, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-3037 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before April 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586-7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Alaska Region manages the U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMPs). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMPs are at 50 CFR part 679.

The recordkeeping and reporting requirements at 50 CFR part 679 form

the basis for this collection of information. NMFS Alaska Region requests information from participating groundfish participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the groundfish fisheries of the EEZ off Alaska.

II. Method of Collection

Internet and facsimile transmission of paper forms. Paper reports, electronic reports, and telephone calls are required.

III. Data

OMB Number: 0648-0213.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 1,033.

Estimated Time Per Response: 18 minutes for Catcher Vessel trawl gear daily fishing logbook (DFL); 28 minutes for Catcher Vessel longline and pot gear DFL; 30 minutes for Catcher/processor trawl gear daily cumulative production logbook (DCPL); 41 minutes for Catcher/processor longline and pot gear DCPL; 31 minutes for Shoreside processor DCPL; 31 minutes for Mothership DCPL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 11 minutes for Product Transfer Report; 17 minutes for Weekly Production Report; 11 minutes for Daily Production Report; estimated time to electronically submit the Weekly Production Report (5 min./report); 5 minutes to electronically submit the check-in/check-out report; 35 minutes for Weekly Cumulative Mothership ADF&G Fish Tickets; 14 minutes for U.S. Vessel Activity Report; 23 minutes for buying station report.

Estimated Total Annual Burden Hours: 36,705.

Estimated Total Annual Cost to Public: \$188,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 10, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-3038 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111004F]

Marine Mammals; File Nos. 393-1772, 545-1761, 587-1767, 1071-1770, 731-1774, 945-1776, 782-1719, 1000-1617

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

ACTION: Receipt of applications for permits and for permit amendments.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit or permit amendment for scientific research on marine mammals:

Deborah A. Glockner-Ferrari, 39 Woodvine Court, Covington, LA 70433, (File No. 393-1772);

North Gulf Oceanic Society (Craig O. Matkin, Principal Investigator), 2030 Mary Allen Avenue, Homer, AK 99603, (File No. 545-1761); Dan R. Salden, Ph.D., Hawaii Whale Research Foundation, 52 Cheshire Drive, Maryville, IL 62062-1931, (File No. 587-1767);

The Dolphin Institute (Adam A. Pack, Ph.D., Principal Investigator), 420 Ward Avenue, Suite 212, Honolulu, HI 96814, (File No. 1071-1770);

Robin Baird, Ph.D., Cascadia Research, 218 1/2 W. 4th Avenue, Olympia, WA 98501, (File No. 731-1774);

Glacier Bay National Park and Preserve (Christine M. Gabriele, Principal Investigator) P.O. Box 140, Gustavus, AK 99826, (File No. 945-1776);

NMFS, National Marine Mammal Laboratory (NMML), 7600 Sand Point Way, NE, Seattle, WA 98102, (Permit No. 782-1719); and

Whitlow W. L. Au, Ph.D., University of Hawaii, P.O. Box 1106, Kailua, HI 96734 (Permit No. 1000-1617).

DATES: Written, telefaxed, or e-mail comments on the new applications and amendment requests must be received on or before March 21, 2005.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

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) 427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

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. 393-1772, 545-1761, 587-1767, 1071-1770, 731-1774, 945-1776, 782-1719, or 1000-1617.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard, Amy Sloan, or Ruth Johnson, (301)713-2289.

SUPPLEMENTARY INFORMATION: The subject permits and amendments are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), 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 222-227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications for Permits

Deborah A. Glockner-Ferrari (File No. 393-1772) requests a 5-year permit to continue long-term population studies of humpback whales (*Megaptera novaeangliae*) on their winter breeding grounds with a particular emphasis on defining life histories, documenting behavior and recording distribution. Incidental observations would be made

of additional cetacean species, including false killer whales (*Pseudorca crassidens*), short-finned pilot whales (*Globicephala macrorhynchus*), killer whales (*Orcinus orca*), bottlenose dolphins (*Tursiops truncatus*), spinner dolphins (*Stenella longirostris*), and pantropical spotted dolphins (*Stenella attenuata*). Takes would occur by close approach for vessel surveys, photo-identification, behavioral observation, video recording, passive acoustic recording, underwater observation, collection of sloughed skin, and incidental harassment. Research would take place in waters off Hawaii with emphasis on the waters of the Auau Channel within the four island region of Maui, Lanai, Kahoolawe, and Molokai.

North Gulf Oceanic Society (File No. 545-1761) requests a 5-year permit to continue population studies on numerous cetacean species with a particular emphasis on killer whales. The research would specifically focus on gathering data to study: (1) mating and social systems and feeding behavior of killer whales; and (2) diving behavior, feeding, movement and contaminant loads of several cetacean species, including killer whales, gray whales (*Eschrichtius robustus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), and Stejneger's beaked whale (*Mesoplodon stejnegeri*). Takes would occur by close approach for vessel surveys, photo-identification, behavioral observation, passive acoustic recording, tagging, biopsy sampling, collection and export of dead parts, and incidental harassment. Collection of dead parts from the above species and humpback whales, minke whales (*Balaenoptera acutorostrata*), Steller sea lions (*Eumetopias jubatus*), harbor seals (*Phoca vitulina*), and Northern fur seals (*Callorhinus ursinus*) would take place during killer whale predation studies. No biopsy sampling would take place on large whale calves less than six months of age or females accompanying such calves. Research would take place in waters off Alaska with a concentration in Glacier Bay/Icy Strait, Sitka Sound, Prince William Sound, Kenai Fjords, Resurrection Bay, Eastern Aleutian chain, and Kodiak Island. Most research would be performed between the months of May and September. Mention other whale species??

Dan R. Salden, Ph.D. (File No. 587-1767) requests a 5-year permit to continue studies of long-term social affiliations among humpback whales.

Incidental observations would be made of additional cetacean species, including false killer whales, short-finned pilot whales, killer whales, bottlenose dolphins, spinner dolphins, and pantropical spotted dolphins. Takes would occur by close approach for vessel surveys, photo-identification, behavioral observation, passive acoustic recording, underwater observation, collection of sloughed skin, and incidental harassment. Research would take place in waters off Hawaii and Alaska, primarily off the islands of Maui (especially between 20°46'N and 21°N in the Auau Channel), Hawaii (especially off the Kona Coast), Molokai (including the area known as the Penguin Banks), Lanai, Kauai, and Kahoolawe, and in southeastern Alaska (especially in the Frederick Sound, Chatham Strait, Seymour Canal, and Stephens Passage areas).

The Dolphin Institute (Adam A. Pack, Ph.D., Principal Investigator) (File No. 1071-1770) requests a 5-year permit to continue long-term population studies of humpback whales and other cetacean species in the Eastern, Western, and Central North Pacific Ocean. These studies would include: (1) photo-identification of individuals to determine individual life histories, social role, migration, habitat use, distribution, and reproductive status; (2) underwater videogrammetry to determine the sizes of animals in different social roles and how size affects or is correlated with the social role adopted, and to derive estimations of sexual maturity of animals; (3) underwater videography to document behaviors and aid in sex determination; (4) song recording and observation of singers to determine song source levels and propagation characteristics; (5) Crittercam studies of animals in competitive groups and in dyads, and of singers, to help in the understanding of the mating system; and (6) skin biopsy sampling for sex determination and individual identification to accompany and supplement Crittercam information. Takes are also requested for other cetacean species, including bottlenose dolphins, spinner dolphins, false killer whales, melon-headed whales (*Peponocephala electra*), pygmy killer whales (*Feresa attenuata*), rough-toothed dolphins (*Steno bredanensis*), pilot whales, striped dolphins (*Stenella coeruleoalba*), pygmy and dwarf sperm whales (*Kogia* spp.), killer whales, sperm whales (*Physeter macrocephalus*), Blainville's beaked whales (*Mesoplodon densirostris*), spotted dolphins, Cuvier's beaked whales, fin whales (*Balaenoptera*

physalus), and blue whales (*Balaenoptera musculus*). The applicant is requesting that biopsy sampling takes be authorized on humpback whale calves less than 6 months of age and/or females accompanying such calves. Research would take place in waters of the Eastern, Central, and Western North Pacific Ocean, with a primary focus on the winter and summer grounds of the three North Pacific humpback whale stocks. This includes waters off the main Hawaiian Islands (primary study area) and along the rim of the North Pacific from California northward to Southeast Alaska and then westward through the Gulf of Alaska, Aleutian Islands, and regions of the upper western Pacific. Research would also take place in Japanese waters off the Mariana, Bonin (Ogasawara), and Ryukyuan islands.

Robin Baird, Ph.D. (File No. 731-1774) requests a 5-year permit to conduct research on all cetacean species in U.S. and international waters in the Pacific Ocean, including Alaska, Washington, Oregon, California, Hawaii, and other U.S. territories. The purposes of the proposed research are to study: (1) diving and night-time behavior; (2) population assessment; and (3) social organization and inter-specific interactions of cetaceans. Incidental harassment of all species of cetaceans may occur through vessel approach for sighting surveys, photographic identification, and behavioral research, and aerial over-flights for the purpose of locating animals and conducting aerial validation studies. Individuals of all cetacean species, with the exception of North Pacific right whales, may have a suction-cup tag attached and be tracked. Dive data (using suction-cup attached tags) will provide a quantitative estimate of time animals are at the surface and available to be seen during visual surveys, as well as to examine other aspects of behavior (e.g., diurnal patterns, reactions to vessel approaches, and/or acoustic behavior). Photo-identification data will be used in population assessment through mark-recapture population estimation and in studies of stock structure involving movements of individuals. Small numbers of pinnipeds including California sea lions (*Zalophus californianus*), harbor seals, northern elephant seals (*Mirounga angustirostris*), and Steller sea lions may be incidentally harassed from research activities. Import of skeletal parts from beach-cast specimens from Canada and export of skin tissue samples obtained from suction-cups is requested for research purposes.

Glacier Bay National Park and Preserve (Christine M. Gabriele, Principal Investigator) (File No. 945-1776) requests a 5-year permit to continue population studies on numerous cetacean species with a particular emphasis on humpback, minke, and killer whales. The research would focus on gathering data to study ecology, behavior and population status to enhance management objectives for these species in and around the Glacier Bay National Park and Preserve, Alaska. Takes would occur by close approach by vessel survey for photo-identification, behavioral observation, passive acoustic recording, collection of sloughed skin and feces, prey sampling, and incidental harassment. Research would take place in waters of and around Glacier Bay with the main study area including a 70-mile (113 km) radius centered at the mouth of Glacier Bay (58°20'N 13°00'W). Research would mainly take place annually primarily during the months of April-November.

Amendment Requests

Permit No. 782-1719-00 issued on June 30, 2004 (69 FR 44514) authorizes NMMLthe Holder to take all species of cetaceans under NMFS jurisdiction during stock assessment activities throughout U.S. territorial waters and the high seas of the North Pacific Ocean, Southern Ocean, Arctic Ocean, and the territorial waters of Mexico (Gulf of California only), Canada, Russia, Japan and the Philippines. The Permit specifically authorizes close approach during Level B harassment (aerial surveys, vessel-based surveys, observations, and photo-identification), and Level A harassment (biopsy sampling and attachment of scientific instruments). Activities are authorized for all age and sex classes with the exception of biopsy sampling of calves less than 6 months of age and accompanying females. The Holder now requests authority to increase the number of humpback whales to be biopsy sampled to 500 in the Western North Pacific stock, 2000 in the Central North Pacific stock, and 1000 in the Eastern North Pacific stock. The Holder also requests that NMFS reconsider its earlier decision and allow biopsy sampling of large whale calves less than 6 months of age (with the exception of neonates) and attending females. The Holder has submitted additional information and justification for this activity. The Holder also requests authority to increase the number of humpback whales to be biopsy sampled to 500 in the Western North Pacific stock, 2000 in the Central North Pacific stock, and 1000 in the Eastern North

Pacific stock. The amendment, if issued, would remain valid until the permit expires June 30, 2009.

Permit No. 1000-1617-01 issued to Whitlow Au, Ph.D. on June 22, 2001 (66 FR 34155) authorizes behavioral observations, photo-identification, genetic sampling, and suction-cup tagging of small cetaceans in Hawaii and California, focused primarily on spinner dolphins. The objectives of the research are to investigate population structure, genetic variability, dispersal patterns, social structure, and foraging and diving behavior. The Permit Holder is now requesting a 5-year amendment to expand the small cetacean research by increasing the number of individuals of each species that can be suction-cup tagged from three to 80. Furthermore, the Holder wishes to add a new project that will focus on large whale behavior and use of the acoustic environment by studying humpback whales, killer whales, and Cuvier's and Blainville's beaked whales (*Ziphius cavirostris* and *Mesoplodon densirostris*). Males and females of all ages and reproductive status of requested species would be closely approached by vessel for photo-identification, behavioral observations, underwater observation and videography, and passive acoustic recording. For biopsy sampling and suction-cup tagging, males and females of all ages would be sampled or tagged, with the exception of calves under 6 months of age and females attending such calves. In the case of humpback whales only: the suction-cup tags, with a desired attachment duration of 6 hours, may include an acoustic transponder. The tag would emit a high-frequency pulse, above the theoretical hearing range of the whales, to assist the researchers in tracking the tagged individual. Research would take place in U.S. and international waters off Hawaii and California. The amended permit, if issued, would be valid for 5 years.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

All documents may be reviewed in the following locations:

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

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562)980-4001; fax (562)980-4018; and

Pacific Islands Region, Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; phone (808)973-2935; fax (808)973-2941.

Dated: February 11, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05-3093 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Trademark Processing

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the submission of a revision of a currently approved collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 18, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: Susan.Brown@uspto.gov. Include "0651-0009 comment" in the subject line of the message.
- Fax: (571) 273-0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Ari Leifman, Staff Attorney, Office of the Commissioner for Trademarks, United States Patent and Trademark Office (USPTO), PO Box 1451, Alexandria, VA 22313-1451, by telephone at 571-272-9572, or by e-mail at ari.leifman@uspto.gov.

SUPPLEMENTARY INFORMATION

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application with the USPTO to register their marks. These individuals and businesses may also submit various communications to the USPTO, including requests to amend their applications to delete an originally-identified statutory filing basis, such as the "intent to use" basis. Registered marks remain on the register for ten years. However, the registrations are canceled unless the owner files an affidavit with the USPTO attesting to the continued use (or excusable non-use) of the mark in commerce. The applicant may withdraw his or her application. If an application becomes abandoned, the owner may petition the USPTO to revive the abandoned application. The registration may be renewed for periods of ten years.

The rules implementing the Act are set forth in 37 CFR Part 2. These rules mandate that each register entry include the mark, the goods and/or services in connection with which the mark is used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses, to determine availability of a mark. By accessing the USPTO's information, parties may reduce the possibility of initiating use of a mark previously adopted by another. The Federal trademark registration process may lessen the filing of papers in court and between parties.

The USPTO is proposing to add five paper requirements into this collection:

Request to Delete Section 1(b) Basis, Intent to Use, Request for Express Abandonment (Withdrawal) of Application, Request for Permission to Withdraw as Attorney of Record, Change of Owner's Address Form, and Other Petitions. The electronic versions of these first four requirements were additions to the collection recently approved by OMB on December 2, 2004. Other Petitions is a new paper category being added to encompass all other miscellaneous petitions that are submitted after prosecution of the trademark application. Other Petitions does not have an electronic equivalent; petitions are submitted on paper.

At this time, the USPTO is proposing to split this collection into five separate collections based upon the lines of the Trademark business processes. The proposed five groups are Applications for Trademark Registration, Substantive Submissions Made During Prosecution of the Trademark Application, Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks), Post Registration (Trademark Processing), and Trademark Petitions. The USPTO believes that splitting this extensive collection into smaller, more manageable, information collection requests will allow for a more efficient updating and renewal process.

II. Method of Collection

Electronically if applicants submit the information using the forms available through TEAS. By mail or hand delivery if applicants chose to submit the information in paper form.

III. Data

OMB Number: 0651-0009.

Form Number(s): PTO Forms 4.8, 4.9, 4.16, 1478(A), 1553, 1581, 1583, 1963, 2000, 2194, 2195, 2196, 2197, 2200, 2201 and 2202.

Type of Review: Revision of a currently approved collection.

Affected Public: Primarily business or other for-profit organizations, but also individuals or households; not-for-profit institutions; farms, Federal Government; and state, local or tribal Government.

Estimated Number of Respondents: 785,130 total responses. Of this total, 253,801 responses are related to 0651-0009 Applications for Trademark Registration, 186,110 responses are related to 0651-00xx Substantive Submissions Made During Prosecution of the Trademark Application, 218,482 responses are related to 0651-00xx Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks), 126,337 responses are related to 0651-00xx Post Registration (Trademark Processing), and 400 responses are related to 0651-00xx Trademark Petitions, for a new total of 785,130 responses for this collection.

Estimated Time Per Response: The USPTO estimates that it will take approximately 3 minutes (0.05 hours) to 30 minutes (0.50 hours) to complete this information This includes the time to gather the necessary information, create the documents, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 141,400 burden hours.

Estimated Total Annual Respondent Cost Burden: Using the professional hourly rate of \$286 for associate attorneys in private firms, the USPTO estimates \$40,440,400 per year for salary costs associated with respondents. Of this total, \$21,438,274 is associated with 0651-0009 Applications for Trademark Registration, \$9,011,288 is associated with 0651-00xx Substantive Submissions Made During Prosecution of the Trademark Application, \$4,596,592 is associated with 0651-00xx Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks), \$5,356,494 is associated with 0651-00xx Post Registration (Trademark Processing), and \$37,752 is associated with 0651-00xx Trademark Petitions, for a new total of \$40,440,400 in annual respondent cost burden for this collection, as follows:

0651-0009 Applications for Trademark Registration:

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Use-Based Trademark/Service Mark Application, including: —Trademark/Service Mark Application. —Collective Trademark/Service Mark Application. —Collective Membership Mark. —Certification Mark Application.	23 minutes	21,392	8,129
Electronic Use-Based Trademark/Service Mark Application, including: —Trademark/Service Mark Application. —Collective Trademark/Service Mark Application. —Collective Membership Mark. —Certification Mark Application.	21 minutes	64,176	22,462

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Intent to Use Trademark/Service Mark Application, including: —Trademark/Service Mark Application. —Collective Trademark/Service Mark Application. —Collective Membership Mark. —Certification Mark Application.	17 minutes	38,031	10,649
Electronic Intent to Use Trademark/Service Mark Application, including: —Trademark/Service Mark Application. —Collective Trademark/Service Mark Application. —Collective Membership Mark. —Certification Mark Application.	15 minutes	114,092	28,523
Application for Registration of Trademark/Service Mark under §§ 44(d) and (e), including: —Trademark/Service Mark Application. —Collective Trademark/Service Mark Application. —Collective Membership Mark. —Certification Mark Application.	20 minutes	4,027	1,329
Electronic Application for Registration of Trademark/Service Mark under §§ 44(d) and (e), including: —Trademark/Service Mark Application. —Collective Trademark/Service Mark Application. —Collective Membership Mark. —Certification Mark Application.	19 minutes	12,083	3,867
Totals .....	.....	253,801	74,959

0651-00xx Substantive Submissions
Made During Prosecution of the
Trademark Application:

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use)	13 minutes	18,739	4,123
Electronic Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use).	11 minutes	43,726	8,308
Request for Extension of Time to File a Statement of Use	10 minutes	30,348	5,159
Electronic Request for Extension of Time to File a Statement of Use	9 minutes ...	70,811	10,622
Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action	12 minutes	1,900	399
Electronic Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action.	5 minutes ...	4,400	352
Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request.	12 minutes	1,900	399
Electronic Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request.	5 minutes ...	4,400	352
Request to Delete Section 1(b) Basis, Intent to Use	4 minutes ...	235	14
Electronic Request to Delete Section 1(b) Basis, Intent to Use	3 minutes ...	550	28
Request for Express Abandonment (Withdrawal) of Application	4 minutes ...	1,115	67
Electronic Request for Express Abandonment (Withdrawal) of Application	3 minutes ...	3,600	180
Request to Divide	5 minutes ...	476	38
Electronic Request to Divide	4 minutes ...	1,110	67
Trademark Amendments/Corrections/Surrenders	30 minutes	2,800	1,400
Totals .....	.....	186,110	31,508

0651-00xx Submissions Regarding
Correspondence and Regarding Attorney
Representation (Trademarks):

Item	Estimated time for response	Estimated annual responses	Estimated burden hours
Revocation of Power of Attorney and/or Appointment of Attorney (Power of Attorney)	6 minutes ...	38,530	3,853
Electronic Revocation of Power of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative.	5 minutes ...	89,900	7,192
Designation of Domestic Representative	3 minutes ...	36,196	1,810
Request for Permission to Withdraw as Attorney of Record	15 minutes	645	161
Electronic Request for Permission to Withdraw as Attorney of Record	12 minutes	1,500	315

Item	Estimated time for response	Estimated annual responses	Estimated burden hours
Change of Owner's Address Form	4 minutes ...	15,515	931
Electronic Change of Owner's Address	3 minutes ...	36,196	1,810
Totals .....	.....	218,482	16,072

0651-00xx Post Registration
(Trademark Processing):

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Affidavit of Use of a Mark in Commerce Under § 8	11 minutes	12,330	2,343
Electronic Affidavit of Use of a Mark in Commerce Under § 8	10 minutes	28,770	4,891
Combined Affidavit of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9.	14 minutes	12,330	2,836
Electronic Combined Affidavit of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9.	12 minutes	28,770	6,042
Affidavit of Incontestability of a Mark Under § 15	3 minutes ...	131	7
Electronic Affidavit of Incontestability of a Mark Under § 15	6 minutes ...	306	31
Combined Affidavit of Use & Incontestability Under §§ 8 & 15	5 minutes ...	13,110	1,049
Electronic Combined Affidavit of Use & Incontestability Under §§ 8 & 15	3 minutes ...	30,590	1,530
Totals .....	.....	26,337	18,729

0651-00xx Trademark Petitions:

Item	Estimated time for response	Estimated annual responses	Estimated time for annual burden hours
Other Petitions	20 minutes	400	132
Total .....	.....	400	132

Estimated Total Annual Non-Hour Respondent Cost Burden (includes postage costs and filing fees): \$146,766,731. This collection has no operation or maintenance costs.

Customers incur postage costs when submitting non-electronic information to the USPTO by mail through the United States Postal Service. The USPTO estimates that the majority of submissions for these paper forms are

made via first class mail. First class postage is 37 cents. Therefore, a total estimated mailing cost of \$92,556 is incurred (250,150 responses × \$.37). Of this total, \$23,476 is associated with 0651-0009 Applications for Trademark Registration, \$21,280 is associated with 0651-00xx Substantive Submissions Made During Prosecution of the Trademark Application, \$33,629 is associated with 0651-00xx Submissions

Regarding Correspondence and Regarding Attorney Representation (Trademarks), \$14,023 is associated with 0651-00xx Post Registration (Trademark Processing), and \$148 is associated with 0651-00xx Trademark Petitions, for a new total of \$92,556 in postage costs for this collection, as follows:

0651-0009 Applications for Trademark Registration:

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
Use-Based Trademark/Service Mark Application, including: —Trademark/Service Mark Application —Collective Trademark/Service Mark Application —Collective Membership Mark —Certification Mark Application	21,392	\$.37	\$7,915.00
Intent to Use Trademark/Service Mark Application, including: —Trademark/Service Mark Application —Collective Trademark/Service Mark Application —Collective Membership Mark —Certification Mark Application	38,031	.37	14,071.00
Application for Registration of Trademark/Service Mark under §§ 44(d) and (e), including: —Trademark/Service Mark Application —Collective Trademark/Service Mark Application —Collective Membership Mark	4,027	.37	1,490.00

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
—Certification Mark Application			
Totals	63,450	.....	\$23,476.00

0651—00xx Substantive
Submissions Made During Prosecution
of the Trademark Application:

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use)	18,739	\$.37	\$6,933.00
Request for Extension of Time to File a Statement of Use	30,348	.37	11,229.00
Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action	1,900	.37	703.00
Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Re- quest	1,900	.37	703.00
Request to Delete Section 1(b) Basis, Intent to Use	235	.37	87.00
Request for Express Abandonment (Withdrawal) of Application	1,115	.37	413.00
Request to Divide	476	.37	176.00
Trademark Amendments/Corrections/Surrenders	2,800	.37	1,036.00
Totals	57,513	.....	21,280.00

0651—00xx Submissions Regarding
Correspondence and Regarding Attorney
Representation (Trademarks):

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
Revocation of Power of Attorney and/or Appointment of Attorney (Power of Attorney)	38,530	\$.37	\$14,256.00
Designation of Domestic Representative	36,196	.37	13,393.00
Request for Permission to Withdraw as Attorney of Record	645	.37	239.00
Change of Owner's Address Form	15,515	.37	5,741.00
Totals	90,886	.....	33,629.00

0651—00xx Post Registration
(Trademark Processing):

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
Affidavit of Use of a Mark in Commerce Under § 8	12,330	\$.37	\$4,562.00
Combined Affidavit of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	12,330	.37	4,562.00
Affidavit of Incontestability of a Mark Under § 15	131	.37	48.00
Combined Affidavit of Use & Incontestability Under §§ 8 & 15	13,110	.37	4,851.00
Totals	37,901	.....	14,023.00

0651—00xx Trademark Petitions:

Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
Other Petitions	400	\$.37	\$148.00
Total	400	.....	148.00

Filing fees of \$146,674,175 are associated with this collection. Of this total, \$85,657,825 is associated with 0651-0009 Applications for Trademark Registration, \$23,118,950 is associated with 0651-00xx Substantive Submissions Made During Prosecution

of the Trademark Application, \$0 is associated with 0651-00xx Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks), \$37,857,400 is associated with 0651-00xx Post Registration (Trademark Processing), and \$40,000 is

associated with 0651-00xx Trademark Petitions for a new total of \$146,674,175 in filing fees for this collection, as follows:

0651-0009 Application for Trademark Registration:

Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a x b)
Use-Based Trademark/Service Mark Application, including:	21,392	\$375.00	\$8,022,000.00
—Trademark/Service Mark Application			
—Collective Trademark/Service Mark			
—Application			
—Collective Membership Mark			
—Certification Mark Application			
Electronic Use-Based Trademark/Service Mark Application, including:	64,176	325.00	20,857,200.00
—Trademark/Service Mark Application			
—Collective Trademark/Service Mark Application			
—Collective Membership Mark			
—Certification Mark Application			
Intent to Use Trademark/Service Mark Application, including:	38,031	375.00	14,261,625.00
—Trademark/Service Mark Application			
—Collective Trademark/Service Mark Application			
—Collective Membership Mark			
—Certification Mark Application			
Electronic Intent to Use Trademark/Service Mark Application, including:	114,092	325.00	37,079,900.00
—Trademark/Service Mark Application			
—Collective Trademark/Service Mark Application			
—Collective Membership Mark			
—Certification Mark Application			
Application for Registration of Trademark/Service Mark under §§ 44(d) and (e), including:	4,027	375.00	1,510,125.00
—Trademark/Service Mark Application			
—Collective Trademark/Service Mark Application			
—Collective Membership Mark			
—Certification Mark Application			
Electronic Application for Registration of Trademark/Service Mark under §§ 44(d) and (e), including:	12,083	325.00	3,926,975.00
—Trademark/Service Mark Application			
—Collective Trademark/Service Mark Application			
—Collective Membership Mark			
—Certification Mark Application			
Totals	253,801	.....	85,657,825.00

0651-00xx Substantive Submissions Made During Prosecution of the Trademark Application:

Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a x b)
Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use)	18,739	\$100.00	\$1,873,900.00
Electronic Trademark/Service Mark Allegation of Use (Amendment to Allege Use/Statement of Use)	43,726	100.00	4,372,600.00
Request for Extension of Time to File a Statement of Use	30,348	150.00	4,552,200.00
Electronic Request for Extension of Time to File a Statement of Use	70,811	150.00	10,621,650.00
Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action	1,900	100.00	190,000.00
Electronic Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action	4,400	100.00	440,000.00
Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request	1,900	100.00	190,000.00
Electronic Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request	4,400	100.00	440,000.00
Request to Delete Section 1(b) Basis, Intent to Use	235	0.00	0.00
Electronic Request to Delete Section 1(b) Basis, Intent to Use	550	0.00	0.00
Request for Express Abandonment (Withdrawal) of Application	1,115	0.00	0.00
Electronic Request for Express Abandonment (Withdrawal) of Application	3,600	0.00	0.00
Request to Divide	476	100.00	47,600.00
Electronic Request to Divide	1,110	100.00	111,000.00

Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a × b)
Trademark Amendments/Corrections/Surrenders	2,800	100.00	280,000.00
Totals	186,110	.....	23,118,950.00

0651-00xx Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks):

Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a × b)
Revocation of Power of Attorney and/or Appointment of Attorney (Power of Attorney)	38,530	\$0.00	\$0.00
Electronic Revocation of Power of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative	89,900	0.00	0.00
Designation of Domestic Representative	36,196	0.00	0.00
Request for Permission to Withdraw as Attorney of Record	645	0.00	0.00
Electronic Request for Permission to Withdraw as Attorney of Record	1,500	0.00	0.00
Change of Owner's Address Form	15,515	0.00	0.00
Electronic Change of Owner's Address	36,196	0.00	0.00
Totals	218,482	.....	0.00

0651-00xx Post Registration (Trademarks):

Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a × b)
Affidavit of Use of a Mark in Commerce Under § 8	12,330	\$100.00	\$1,233,000.00
Electronic Affidavit of Use of a Mark in Commerce Under § 8	28,770	100.00	2,877,000.00
Combined Affidavit of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	12,330	500.00	6,165,000.00
Electronic Combined Affidavit of Use in Commerce & Application for Renewal of Registration of a Mark Under §§ 8 & 9	28,770	500.00	14,385,000.00
Affidavit of Incontestability of a Mark Under § 15	131	200.00	26,200.00
Electronic Affidavit of Incontestability of a Mark Under § 15	306	200.00	61,200.00
Combined Affidavit of Use & Incontestability Under §§ 8 & 15	13,110	300.00	3,933,000.00
Electronic Combined Affidavit of Use & Incontestability Under §§ 8 & 15	30,590	300.00	9,177,000.00
Totals	126,337	.....	37,857,400.00

0651-00xx Trademark Petitions:

Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a × b)
Other Petitions	400	\$100.00	\$40,000.00
Total	400	.....	40,000.00

*Note: All filing fees are based on per class filing.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB

approval of this information collection; they will also become a matter of public record.

Dated: February 10, 2005.

Susan K. Brown,

Records Officer, U.S. Patent and Trademark Office, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05-3048 Filed 2-16-05; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0013]

Federal Acquisition Regulation; Submission for OMB Review; Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data

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 (9000-0013).

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 cost or pricing data requirements and information other than cost or pricing data. A request for public comments was published in the Federal Register at 69 FR 75935, on December 20, 2004. No comments were received.

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.

DATES: Submit comments on or before March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Contract Policy Division, GSA (202) 501-3221.

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 (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000-0013, Cost or Pricing Data Requirements and Information Other Than Cost Pricing Data, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Truth in Negotiations Act requires the Government to obtain certified cost or pricing data under certain circumstances. Contractors may request an exemption from this requirement under certain conditions and provide other information instead.

B. Annual Reporting Burden

Respondents: 33,332.

Responses Per Respondent: 6.

Total Responses: 199,992.

Hours Per Response: 50.51.

Total Burden Hours: 10,101,684.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0013, Cost or Pricing Data Requirements and Information Other Than Cost Pricing Data, in all correspondence.

Dated: February 11, 2005.

Julia B. Wise

Acting Director, Contract Policy Division.

[FR Doc. 05-3058 Filed 2-16-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant an Exclusive Patent License; Vector Test Systems, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Vector Test Systems, Inc., a revocable, nonassignable, exclusive license to practice worldwide the Government owned inventions described in U.S. Patent Number 6,399,062 entitled "Murine Monoclonal

Antibody Protective Against Plasmodium Vivax Malaria" issued 4 June 2002. The present invention relates to the field of development of immunochromatographic of dipstick assays for detection of Pv210 Antigen in Vectoring Mosquitoes.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500 telephone (301) 319-7428.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500, telephone (301) 319-7428 or E-Mail at: schlagelc@nmrc.navy.mil.

Dated: February 8, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05-3043 Filed 2-16-05; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information, William F. Goodling Even Start Family Literacy Programs—Grants for Indian Tribes and Tribal Organizations; Notice Inviting Applications for New Awards in Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.258A.

DATES: Applications Available: February 18, 2005.

Deadline for Transmittal of Applications: April 11, 2005.

Eligible Applicants: Federally recognized Indian tribes and tribal organizations. Applicable definitions of the terms "Indian tribe" and "tribal organization" are in section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b.

Estimated Available Funds: \$4,975,000. Contingent upon the availability of funds and quality of applications we may make additional awards in subsequent years from the list

of unfunded applicants from this competition.

Estimated Range of Awards:

\$150,000–\$250,000 per year.

Estimated Average Size of Awards:

\$200,000 per year.

Estimated Number of Awards: 20–33.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The William F. Goodling Even Start Family Literacy Programs (Even Start), including the grants for Indian tribes and tribal organizations, are intended to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program. These programs are implemented through cooperative activities that: build on high-quality existing community resources to create a new range of educational services for most-in-need families; promote the academic achievement of children and adults; assist children from low-income families to meet challenging State content and student achievement standards; and use instructional programs that are based on scientifically based reading research and on the prevention of reading difficulties for children and adults, to the extent such research is available. A description of the required fifteen program elements for which funds must be used is included in the application package.

Priorities: Under this competition we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: For FY 2005 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Early Childhood Education Service in a Group Setting

The Secretary is especially interested in programs that offer center-based early childhood education services.

The research in early childhood education shows that educational services for young children that are

provided in a center are more likely to be intensive and, therefore, more likely to result in significant learning outcomes than non-center-based services. For example, the Third National Even Start Evaluation showed that children who participated more intensively in early childhood education scored higher on standardized literacy skills. A center is defined, for the purpose of this competition, as a place where early childhood educational services can be provided to a group of children from multiple households.

Invitational Priority 2—Early Childhood Education Services Provided for Minimum of a 3-year Age Range

The Secretary is especially interested in Even Start tribal projects that provide early childhood education services for children for at least a 3-year age range, which may begin at birth, in order to enhance the early language, literacy, and early reading development of preschool-age children.

Under the statutory requirements that apply to the State-administered Even Start Family Literacy program, local programs must serve a 3-year age range of children, which may begin at birth. This priority would encourage tribal Even Start programs to serve a similar age range in order to enhance early language, literacy, and early reading development of preschool-age children.

Program Authority: 20 U.S.C. 6381a(a)(1)(C).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: \$4,975,000. Contingent upon the availability of funds and quality of applications we may make additional awards in subsequent years from the list of unfunded applicants from this competition.

Estimated Range of Awards: \$150,000–\$250,000 per year.

Estimated Average Size of Awards: \$200,000 per year.

Estimated Number of Awards: 20–33.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Federally recognized Indian tribes and tribal organizations. Applicable definitions of the terms “Indian tribe” and “tribal organization” are in section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b.

2. *Cost Sharing or Matching:* Cost sharing requirements for these grants are detailed in section 1234(b) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA).

3. *Other:* In general, a family is eligible to participate in an Even Start project for Indian tribes and tribal organizations if they qualify under the following requirements: (a) the parent(s) is eligible to participate in adult education and literacy activities under the Adult Education and Family Literacy Act, the parent(s) is within the State’s compulsory school attendance age range (in which case a local educational agency must provide or ensure the availability of the basic education component), or the parent(s) is attending secondary school; and (b) the child (or children) is younger than eight years of age. More specific information on family eligibility is contained in section 1236 of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain an application via the Internet, use the following address: <http://www.ed.gov/programs/evenstartindian/applicant.html>. To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll-free): 1–800–576–7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html> or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.258A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of the application, together with the forms you must submit, are in the application package for this competition.

Page and Appendices Limits: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative in Part III of the application to the equivalent of no more than 25 typed pages. Part IV of the application is where you, the applicant, provide a budget narrative that reviewers use to evaluate your application. You must limit the budget narrative in Part IV of the application to the equivalent of no more than 3 typed pages. For all page limits, use the following standards:

- The page limits do not apply to: the cover sheet; the one-page abstract; the budget forms; assurances and certifications (included in Section E of the application package); and the endnotes included as an Appendix for Part III of your application (see section C of the application package).

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application and budget narratives, including titles, headings, footnotes, quotations, references, and captions. Text in tables, charts, graphs, and the limited Appendices may be single spaced.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). You may use other point fonts for any tables, charts, graphs, and the limited Appendices, but those tables, charts, graphs and limited Appendices should be in a font size that is easily readable by the reviewers of your application.

- Any tables, charts, or graphs are included in the overall application narrative and budget narrative page limits. The limited Appendices are not part of these page limits.

- Appendices are limited to the following: the curriculum vitae or position descriptions of no more than 5 people (including key contract personnel and consultants); and endnote citations of no more than 2 pages for the scientifically based reading research upon which your instructional programs are based.

- Other application materials are limited to the specific materials indicated in the application package and may not include any video or other non-print materials.

Our reviewers will not read any pages of your application that—

- Exceed the page limits if you apply these standards; or
- Exceed the equivalent of the page limits if you apply other standards.

In addition, our reviewers will not read or view any Appendices or enclosures (including non-print materials such as videotapes or CDs) other than those described in this notice and the application package.

3. *Submission Dates and Times:*

Applications Available: February 18, 2005.

Deadline for Transmittal of Applications: April 11, 2005.

Applications for grants under this program may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Recipients of an Even Start Indian tribe and tribal organization grant may not use funds awarded under this competition for the indirect costs of a project, or claim indirect costs as part of the local project share. (Section 1234(b)(3) of the ESEA) Grant recipients may request that the Secretary waive this requirement under appropriate circumstances. To obtain a waiver, a recipient must demonstrate to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start program. (Section 1234(b)(2) of the ESEA.) Information about requesting a waiver is in the application package. We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* If you submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: <http://e-grants.ed.gov>.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

- Your electronic application must comply with any page limit requirements described in this notice.

- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The applicant's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control

Center at (202) 245-6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see section VII. Agency Contact) or (2) the e-Grants help desk at 1-888-336-8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail. If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.258A), 400 Maryland Avenue, SW., Washington, DC 20202-4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.258A), 7100 Old Landover Road, Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.258A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

1. You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

2. The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgement within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. **Selection Criteria:** The following selection criteria for this competition are from 34 CFR 75.210 of EDGAR. Further information about each of these selection criteria is in the application package. The maximum score for each criterion is indicated in parentheses after each criterion.

(a) **Quality of the project design.** (30 points) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (34 CFR 75.210(c)(2)(ii))

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (34 CFR 75.210(c)(2)(xiii))

(3) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (34 CFR 75.210(c)(2)(xvii))

(b) **Quality of project services.** (25 points) The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(d)(2)) In addition, the Secretary considers the following factors:

(1) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (34 CFR 75.210(d)(3)(v))

(2) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured

against rigorous academic standards. (34 CFR 75.210(d)(3)(vii))

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (34 CFR 75.210(d)(3)(ix))

(c) *Quality of project personnel.* (10 points) The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(e)(2)) In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator. (34 CFR 75.210(e)(3)(i))

(2) The qualifications, including relevant training and experience, of key project personnel. (34 CFR 75.210(e)(3)(ii))

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors. (34 CFR 75.210(e)(2)(iii))

(d) *Adequacy of resources.* (10 points) The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (34 CFR 75.210(f)(2)(i))

(2) The extent to which the budget is adequate to support the proposed project. (34 CFR 75.210(f)(2)(iii))

(e) *Quality of the management plan.* (10 points) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210(g)(2)(i))

(f) *Quality of the project evaluation.* (15 points) The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the

evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (34 CFR 75.210(h)(2)(i))

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (34 CFR 75.210(h)(2)(vi))

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to: <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Secretary has established the following measures for evaluating the overall effectiveness of the Even Start program, which Tribal Even Start projects are expected to meet: (1) Percentage of adults who achieve significant learning gains on measures of literacy, and percentage of limited English proficient (LEP) adults who achieve significant learning gains on measures of English language acquisition, as measured by the Comprehensive Adult Student Assessment System (CASAS) or the Tests of Adult Basic Education (TABE);

(2) percentage of Even Start adults with a high school completion goal or a percentage of those with a General Equivalency Diploma (GED) attainment goal who earn a high school diploma or equivalent; (3) percentage of Even Start children entering kindergarten who demonstrate age-appropriate development of receptive language as measured by the Peabody Picture Vocabulary Test-III (PPVT-III); and (4) the average number of letters that Even Start children are able to identify as measured by the Uppercase Letter Naming subtask on the PALS Pre-K assessment. All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Doris Sligh, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W246, Washington, DC 20202-6132. Telephone: (202) 260-0968, or by e-mail: Doris.Sligh@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: February 11, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E5-657 Filed 2-16-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY**Agency Information Collection Extension**

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB) concerning printing and publishing activities. The collection package 1910-0100 is formerly known as the "Information Management" collection. Data collected under this package is used to ensure that the Department's information resources are properly managed. The Department of Energy is required to submit an annual report to the Joint Committee on Printing (JCP) regarding its printing activities. The Department reports on information gathered and compiled from its facilities nationwide on the usage of in-house printing and duplication facilities as well as all printing procedure from external vendors. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before April 18, 2005. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to:

Mary R. Anderson, ME-42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or by fax at (202) 586-5460 or by e-mail at Mary.Anderson@hq.doe.gov and to Sharon A. Evelin, Director, IM-11/ Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585-1290; or

by fax at 301-903-9061 or by e-mail at sharon.evelin@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mary R. Anderson at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.*: 1910-0100; (2) *Package Title*: Printing and Publishing Activities; (3) *Type of Review*: renewal; (4) *Purpose*: The collection of the data is a Joint Committee on Printing (JCP) requirement; (5) *Respondents*: 336; (6) *Estimated Number of Burden Hours*: 947.

Statutory Authority: Title V: Joint Committee on Printing Report Forms.

Issued in Washington, DC, on February 11, 2005.

Sharon A. Evelin,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 05-3067 Filed 2-16-05; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7874-3]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566-1672, or e-mail at auby.susan@epa.gov and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests*OMB Approvals*

EPA ICR No. 1655.05; Regulation of Fuels and Fuel Additives; Detergent Gasoline; in 40 CFR part 80, subpart G; was approved 01/14/2005; OMB Number 2060-0275; expires 01/31/2008.

EPA ICR No. 1230.17; Prevention of Significant Deterioration Non-Attainment Area New Sources Review (Renewal); in 40 CFR 51.160 to 51.166; 40 CFR 52.21; 40 CFR 52.24; was approved 01/25/2005; OMB Number 2060-0003; expires 01/31/2008.

EPA ICR No. 1718.06; Recordkeeping and Reporting for the Fuel Quality Regulations for Diesel Fuel Sold in 2001 & Later Years; for Tax-Exempt (Dyed) Highway Diesel Fuel; & Nonroad Locomotive & Marine Diesel Fuel; in 40 CFR 80.29, 80.240, 80.530-80.532, 80.535-80.536, 80.550-80.555, 80.560-80.561, 80.590-80.594, 80.597, 80.600-80.604, 80.607 and 80.62; was approved 01/07/2005; OMB Number 2060-0308; expires 01/31/2008.

EPA ICR No. 1722.04; Emission Certification and Compliance Requirements for Marine Spark-ignition Engines (Renewal); in 40 CFR part 91, subparts B and C; was approved 01/07/2005; OMB Number 2060-0321; expires 01/31/2008.

EPA ICR No. 2151.01; Obtaining Feedback on Public Involvement Activities and Processes; was approved 01/10/2005; OMB Number 2010-0039; expires 01/31/2008.

EPA ICR No. 1367.07; Regulation of Fuels and Fuel Additives: Gasoline Volatility; in 40 CFR 80.27; was approved 01/19/2005; OMB Number 2060-0178; expires 01/31/2008.

EPA ICR No. 1360.07; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Renewal); in 40 CFR part 280; 40 CFR part 281; was approved 01/24/2005; OMB Number 2050-0068; expires 01/31/2008.

EPA ICR No. 1189.14; Identification, Listing and Rulemaking Petitions (Renewal); in 40 CFR 260.20-260.22, 40 CFR 260.31-260.33, 40 CFR 261.3(a)-(c), 40 CFR 261.31, 40 CFR 261.35, 40 CFR 261.4; was approved 01/24/2005; OMB Number 2050-0053 expires 01/31/2008.

EPA ICR No. 0820.09; Hazardous Waste Generator Standards; in 40 CFR part 262; was approved 01/31/2005; OMB Number 2050-0035; expires 01/31/2008

EPA ICR No. 1365.07; Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule; in 40 CFR part 763, subpart E; was approved 01/31/2005; OMB Number 2070-0091; expires 01/31/2008.

EPA ICR No. 1352.10; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal); in 40 CFR part 370; was approved 01/

31/2005; OMB Number 2050-0072; expires 01/31/2008.

EPA ICR No. 0661.08; NSPS for Asphalt Processing and Roofing Manufacture; in 40 CFR part 60, subpart UU; was approved 01/26/2005; OMB Number 2060-0002; expires 01/31/2008.

EPA ICR No. 1051.09; NSPS for Portland Cement Plants; in 40 CFR part 60, subpart F; was approved 01/26/2005; OMB Number 2060-0025; expires 01/31/2008.

Short Term Extensions

EPA ICR No. 2052.01; Information Collection Request for Long Term 1 Enhanced Surface Water Treatment Rule (Final Rule); OMB Number 2040-0229; on 01/27/2005 OMB extended the expiration date to 07/31/2005.

EPA ICR No. 1897.04; Information Requirements for Marine Diesel Engines (Nonroad Large SI Engines and Marine Diesel Engines) (Amendments) (Final Rule); OMB Number 2060-0460; on 01/28/2005 OMB extended the expiration date to 04/30/2005.

Disapproved and Continue

EPA ICR No. 0783.45; Vehicle Emission Certification and Fuel Economy Compliance (Final Rule for Service Information); OMB Number 2060-0104; was withdrawn on 01/14/2005.

Dated: February 10, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05-3061 Filed 2-16-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS-0990-New]

Agency Information Collection

Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection

Request: New Collection, Regular.

Title of Information Collection:

Homeless Women Veterans Survey.

Form/OMB No.: OS-0990-New.

Use: This information will be used to assess and identify the issues and problems of homelessness among women veterans, and to develop programs to better meet their gender specific needs.

Frequency: Reporting and on occasion.

Affected Public: Individuals or households.

Annual Number of Respondents: 30.

Total Annual Responses: 30.

Average Burden Per Response: 1 hour.

Total Annual Hours: 30.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at <http://www.hhs.gov/oirm/infocollect/pending/> or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to naomi.cook@hhs.gov, or call the Reports Clearance Office on (202) 690-6162.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address:

Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990-New), Room 531-H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: February 2, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05-3042 Filed 2-16-05; 8:45 am]

BILLING CODE 4168-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs, Office of Public Health and Science, Department of Health and Human Services, published a notice in the **Federal Register** July 7, 2004, announcing the anticipated availability of funds for family planning services grants. This notice contained an error. An eligible Population/area was not listed as available for competition in 2005. A document correcting the omission of the Seattle, Washington Population/area as competitive in 2005 was published in the **Federal Register** August 10, 2004. Later, two additional Populations/areas, Illinois, Chicago area and Arizona, Navajo Nation, became available for competition in 2005. A second correction notice was published in the **Federal Register** November 22, 2004, which included all Populations/areas available for competition in 2005.

Since that time, it has been recognized that the project period start date indicated in Table I for the Seattle, Washington Population/area is incorrect. This notice corrects the project period start date to 09/30/2005 for the FY 2005 competitive year. However, the first year of the project period beginning 09/30/2005 will be abbreviated. The budget period for the 01-year will end on 06/30/2006. In subsequent years, the annualized budget period will begin on 07/01 of each project period year, and will end on 06/30 of each project period year. The purpose of this change is to modify the project period start and end dates for the Seattle, Washington Population/area in order to enhance project oversight.

FOR FURTHER INFORMATION CONTACT: Susan B. Moskosky, 301-594-4008.

Correction

In the **Federal Register** of July 7, 2004, FR Doc. 03-15514, on page 41,115, correct Table I to read:

TABLE I

States/populations/areas to be served	Approximate funding available	Application due date	Approx. grant funding date
Region I: Massachusetts	\$5,217,000	09-01-04	01-01-05
Region II: New York State	9,635,000	03-01-05	07-01-05
Puerto Rico	2,389,000	03-01-05	07-01-05
Region III: Washington, DC	1,053,000	09-01-04	01-01-05
Region IV: Kentucky	5,203,000	03-01-05	07-01-05
South Carolina	5,569,000	03-01-05	07-01-05
Tennessee	5,914,000	03-01-05	07-01-05
Region V: Illinois, Chicago area	200,225	06-01-05	09-30-05
Region VI: Arkansas	3,241,000	11-01-04	03-01-05
New Mexico	2,228,000	09-01-04	01-01-05
Region VII: Kansas	2,332,000	03-01-05	07-01-05
Region VIII: No areas competitive in FY 2005			
Region IX: Gila River Indian Community	251,000	03-01-05	07-01-05
Government of Guam	452,000	03-01-05	07-01-05
Republic of Palau	99,000	03-01-05	07-01-05
Federated States of Micronesia	411,000	03-01-05	07-01-05
Arizona, Navajo Nation	640,000	03-01-05	07-01-05
Region X: Idaho	1,318,000	03-01-05	07-01-05
Oregon, Multnomah County	330,000	03-01-05	07-01-05
Washington, Seattle*	158,450	06-01-05	09-30-05

* The first year budget period of this grant will be abbreviated. The budget period start and end dates in the first year will be 09/30/05-06/30/06. In subsequent years of the approved project period, the budget periods will be 07/01 through 06/30 of each year. Applications should reflect the abbreviated budget period of the first year of the project period.

Dated: February 4, 2005.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 05-3059 Filed 2-16-05; 8:45 am]

BILLING CODE 4150-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry (ATSDR); Public Meeting of the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

Name: Public meeting of the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.-6 p.m., March 22, 2005.

Place: Oak Ridge Mall, Alpine Meeting Room, 333 East Main Street,

Oak Ridge, Tennessee. Telephone: (865) 482-2008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: A memorandum of Understanding (MOU) was signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments (PHA) at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced

by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to the Centers for Disease Control and Prevention (CDC). Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities, and input from members of the ORRHES is part of these efforts.

Purpose: The purpose of this meeting is to address issues that are unique to community involvement with the ORRHES, and to provide agency updates.

Matters To Be Discussed: agenda items will include a brief discussion on the ATSDR project management plan and the schedule of PHA's to be released in FY2005-2006; overall health communication plan; Y-12 PHA Video; launch of the new ATSDR/ORRHES website; updates and recommendations

from the Exposure Evaluation, Community Concerns and Communications, and Health Outcome Data Workgroups; and agency updates. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Marilyn Horton, Designated Federal Official and Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E-32 Atlanta, Georgia 30333, telephone 1-888-42-ATSDR (28737), fax 404/498-1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: February 11, 2005.

Alvin Hall,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05-3051 Filed 2-16-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Survey of Administrative Costs for Children in Title IV-E Foster Care

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	52	1	9	468

Estimated Total Annual Burden Hours: 468 hours.

Additional Information: ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by February 25, 2005. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Greta Johnson at (202) 401-9384. In addition, a request may be made by sending an e-mail request to: grjohnson@acf.hhs.gov.

Comments and questions about the information collection described above should be directed to the following address by February 25, 2005: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project. E-mail: katherine_T_Astrich@comb.eop.gov.

Dated: February 14, 2005.

Robert Sargis,
Reports Clearance Officer.
[FR Doc. 05-3087 Filed 2-16-05; 8:45 am]
BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Special Improvement Project (SIP) Grants

Announcement Type: Initial—Grant.
Funding Opportunity Number: HHS-2005-ACF-OCSE-FI-0005.

CFDA Number: 93.601.

Due Date for Applications: Application is due May 3, 2005.

Executive Summary: The Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) invites eligible applicants to submit competitive grant applications for special improvement projects, which further the national child support mission, vision, and goals. For FY 2005, OCSE is looking for projects that reflect the goals of the new FY 2005-2009 strategic plan including the goals that all children have parentage established; and all children in IV-D (child support) cases have support orders established, have medical coverage and receive financial support from parents as ordered. The last goal of the strategic plan is that the IV-D program will be efficient and responsive in its operations. Applications will be screened and evaluated as indicated in this program

OMB No.: New Collection.

Description: The Administration for Children and Families is requesting State child welfare agencies voluntarily to complete a survey of administrative cost claims associated with children placed in unlicensed foster family homes. This information is necessary to determine the fiscal impact of the Notice of Proposed Rulemaking on the Administrative Costs for Children in Title IV-E Foster Care published in the **Federal Register** on January 31, 2005 (70 FR 4803).

Respondents: State child welfare agencies.

announcement. Awards will be contingent upon the outcome of the competition and the availability of funds. For FY 2005, approximately \$1.8 million is available for all priority areas. A non-Federal match is not required. The anticipated start date for the new awards is August 1, 2005; projects under Priority 1 may run through December 31, 2006, for a period of up to 17 months; projects under Priorities 2, 4 and 5 may run through July 31, 2007, for a period of up to 24 months and projects under Priority 3 may run through July 31, 2008, for a period of up to 36 months.

Legislative Authority: Section 452(j) of the Social Security Act, 42 U.S.C. 652(j), provides Federal funds for information dissemination and technical assistance to States, training of Federal and State staff to improve child support programs, and research, demonstration, and special projects of regional or national significance relating to the operation of State child support enforcement programs.

I. Funding Opportunity Description

Program Purpose and Objectives. To fund a number of special improvement projects, which further the national child support mission to ensure that all children receive financial and medical support from their parents and which strengthen the ability of the nation's child support programs to collect

support on behalf of children and families. For FY 2005, OCSE is looking for projects that reflect the goals of the new FY 2005–2009 strategic plan including the goals that all children have parentage established; and all children in IV–D (child support) cases have support orders established, have medical coverage, and receive financial support from parents as ordered. The last goal of the strategic plan is that the IV–D program will be efficient and responsive in its operations. The national strategic plan reflects more than 10 years of child support professionals' brainstorming and consensus building among various branches and levels of government. OCSE is looking for innovative projects which promote some of the basic themes of the national strategic plan in that child support should be a reliable source of income for families; that the child support system should help secure children's health care coverage; and that child support agencies should use early prevention strategies to help build a culture of compliance in which parents will support their children voluntarily and reliably. We invite applications for partnerships with entities such as courts and/or tribunals and community- and faith-based organizations, which have the ability to address the needs of harder-to-serve populations, such as low-income non-custodial parents and culturally diverse populations. Applicants should understand that OCSE will not award grants for special improvement projects which (a) duplicate automated data processing and information retrieval system requirements or enhancements and associated tasks which are specified in the Social Security Act; or (b) which cover costs for routine activities that would normally be reimbursed under the Child Support Program (e.g., adding staff positions to perform routine CSE tasks), or by other Federal funding sources. Proposals and their accompanying budgets will be reviewed from this perspective.

Over the past five years, OCSE has awarded an average of 11 grants per year, totaling approximately \$1.3 million per year. All grant awards are subject to the availability of appropriated funds. A non-Federal match is not required. The anticipated start date for the new awards is August 1, 2005; projects under Priority 1 may run through December 31, 2006, for a period of up to 17 months; projects under Priorities 2, 4 and 5 may run through July 31, 2007, for a period of up to 24 months; and projects under

Priority 3 may run through July 31, 2008, for a period of up to 36 months.

The Federal OCSE will provide the State CSE agency the opportunity to comment on the merits of local CSE agency applications before final award. Given that the purpose of these projects is to improve child support enforcement programs, it is critical that applicants have the cooperation of IV–D agencies to operate these projects. Preference will be given to applicants representing CSE agencies and applicant organizations which have letters of commitment or cooperative agreements with CSE agencies. All applications developed jointly by more than one agency/organization must identify a single lead organization as the official applicant. The lead organization will be the recipient of the grant award. Participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors with their written authorization.

On October 21, 2004, OCSE conducted an audio conference call on "Writing a Grant Application Made Easy." The material presented covered major differences between Section 1115 and Special Improvement Project (SIP) grant programs, key elements of the evaluation criteria, and advice on what to include and common mistakes to avoid. It did not cover the details of the published announcement or discuss the specific priority areas. The recorded tape of this call is available through March 31, 2005, toll free at 1–866–442–8065.

Priority Area 1

Customizing Approaches for Improved Customer Service

1. Description: Under this solicitation, projects would design and implement customized child support enforcement strategies to improve services in specific sites such as, urban areas or multi-state metro areas, or for specific populations (e.g., incarcerated or formerly incarcerated parents or TANF recipients). Strategies may include, but are not limited to, two or more of the following customized service approaches: distinguishing between those who refuse to pay (e.g., denial/revocation of licenses and other remedies) and those who cannot pay (e.g., referral to workforce investment agency activities); working with TANF recipients nearing end of receipt of public assistance to help them get child support more regularly; using software to collect and target data for improved case management (however, SIP grant funds may not be used for substantial systems development or design);

preventing the build-up of arrears through proactive early intervention; or co-location of staff to enhance inter-jurisdictional case processing.

II. Award Information

Funding Instrument Type: Grant.
Anticipated Total Priority Area Funding: \$600,000 per project period.
Anticipated Number of Awards: 3.
Ceiling of Individual Awards: \$200,000 per project period.
Floor on Amount of Individual Awards: None.

An application that exceeds the upper value of the dollar range specified will be considered non-responsive.

Average Projected Award Amount: \$200,000 per project period.

Length of Project Periods: 17 months.

Priority Area 2

Improving Judicial/Administrative Child Support Enforcement Processes

1. Description: Under this solicitation, OCSE is looking for projects that design and implement approaches, which lead to the establishment of child support orders that more appropriately address circumstances of both parents. Such approaches could include better service of process, use of stipulated (voluntary) agreements between both parents on child support and related matters, improved court processes, along with using more culturally sensitive materials for diverse populations (such as tribal, ethnic groups, those with low literacy, etc.), as appropriate. Approaches should also address perceived obstacles to payment, including affordability of orders, matters of procedural justice and/or access to children.

II. Award Information

Funding Instrument Type: Grant.
Anticipated Total Priority Area Funding: \$375,000 per project period.
Anticipated Number of Awards: 2.
Ceiling of Individual Awards: \$187,500 per project period.
Floor on Amount of Individual Awards: None.

An application that exceeds the upper value of the dollar range specified will be considered non-responsive.

Average Projected Award Amount: \$187,500 per project period.

Length of Project Periods: 24 months with two 12-month budget periods.

OCSE is providing \$150,000 for the first 12-month budget period and \$37,500 for the second 12-month budget period to provide sufficient time for these projects to finalize activities and evaluation reports.

Priority Area 3

Improving Child Support and Marriage Education Services for Ethnic and Culturally Diverse Populations

1. Description: Under this solicitation, projects would target underserved ethnic and culturally diverse populations, including, but not limited to, the Hispanic/Latino community, the Asian-American and Pacific Islander community, the African-American community, and Native Americans, American Indians, and Alaskan Natives so that they will receive more effective child support enforcement services and appropriate healthy marriage education. In addition, projects would identify and eliminate barriers that make it harder for ethnic and culturally diverse populations to establish paternity, seek child support assistance and to form and sustain healthy marriages. OCSE is looking for projects which implement strategies to improve and strengthen family stability by providing a combination of child support and marriage education services to ethnic and culturally diverse non-married, custodial, and non-custodial parents. We are interested in collaborative approaches between State/local/tribal governments and/or courts/tribunals with community-based, faith-based organizations, or education institutions and universities (including Historically Black Colleges and Universities) to offer model service approaches (not outreach campaigns) which reduce identified barriers and implement new service delivery strategies within the community. These service approaches should demonstrate the impact on child support outcomes such as paternity establishment, orders established, collections, and healthy marriage formation. This solicitation is not designed to provide funding for the development and implementation of Tribal child support enforcement programs since these provisions are being addressed through Federal regulation. As noted under "III. Eligibility Information" below, Tribes and Tribal Organizations are eligible to apply for any of the SIP priority areas described in this announcement.

II. Award Information

Funding Instrument Type: Grant.
Anticipated Total Priority Area Funding: \$1,500,000 per project period.
Anticipated Number of Awards: 5.
Ceiling of Individual Awards: \$300,000 per project period.
Floor on Amount of Individual Awards: None.

An application that exceeds the upper value of the dollar range specified will be considered non-responsive.

Average Projected Award Amount: \$300,000 per project period.

Length of Project Periods: 36 months with three 12-month budget periods.

Priority Area 4

Improving Health Care Coverage for Children in Child Support Cases

1. Description: Under this solicitation, OCSE is looking for projects that develop and test creative strategies to improve medical support coverage for children in child support cases. Sufficient health care coverage for children is a primary consideration for the child support enforcement program. Strategies may include, but are not limited to, approaches which would improve employer and health insurance plan administrator compliance with the National Medical Support Notice (NMSN); encourage employers to provide information to CSE agencies about their health insurance providers so CSE agencies could better track and monitor medical support coverage; develop information that could be replicated in other communities for custodial and non-custodial parents available at the local level; or improve data interfaces and other information exchanges between State/local CSE agencies and agencies administering Medicaid and SCHIP programs.

II. Award Information

Funding Instrument Type: Grant.
Anticipated Total Priority Area Funding: \$250,000 per project period.
Anticipated Number of Awards: 2.
Ceiling of Individual Awards: \$125,000 per project period.
Floor on Amount of Individual Awards: None.

An application that exceeds the upper value of the dollar range specified will be considered non-responsive.

Average Projected Award Amount: \$125,000 per project period.

Length of Project Periods: 24 months with two 12-month budget periods.

OCSE is providing \$100,000 for the first 12-month budget period and \$25,000 for the second 12-month budget period to provide sufficient time for these projects to finalize activities and evaluation reports.

Priority Area 5

Improving Local Collaboration Strategies Between Child Support Enforcement and Community Agencies

1. Description: Under this solicitation, OCSE is interested in collaboration

strategies between local CSE agencies and community- and faith-based organizations, health clinics, birthing centers, educational institutions and universities (including Historically Black Colleges and Universities) or public agencies such as Head Start, Medicaid, and TANF, that serve child support clients. Projects would demonstrate innovative strategies to educate parents, especially low-income, unwed parents, about child support enforcement policies in order to expedite the establishment of parentage, and encourage parents to meet their child support and parental responsibilities. OCSE has funded a number of projects designed to provide mentoring and employment services to non-custodial parents to increase child support outcomes. Although these types of projects provided valuable services to non-custodial parents, they generally did not produce significant child support outcomes. Thus, under this solicitation OCSE is looking for innovative collaboration strategies that are primarily intended to improve child support performance in paternity establishment, support order establishment, payment of current or overdue support and additionally, help increase healthy marriage formation.

II. Award Information

Funding Instrument Type: Grant.
Anticipated Total Priority Area Funding: \$250,000 per project period.
Anticipated Number of Awards: 2.
Ceiling of Individual Awards: \$125,000 per project period.
Floor on Amount of Individual Awards: None.

An application that exceeds the upper value of the dollar range specified will be considered non-responsive.

Average Projected Award Amount: \$125,000 per project period.

Length of Project Periods: 24 months with two 12-month budget periods.

OCSE is providing \$100,000 for the first 12-month budget period and \$25,000 for a second 12-month budget period to provide sufficient time for these projects to finalize activities and evaluation reports.

III. Eligibility Information*1. Eligible Applicants*

Eligible applicants for these special improvement project grants are State (including District of Columbia, Guam, Puerto Rico, and the Virgin Islands) Human Services Umbrella agencies, other State agencies (including State IV-D agencies), Tribes and Tribal Organizations, local public agencies (including IV-D agencies), non-profit

organizations (including faith-based and community-based organizations and universities such as Historically Black Colleges and Universities) and consortia of State and/or local public agencies.

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Documentation of non-profit status must be submitted by time of award. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at <http://www.acf.hhs.gov/programs/ofs/forms.htm>.

Additional Information on Eligibility

The applicant should clearly indicate in its application(s) for which specific priority area it is applying. Applicants may submit different applications covering different priority areas or they may submit different applications for different projects under one priority area; however, they may not submit one application for the same project covering multiple priority areas.

2. Cost Sharing/Matching

No.

3. Other Eligibility Information

No grant award will be made under this announcement on the basis of an incomplete application.

All applicants must have a Dun & Bradstreet Universal Numbering System (DUNS) number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new

Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (<http://www.Grants.gov>). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1-866-705-5711 or you may request a number on-line at <http://www.dnb.com>.

Disqualification Factors: An application that exceeds the upper value of the dollar range specified will be considered non-responsive.

Late applications will be rejected and will not receive further consideration.

IV. Application and Submission Information

1. Address To Request Application Package

ATTN: Jean Robinson, Program Analyst, Administration for Children and Families, Office of Child Support Enforcement (OCSE), Division of State, Tribal and Local Assistance, 370 L'Enfant Promenade, SW., 4th Floor, East Wing, Washington, DC 20447. Phone: 202-401-5330. E-mail: jrobinson@acf.hhs.gov.

2. Content and Form of Application Submission

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the <http://www.Grants.gov/Apply> site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications submitted via e-mail or fax.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically

through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.

• Your application must comply with any page limitation requirements described in this program announcement.

• After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.

• We may request that you provide original signatures on forms at a later date.

• You may access the electronic application for this program on <http://www.Grants.gov>.

• You must search for the downloadable application package by the CFDA number.

An original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures on the original, and be submitted unbound.

Private non-profit organizations need to submit proof of their non-profit status as described above under "Eligibility Information" and are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at <http://www.acf.hhs.gov/programs/ofs/forms.htm>.

The applicant should clearly indicate in its application(s) for which specific priority area it is applying. Applicants may submit different applications covering different priority areas or they may submit different applications for different projects under one priority area; however, they may not submit one application for the same project covering multiple priority areas. The

length of the application, excluding the required application forms, certifications, and resumes, should be no more than 20 to 25 pages, double-spaced format preferred. A page is a single-side of an 8½" x 11" sheet of plain white paper. (Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process.) The project description should include all the information requirements described in the specific evaluation criteria outlined in this program announcement under Part V.

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF-424A, Budget Information—Non-Construction Programs; SF-424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of \$100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348-0046). Applicants must

sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103-227, Title XII Environmental Tobacco Smoke (also known as the PRO-KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: <http://www.acf.hhs.gov/programs/ofs/forms.htm>.

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date: Application is due May 3, 2005.

Explanation of Due Dates

The closing time and date for the receipt of applications is 4:30 p.m., eastern time, referenced above. Mailed or hand-delivered applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447, between Monday and Friday (excluding Federal holidays). This address must appear on

the envelope/package containing the application with the note "Attention: Sylvia M. Johnson." Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m., eastern time, on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. See Section IV.6. for more detailed information on submission requirements.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described in Section IV.2.	Consistent with guidance in "Content and Form of Application Submission" section of this announcement.	By application due date.
Abstract of Proposed Project	As described in Section IV.2.	Consistent with guidance in "Content and Form of Application Submission" section of this announcement.	By application due date.
Completed Standard Form 424.	As described in Section IV.2.	May be found on http://www.acf.hhs.gov/programs/ofs/forms.htm .	By application due date.
Completed Standard Form 424A.	As described in Section IV.2.	May be found on http://www.acf.hhs.gov/programs/ofs/forms.htm .	By application due date.
Narrative Budget Justification.	As described in Section IV.2.	Consistent with guidance in "Content and Form of Application Submission" section of this announcement.	By application due date.
Project Narrative	As described in Section IV.2.	Consistent with guidance in "Content and Form of Application Submission" section of this announcement.	By application due date.

What to submit	Required content	Required form or format	When to submit
Proof of Non-Profit Status ...	As described in Section III.1.	May be found in Section III. Eligibility Information	By time of award.
Certification regarding lobbying.	As described in Section IV.2.	May be found on http://www.acf.hhs.gov/programs/ofs/forms.htm .	By time of award.
Certification regarding environmental tobacco smoke.	As described in Section IV.2.	May be found on http://www.acf.hhs.gov/programs/ofs/forms.htm .	by time fo award.
Certification regarding non-construction programs.	As described in Section IV.2.	May be found on http://www.acf.hhs.gov/programs/ofs/forms.htm .	By time of award.

Additional Forms

Private non-profit organizations are encouraged to submit with their

applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit

Grant Applicants" at <http://www.acf.hhs.gov/programs/ofs/forms.htm>.

What to submit	Required content	Required form or format	When to submit
Survey for Private Non-Profit Grant Applicants.	Per required form	Maybe found on http://www.acf.hhs.gov/programs/ofs/forms.htm .	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2).

A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs

are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: <http://www.whitehouse.gov/omb/grants/spoc.html>.

5. Funding Restrictions

Construction is not an allowable activity or expenditure under this solicitation.

Grant awards will not allow reimbursement of pre-award costs.

Number of Projects in Application

Applicants may submit different applications covering different priority areas or they may submit different applications for different projects under one priority area; however, they may not submit one application for the same project covering multiple priority areas.

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m., eastern time, on or before the closing date.

Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 4th Floor West, Washington, DC 20447. ATTN: Sylvia M. Johnson, SIP Application.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m., eastern time, on or before the closing date.

Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., eastern time, Monday through Friday (excluding Federal holidays). Applications may be delivered to: ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, SW., Washington, DC 20024.

Electronic Submission: <http://www.Grants.gov>. Please see section IV.2 Content and Form of Application Submission for guidelines and requirements when submitting applications electronically.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104-13)

Public reporting burden for this collection of information is estimated to average 15 hours per response, including the time for reviewing instructions, gathering and maintaining

the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970-0139 which expires 4/30/2007. 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.

1. Criteria

The following are instructions and guidelines on how to prepare the "project summary/abstract" and "Full Project Description" sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

Part 1 The Project Description Overview

Purpose. The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criterion should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Part II General Instructions for Preparing a Full Project Description

Introduction. Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

Project Summary Abstract. Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance. Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and

subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach. Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. For example, increased use of an interstate child support enforcement remedy (such as income withholding, tax refund offset) is projected to have quarterly results of a 5% increase in income withholding collections and a 5% increase in automated enforcement collections. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

Evaluation. Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will

determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Additional Information. Following are requests for additional information that need to be included in the application:

Staff and Position Data. Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

Budget and Budget Justification. Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also, include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General. Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. "Federal resources" refers only to the ACF grant for which you are applying. "Non-Federal resources" are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the

project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Description: Costs of project-related travel by employees of the applicant organization (does not include consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, *per diem*, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment. Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy, which includes the equipment definition.

Supplies. Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other

information, which supports the amount requested.

Contractual. Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the same supporting information referred to in these instructions.

Other. Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (Self-explanatory.)

Evaluation Criteria: The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion.

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Objectives and Need for Assistance 30 Points

The application should demonstrate a thorough understanding and analysis of the problem(s) being addressed in the project, the need for assistance, and the importance of addressing these problems in improving the effectiveness of the child support program. The applicant should describe how the project will address this problem(s) through implementation of changes, enhancements, and innovative efforts and specifically, how this project will improve program results. The applicant should address one or more of the strategies or approaches described under the specific priority area they are applying for (refer to Part I. Priority Areas). The applicant should identify the key goals and objectives of the project; describe the conceptual framework of its approach to resolve the identified problem(s); and provide a rationale for taking this approach as opposed to others.

Approach 30 Points

A well thought-out and practical management and staffing plan is mandatory. The application should include a detailed management plan that includes timelines and detailed budgetary information. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework. The plan should identify what tasks are required of any contractors and specify their relevant qualifications to perform these tasks. Staff to be committed to the project (including supervisory and management staff) at the state and/or local levels must be identified by their role in the project along with their qualifications and areas of particular expertise. In addition, for any technical expertise obtained through a contract or subgrant, the desired technical expertise and skills of proposed positions should be specified in detail. The applicant should demonstrate that persons with the skills needed to operate the project are on board or can be obtained within a reasonable time.

Evaluation 25 Points

The application should describe how the success of this project can be measured and how the success of this project has broader application in contributing to child support enforcement policies, practices, and/or providing solutions that could be

adapted by other states/jurisdictions. The application should describe the specific results/products that will be achieved; as appropriate, identify the kinds of data to be collected and maintained; describe procedures for informed consent of participants, where applicable, and discuss the criteria to be used to evaluate the results of the project. The application should describe the evaluation methodology to be used to determine if the process proposed was implemented and if the project goals/objectives were achieved. Sound evaluations to determine whether or not project goals have been realized are of importance to child support enforcement policy makers and administrators. Thus, the proposal should include a process evaluation component and comparison of before/ and after the project site(s)' experience, as appropriate, to demonstrate the results achieved.

Budget and Budget Justification 10 Points

The project costs need to be reasonable in relation to the identified tasks, including the evaluation component. A detailed budget (*e.g.*, the staff required, equipment and facilities that would be leased or purchased) should be provided identifying all agency and other resources (*i.e.*, state, community, or other programs such as TANF or Head Start) that will be committed to the project. Consultant or contractor personnel costs should also be delineated. Although the general rule stated above under the heading TRAVEL suggests otherwise, applicants should NOT include funds for trips to conferences or to OCSE's Central Office in Washington, DC. If OCSE requests such visits, it will reimburse the grantee for them. Grant funds cannot be used for capital improvements or the purchase of land or buildings. Explain why this project's resource requirements cannot be met by the state/local agency's regular program operating budget.

Preferences 5 Points

Preference will be given to those grant applicants representing IV-D agencies and applicant organizations who have documented IV-D agency commitment to the project, either through a cooperative agreement or letter of commitment, which needs to be signed and attached to the application.

2. Review and Selection Process

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with

the instructions in this announcement and (2) the applicant is eligible for funding. It is necessary that applicants state specifically which priority area they are applying for.

Applications will be screened for priority area appropriateness. If applications do not clearly select a priority area, or if an application for a single project covers multiple priority areas (see Section IV.2. Content and Form of Application Submission), applicants will be contacted by staff to provide verbal approval of priority area selection.

Applications that pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The results of these reviews will assist the Commissioner and OCSE program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to, the number of similar types of existing grants or projects funded with OCSE funds in the last five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; an applicant's progress in resolving any final audit disallowance on previous OCSE or other Federal agency grants. OCSE will consider the geographic distribution of funds among States and the relative proportion of funding among rural and urban areas. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Federal reviewers will be used for the review process; however, we may also use consultants. Since ACF will be using non-Federal reviewers in the review process, applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Approved but Unfunded Applications

In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competition.

3. Anticipated Announcement and Award Dates

The anticipated start date for the new awards is August 1, 2005. Projects under Priority 1 may run through December 31, 2006, for a period of up to 17 months; projects under Priorities 2, 4 and 5 may run through July 31, 2007, for a period of up to 24 months; and projects under Priority 3 may run through July 31, 2008, for a period of up to 36 months.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR part 74 (non-governmental) or 45 CFR part 92 (governmental).

3. Reporting Requirements

All grantees are required to submit quarterly program reports; grantees are also required to submit quarterly expenditure reports using the required financial standard form (SF-269) which can be found at the following URL: <http://www.acf.hhs.gov/programs/ofsf/forms.htm> Final reports are due 90 days after the end of the grant period. A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

Program Office Contact

For questions regarding application development, forms, or program concerns regarding the announcement contact: Susan Greenblatt, Deputy Director, Administration for Children and Families, Office of Child Support Enforcement (OCSE), Division of State, Tribal and Local Assistance, 370 L'Enfant Promenade, SW., 4th Floor, East Wing, Washington, DC 20447. Phone: 202-401-4849. E-mail: sgreenblatt@acf.hhs.gov.

Grants Management Office Contact

Sylvia M. Johnson, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Suite 500 West, Aerospace Building, Washington, DC 20447. Phone: 202-401-4524. E-mail: SYJohnson@acf.hhs.gov.

VIII. Other Information

ACF will not send applicants an acknowledgement of receipt for applications received during the application period.

Additional information about this program and its purpose can be located on the following Web site: URL: www.acf.hhs.gov/programs/cse/.

Dated: February 11, 2005.

David H. Siegel,

Acting Commissioner, Office of Child Support Enforcement.

[FR Doc. 05-3090 Filed 2-16-05; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimate for a Four-Person Family (FFY 2006); Notice of the Federal Fiscal Year (FFY) 2006 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administration by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Notice of estimated State median income estimates for FFY 2006.

SUMMARY: This notice announces the estimated median income for four-person families in each State and the District of Columbia for FFY 2006 (October 1, 2005 to September 30, 2006). LIHEAP grantees may adopt the State median income estimates beginning with the date of this publication of the estimates in the **Federal Register** or at a later date as discussed below. This means that LIHEAP grantees could choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2005, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using State median income estimates must adjust their income eligibility criteria to be in accord with the FFY 2006 State median income estimates.

This listing of estimate State median income provides one of the maximum income criteria that LIHEAP grantees may use in determining a household's income eligibility for LIHEAP.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 2005, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT:

Leon Litow, Administration for Children and Families, HHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401-5304, E-Mail llitow@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(11) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, as amended), we are announcing the estimated median income of a four-person family for each State, the District of Columbia, and the United States for FFY 2006 (the period of October 1, 2005, through September 30, 2006).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each State, as annually established by the Secretary of the Department of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in

determining a household's eligibility for LIHEAP.

LIHEAP is authorized through the end of FFY 2004 by the Coats Human Services Reauthorization Act of 1998, Public Law 105-285, which was enacted on October 27, 1998. The LIHEAP program continues to operate with reauthorization legislation currently pending in Congress.

Estimates of the median income for a four-person family for each State and the District of Columbia for FFY 2006 have been developed by the Census Bureau of the U.S. Department of Commerce, using the most recently available income data. In developing the median income estimates for FFY 2006, the Census Bureau used the following three sources of data: (1) The Current Population Survey's 2004 Annual Social and Economic Supplement File; (2) the 2000 Decennial Census of Population; and (3) 2003 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce.

For further information on the estimating method and data sources, contact the Housing and Household Economic Statistics Division, at the Census Bureau (302-763-3243). For information on recent U.S. income trends go to: <http://www.census.gov/prod/2004pubs/p60-226.pdf>.

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FFY 2006 follows: The listing describes the method for adjusting median income for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: February 9, 2005.

Robert L. Mott,

Deputy Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR A FOUR-PERSON FAMILY, BY STATE, FEDERAL FISCAL YEAR 2006¹

States	Estimated State median income for a four-person family ²	60 percent of estimated State median income for a four-person family
Alabama	\$55,448	\$33,269

ESTIMATED STATE MEDIAN INCOME FOR A FOUR-PERSON FAMILY, BY STATE, FEDERAL FISCAL YEAR 2006¹—Continued

States	Estimated State median income for a four-person family ²	60 percent of estimated State median income for a four-person family
Alaska	72,110	43,266
Arizona	58,206	34,924
Arkansas	48,353	29,012
California	67,814	40,688
Colorado	71,559	42,935
Connecticut	86,001	51,601
Delaware	72,680	43,608
Dist. of Col.	56,067	33,640
Florida	58,605	35,163
Georgia	62,294	37,376
Hawaii	71,320	42,792
Idaho	53,376	32,026
Illinois	72,368	43,421
Indiana	65,009	39,005
Iowa	64,341	38,605
Kansas	64,215	38,529
Kentucky	53,198	31,919
Louisiana	50,529	30,317
Maine	59,596	35,758
Maryland	82,363	49,418
Massachusetts	82,561	49,537
Michigan	68,602	41,161
Minnesota	76,733	46,040
Mississippi	46,570	27,942
Missouri	64,128	38,477
Montana	49,124	29,474
Nebraska	63,625	38,175
Nevada	63,005	37,803
New Hampshire	79,339	47,603
New Jersey	87,412	52,447
New Mexico	45,867	27,520
New York	69,354	41,612
North Carolina	56,712	34,027
North Dakota	57,092	34,255
Ohio	66,066	39,640
Oklahoma	50,216	30,130
Oregon	61,570	36,942
Pennsylvania	68,578	41,147
Rhode Island	71,098	42,659
South Carolina	56,433	33,860
South Dakota	59,272	35,563
Tennessee	55,401	33,241
Texas	54,554	32,732
Utah	62,032	37,219
Vermont	65,876	39,526
Virginia	71,697	43,018
Washington	69,130	41,478
West Virginia	46,169	27,701
Wisconsin	69,010	41,406
Wyoming	56,065	33,639

Note—FFY 2006 covers the period of October 1, 2005 through September 30, 2006. The estimated median income for a four-person family living in the United States is \$65,093 for FFY 2006. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 2005, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

¹ In accordance with 45 CFR 96.85, each State's estimated median income for a four-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For each additional family member above six persons, add 3% to the percentage for a six-person family (132%), and multiply the new percentage by the State's estimated median income for a four-person family.

² Prepared by the Census Bureau from the Current Population Survey's 2004 Annual Social and Economic Supplement File, 2000 Decennial Census of Population and Housing, and 2003 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA). For further information, contact the Housing and Household Economic Statistics Division at the Census Bureau (301-763-3243).

[FR Doc. 05-3088 Filed 2-16-05; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1983G-0318]

Kerry, Inc.; Withdrawal of Generally Recognized as Safe Affirmation Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a generally recognized as safe (GRAS) affirmation petition (GRASP 3G0287) proposing that the use of gum acacia (arabic) in alcoholic beverages up to a maximum level of 20 percent in the finished preparation (liqueur) is GRAS.

FOR FURTHER INFORMATION CONTACT: Mical Honigfort, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1278.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of October 13, 1983 (48 FR 46626), FDA announced that a petition (GRASP 3G0287) had been filed by Beatrice Foods Co., c/o 135 South LaSalle, Chicago, IL 60603 (now Kerry, Inc., c/o Bell, Boyd, and Lloyd, LLC, Three First National Plaza, 70 West Madison St., suite 3300, Chicago, IL 60602). This petition proposed to amend § 184.1330 *Acacia (gum arabic)* (21 CFR 184.1330) to affirm the use of gum acacia (arabic) in alcoholic beverages up to a maximum level of 20 percent in the finished preparation (liqueur) as GRAS.

Kerry, Inc. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: January 28, 2005.

Leslye M. Fraser,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 05-3024 Filed 2-16-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Dermatologic and Ophthalmic Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Dermatologic and Ophthalmic Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 24, 2005, from 8 a.m. to 5:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Teresa A. Watkins, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery: 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301-827-7001, FAX: 301-827-6801, or email: watkinst@cder.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512534 or 3014512541. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss what should be the necessary and sufficient safety database in order to evaluate the prescription (Rx) to over-the-counter (OTC) switch of topical corticosteroids, especially the database to evaluate the potential for hypothalamic, pituitary, adrenal (HPA) and growth suppression and other systemic and local adverse events.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 17, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact

person before March 17, 2005, 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 LaNise Giles at 301-827-7001, 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 10, 2005.

Sheila Dearybury Walcott,

Assistant Commissioner for External Relations.

[FR Doc. 05-3055 Filed 2-16-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104-13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps (NHSC) Loan Repayment Program (LRP) (OMB No. 0915-0127)—Extension

The NHSC Loan Repayment Program (LRP) was established to assure an

adequate supply of trained primary care health professionals to provide services in the neediest Health Professional Shortage Areas (HPSAs) of the United States. Under this program, the Department of Health and Human Services agrees to repay the educational loans of the primary care health professionals. In return, the health professionals agree to serve for a specified period of time in a federally-

designated HPSA approved by the Secretary for LRP participants.

This request for extension of OMB approval will include the NHSC LRP Application, Loan Verification Form, Site Information Form, Request for Method of Advanced Loan Repayment Form and Authorization to Release Information Form.

The estimate of burden is as follows:

Type of respondents	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Applicants	1430	*1	1430	1.5	2145
Lenders	70	**1	70	.25	18
Total		1500	1500		2163

*An applicant response includes completion of one of each of the above-listed forms, and may include the completion of additional Loan Verification Forms (one for each educational loan for which he or she is seeking repayment).

**A lender response includes completion of one Loan Verification Form for each educational loan of an applicant it holds.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 10, 2005.

Tina M. Cheatham,
Director, Division of Policy Review and Coordination.

[FR Doc. 05-3022 Filed 2-16-05; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104-13), the Health Resources and Services Administration (HRSA)

publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps (NHSC) Recruitment and Retention Assistance Application (OMB No. 0915-0230)—Revision

The National Health Service Corps (NHSC), managed by the Bureau of

Health Professions (BHPr), HRSA, is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The Application for NHSC Recruitment and Retention Assistance submitted by sites or clinicians, requests information on the practice site, sponsoring agency, recruitment contact, staffing levels, service users, charges for services, employment policies, and fiscal management capabilities. Assistance in completing the application may be obtained through the appropriate State Primary Care Offices, State Primary Care Associations and NHSC contractors. The information on the application is used for determining eligibility of sites and to verify the need for NHSC providers. Sites must apply once every three years.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Response per respondents	Hours per response	Total burden hours
Application	2900	1	.5	1450

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 10, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05-3023 Filed 2-16-05; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to

OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White CARE Act Dental Reimbursement Program (OMB No. 0915-0151)—Revision

The Dental Reimbursement Program (DRP) under Part F of the Ryan White CARE Act offers grants to accredited dental schools and programs that provide non-reimbursed oral health care to patients with HIV disease. The Ryan White CARE Act Amendments of 2000 expanded eligibility of this program to accredited schools of dental hygiene, in addition to previously funded schools of dentistry and post-doctoral dental education programs.

HRSA is revising the DRP Application that schools and programs use to apply for funding of non-reimbursed costs incurred in providing oral health care to patients with HIV. Awards are authorized under section 2692 of the Public Health Service Act (42 U.S.C. 300ff-111). The DRP Application will collect data in three different areas: Program information, patient demographics and services, and reimbursement and funding. It also

requests applicants to provide narrative descriptions of their services and facilities, as well as their links and collaboration with community-based providers of oral health services.

The primary purpose of collecting this information annually, as part of the DRP Application, is to verify eligibility and determine the reimbursement amount each applicant should receive. This information also allows HRSA to learn about (1) The extent of the involvement of dental schools and programs in treating patients with HIV, (2) the number and characteristics of clients who receive CARE Act-supported oral health services, (3) the types and frequency of the provision of these services, (4) the non-reimbursed costs of oral health care provided to patients with HIV, and (5) how applicants intend to use DRP funds once they are received. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected in the DRP Application is critical for HRSA, State and local grantees, and individual providers, to help assess the status of existing HIV-related health service delivery systems.

The estimated reporting burden is as follows:

Collection	Number of respondents	Hours per application	Total burden hours
Reimbursement Request	125	20	2500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 11, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05-3054 Filed 2-16-05; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG-2005-20336]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) and its Subcommittee on SOLAS Application for Offshore Support Vessels will meet to discuss various issues relating to offshore safety and security. Both meetings will be open to the public.

DATES: NOSAC will meet on Tuesday, April 5, 2005, from 9 a.m. to 3 p.m. The Subcommittee on SOLAS Application for OSVs will meet on Monday, April 4, 2005, from 1 p.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 22, 2005. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 22, 2005.

ADDRESSES: NOSAC will meet in room 2415 of the Coast Guard Headquarters Bldg, 2100 Second Street, SW., Washington, DC. The SOLAS Application for OSVs Subcommittee

will meet in room 6319 of the Coast Guard Headquarters Bldg, 2100 Second Street, SW., Washington, DC Send written material and requests to make oral presentations to Commander J.M. Cushing, Commandant (G-MSO-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. This notice is available on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Commander J. M. Cushing, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202-267-1082, fax 202-267-4570.

SUPPLEMENTARY INFORMATION: Notice of the meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

National Offshore Safety Advisory Committee. The agenda includes the following:

- (1) Report on issues concerning the International Maritime Organization and

the International Organization for Standardization.

(2) SOLAS compliance for foreign operation of U.S. flagged Offshore Support Vessels including Liftboats.

(3) Report from the Liftboat Subcommittee on operations procedure/training for liftboat operators.

(4) Offshore Helidecks—new and revised API and ICAO standards.

(5) Revision of 33 CFR Chapter I, Subchapter N, Outer Continental Shelf activities.

(6) 33 CFR Chapter I, Subchapter NN, Temporary Final Rule on Deepwater Ports, and status of license submissions for LNG deepwater ports.

SOLAS Application for OSVs Subcommittee. The agenda includes the following:

(1) Review and discuss previous work.

(2) Work on outline of Draft Report.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than March 22, 2005. Written material for distribution at the meeting should reach the Coast Guard no later than March 22, 2005. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than March 22, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: February 9, 2005.

Howard L. Hime,

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

[FR Doc. 05-3019 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4978-N-02]

Notice of Proposed Information Collection for Public Comment; Demolition/Disposition Application on Reporting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 18, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410-5000.

FOR FURTHER INFORMATION CONTACT:

Aneita Waites, (202) 708-0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The notice also lists the following information:

Title of Proposal: Demolition/Disposition Application.

OMB Control Number: 2577-0075.

Description of the Need for the Information and Proposed Use: Housing Agencies (HAs), are required to submit information to HUD to request permission to demolish or sell all or a portion of a development (*i.e.* dwelling units, nondwelling property or vacant land) owned and operated by a HA. The specific information requested in the application is based on requirements of the statute, section 18 of the United States Housing Act of 1937, as amended, and specifically identified in 24 CFR part 970 of the regulation. The Department uses the information submitted to determine whether, and under what circumstances, to permit a HA to demolish or sell all or a portion of a public housing development. The Department has automated the application process by instituting the Demolition/Disposition module in the Public and Indian Housing Information Center (PIC) in February of 2004.

Agency Form Number: HUD-52860.

Members of Affected Public: State or local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Number of respondents	Frequency of submissions	Hours of responses	Burden hours
120	1	15	*1,920
120	1	1/2	60
120	1	1/2	60
120	1	16	2,040

*1,920 Reporting: 120 hours recordkeeping—Total Burden: 2,040 Hours.

Status of the Proposed Information Collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: February 10, 2005.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 05-3007 Filed 2-16-05; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Comprehensive Conservation Plan and Summary for Kern and Pixley National Wildlife Refuges, Kern and Tulare Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Kern and Pixley Refuges' Final Comprehensive Conservation Plan (CCP) and Summary are available for distribution. The CCP, prepared pursuant to the National Wildlife Refuge System Administration Act as amended, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the two Refuges for the next 15 years. The compatibility determinations for waterfowl hunting, wildlife observation and photography, environmental education and interpretation, research, grazing and mosquito control are also available with the CCP.

DATES: The Final CCP and Finding of No Significant Impact (FONSI) are available now. The FONSI was signed on September 30, 2004. Implementation of the CCP may begin immediately.

ADDRESSES: Copies of the Final CCP, FONSI, or Summary may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Mark Pelz, California/Nevada Refuge Planning Office, Room W-1916, 2800 Cottage Way, Sacramento, California, 95825. Copies of the CCP may be viewed at this address or at the Kern National Wildlife Refuge Complex Headquarters, 10811 Corcoran Road, Delano, California, 93216. The Final CCP is also available online for viewing and downloading at <http://pacific.fws.gov/planning>.

FOR FURTHER INFORMATION CONTACT: Mark Pelz, U.S. Fish and Wildlife Service, California/Nevada Refuge Planning Office, Room W-1916, 2800

Cottage Way, Sacramento, California, 95825; telephone 916-414-6500; fax 916-414-6512.

SUPPLEMENTARY INFORMATION:

Background

Kern National Wildlife Refuge is located in the southern portion of California's San Joaquin Valley, in Kern County. It was established in 1960, to provide wintering habitat for waterfowl and other migratory birds in the southern San Joaquin Valley. Kern Refuge consists of a 11,249-acre unit, owned by the Service. Kern Refuge's seasonal wetlands are an important wintering area for Pacific Flyway waterfowl and a popular destination for southern California hunters. The Refuge's grassland, alkali scrub, and riparian communities support four endangered species and several other special status species.

Pixley National Wildlife Refuge is located northeast of Kern Refuge in Tulare County. Pixley Refuge was set aside in 1959, to provide wintering habitat for migratory birds. Later, it was expanded to protect habitat for the endangered blunt-nosed leopard lizard and Tipton kangaroo rat. The Pixley Refuge acquisition boundary contains about 10,300 acres, of which, about 62 percent is owned by the Federal government. Pixley Refuge protects mostly grassland and smaller amounts of alkali playa, saltbush scrub, vernal pools, and riparian habitats. Pixley Refuge also has 756 acres of moist soil wetlands that are managed for wintering waterfowl, sandhill cranes, and other migratory birds.

The availability of the Draft CCP and Environmental Assessment (EA) for a 30-day public review and comment period was published in the **Federal Register** on Friday, June 25, 2004 in Volume 69, Number 122. The Draft CCP/EA identified and evaluated four alternatives for managing the Refuges for the next 15 years. Alternative A was the no-action alternative which described current Refuge management activities. Under Alternative B, improvements at Kern Refuge would have focused on improving habitat for migratory waterfowl and increasing waterfowl hunting opportunities. Changes at Pixley Refuge under Alternative B would have focused on improving and expanding the Refuge's existing threatened and endangered species management and environmental education and interpretation programs. Under Alternative C (the selected plan), Kern Refuge's focus will continue to emphasize providing wintering habitat for waterfowl and other migratory birds, and also contributing to the recovery of

targeted special status species. Management programs for all wildlife-dependant public uses will improve and expand. Changes at Pixley Refuge under Alternative C will be similar to those under Alternative B with additional improvements in sandhill crane management. Under Alternative D, management of both Kern and Pixley Refuges would have changed to maximize native biodiversity. The Service would have substantially modified management of moist soil units at both Refuges to encourage native waterfowl food plants and improve habitat for shorebirds.

The Service received thirteen comment letters on the Draft CCP and EA. The comments received were incorporated into the CCP, when appropriate, and are responded to in an appendix to the CCP. Alternative C was selected for implementation and is the basis for the Final CCP.

With the management program described in the Final CCP, the Service will continue existing management of moist soil units at Kern and Pixley Refuges and seasonal marsh units at Kern Refuge. In addition, the Service will rehabilitate 1,330 acres of seasonal marsh units at Kern Refuge to improve habitat conditions and water management efficiency. One of the objectives of the CCP is eradicating 90 percent of the salt cedar on Kern Refuge within five years, using flooding and mechanical removal. To provide sanctuary for wintering birds and other wildlife, the existing flexible closed zone will be maintained. Pixley Refuge will remain closed to hunting. The Service will continue to maintain water through most of the summer in the eastern portion of unit 1 to provide nesting habitat for tricolor blackbirds, white-faced ibis, and other colonial nesting birds. In addition, a 272-acre grain unit will be developed on Pixley Refuge to provide foraging habitat for sandhill cranes and geese.

Under the selected plan, the Service will continue to use cattle grazing on Kern and Pixley Refuge's upland habitats as a vegetation management tool to improve conditions for the endangered blunt-nosed leopard lizard and Tipton kangaroo rat. In addition, a grassland management plan will be developed that will explore various options for managing plant cover and improving habitat conditions for these two species. The Service will also pursue acquisition of the remaining natural lands within Pixley Refuge's approved boundary from willing sellers.

The Service will continue to maintain 215 acres of existing riparian habitat at Kern Refuge by periodically flooding it.

In addition, the Service will plant and maintain 15 acres of new riparian habitat at Kern Refuge and 10 acres at Pixley Refuge. Herbicides will be used to treat salt cedar on Kern Refuge through foliar spray or cut stump application with a goal of removing 90 percent within 10 years. In addition, the Service will restore 400 acres of valley sink scrub on Kern Refuge.

Under the selected plan, hunting opportunities at Kern Refuge will be increased by opening an additional 540 acres to hunting, and constructing nine new hunting blinds. Other new visitor services projects at Kern Refuge include: developing new interpretive signs and displays, and a new refuge brochure; enhancing the pond at the refuge entrance and constructing a new kiosk and boardwalk; constructing a new 4.3-mile tour route (open every day); and constructing two new photo blinds. In addition, the environmental education program will be expanded and a visitor services plan will be developed. At Pixley Refuge, a new wildlife viewing area and interpretive displays will be constructed on the Turkey Tract adjacent to State Highway 43. Full implementation of the selected plan will be subject to available funding and staffing.

Dated: February 11, 2005.

Steve Thompson,

Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 05-3073 Filed 2-16-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 91985, NMNM 91986]

Public Land Order No. 7625; Withdrawal of National Forest System Lands for the Gallinas Peak and West Turkey Cone Electronic Sites; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 140 acres of National Forest System lands from location and entry under the United States mining laws for 20 years to protect the Gallinas Peak and West Turkey Cone Electronic Sites.

EFFECTIVE DATE: February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Irene Gonzales, BLM Roswell Field Office, 2909 West Second Street, Roswell, New Mexico 88201, 505-627-0287.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. ch. 2 (2000), to protect the Gallinas Peak and West Turkey Cone Electronic Sites:

Cibola National Forest

New Mexico Principal Meridian

Gallinas Peak Electronic Site

T. 1 S., R. 11 E.,
Sec. 4, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, and
W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 9, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

West Turkey Cone Electronic Site

T. 1 S., R. 11 E.,
Sec. 4, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$,
N $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and
W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 5, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$,
and N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The areas described aggregate 140 acres in Lincoln County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: January 24, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05-3053 Filed 2-16-05; 8:45 am]

BILLING CODE 3410-11-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-05-005]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:

International Trade Commission.

TIME AND DATE: March 3, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-1089 (Preliminary) (Certain Orange Juice from

Brazil)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on March 7, 2005; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before March 14, 2005.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 14, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-3145 Filed 2-15-05; 11:12 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Demetra Arvanitis*, et al., (Case No. 02 C 50371, was lodged with the United States District Court for the Northern District of Illinois on February 7, 2005. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands on their property without a permit. The proposed Consent Decree requires the defendants to pay a civil penalty, pay for wetland restoration, and donate the wetland property to a local conservation district.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Jonathan Haile, Assistant United States Attorney, United States Attorney's office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States v. Demetra Arvanitis*, et al., Case No. 02 C 50371, including the USAO # 1999V01339.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be

viewed on the World Wide Web at <http://www.usdoj.gov/enrd/open.html>.

Kurt N. Lindland,

Assistant United States Attorney.

[FR Doc. 05-3014 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on February 10, 2005, a proposed Consent Decree in *United States versus Ralph Bello*, et. al., Civil Action No. 3:01 CV 1568 (SRU), was lodged with the United States District Court for the District of Connecticut.

In this action, the United States sought recovery of response costs incurred by the United States Environmental Protection Agency in conducting a soil cleanup removal action at the National Oil Service Superfund Site in West Haven, Connecticut. The United States filed its complaint pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), seeking recovery of response costs incurred at the Site. There have been four prior settlements relating to this Site, and the current proposed settlement represents resolution of the United States' remaining filed claims in this matter. Defendant, The Torrington Company ("the Settling Defendant"), is participating in the proposed settlement. The proposed Consent Decree resolves the Settling Defendant's liability to the United States for unreimbursed response costs at the Site. Under the proposed Decree, the Settling Defendant agrees to pay \$350,000 in partial reimbursement of the United States' response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States versus Ralph Bello*, et al., D.J. Ref. 90-11-3-07333/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Connecticut Financial

Center, New Haven, CT, and at U.S. EPA Region 1, One Congress Street, Boston, MA. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood, (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation no. (202) 514-1547. For a copy of the proposed Consent Decree including the signature pages and attachments, please enclose a check in the amount of \$4.25 (25 cents per page reproduction cost) payable to "U.S. Treasury."

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05-3008 Filed 4-16-05; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Bernstein*, Civil Action No. 05-B-268 (CBS), was lodged with the United States District Court for the District of Colorado on February 10, 2005.

This proposed Consent Decree concerns a complaint filed by the United States against Frederic M. Bernstein, Henry Y. Yusem, K&J Properties, Inc., Y&B Properties, Inc., Indian Creek Investments, LLC, and ICR, LLC, pursuant to 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Andrew J. Doyle, Trial Attorney, P.O. Box 23986, Washington, DC 20026-3986, and refer to *United States v. Bernstein*, DJ #Q90-5-1-1-16840.

The proposed Consent Decree may be examined at the Clerk's Office, United

States District Court for the District of Colorado, 901 19th Street, Denver, Colorado. In addition, the proposed Consent Decree may be viewed at <http://www.usdoj.gov/enrd/open.html>.

Dated: February 11, 2005.

Scott A. Schachter,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 05-3032 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 1, 2005, a proposed Stipulation and Agreed Order ("Agreed Order") in *In re Formica Corp., et al.*, Case No. 02-10969, as well as a proposed agreement which is annexed to the Agreed Order (the "Attachment"), where lodged with the United States Bankruptcy Court for the Southern District of New York. Under the proposed Agreed Order, the United States Environmental Protection Agency ("EPA") would receive an allowed unsecured claim of \$744,523 in connection with the Skinner Landfill Superfund Site in West Chester, Ohio, and an allowed unsecured claim of \$4.1 million in connection with the Pristine Superfund Site in Reading, Ohio. Also, under the proposed Agreed Order and Attachment, distributions on EPA's allowed claims would be deposited in special accounts for the Skinner and Pristine sites and earmarked for the benefit of the potentially responsible parties who are performing the remedies for the two sites pursuant to consent decrees which were entered, respectively, in the *United States v. Elsa Skinner-Morgan*, Civ. Action No. C-1-00-424 (S.D. Ohio), and *United States v. American Greetings Corp.*, Civ. Action No. C-1-89-837 (S.D. Ohio).

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Agreed Order and Attachment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *In re Formica Corp., et al.*, Case No. 02-10969, D.J. Ref. 90-11-2-07775.

The proposed Agreed Order and Attachment may be examined at the

Office of the United States Attorney, 86 Chambers Street, New York, NY 10007, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the proposed Agreed Order and Attachment may also be examined on the following Department of Justice website, <http://www.usdoj.gov/enrd/open.html>. A copy of the proposed Agreed Order and Attachment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, or by e-mailing or faxing a request to Tonia Fleetwood, tonia.fleetwood@usdoj.gov, fax no. (202) 514-0097, phone confirmation no. (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$3.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05-3009 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on January 31, 2005, a proposed Consent Decree ("Consent Decree") in the consolidated matters *United States v. International Paper Co.*, et al. Civil Action No. 01-C-0693-C, and *International Paper Co. v. City of Tomah, WI*, et al., Civil Action No. 00-C-539-C, was lodged with the United States District Court for the Western District of Wisconsin.

The Consent Decree settles an action brought by the United States under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, for reimbursement from International Paper and the City of Tomah, Wisconsin of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Tomah Municipal Sanitary Landfill site in Monroe County, Wisconsin ("the Site"). The Consent Decree also settles a lawsuit brought by International Paper Company ("International Paper") under CERCLA section 113(f), 42 U.S.C. 9613(f), against

the City of Tomah, Wisconsin, and the United States Department of Veterans Affairs, in which International Paper sought contribution towards certain costs International Paper allegedly incurred in response to the release or threatened release of hazardous substances at the Site. The Consent Decree addresses claims with respect to a second Operable Unit ("OU2") at the Site, as a previous consent decree entered by the Court addressed claims with respect to Operable Unit 1.

Under the Consent Decree, International Paper is required to implement the natural attenuation remedy for OU2 (design and implement a groundwater monitoring system for the groundwater outside of the landfill's boundaries) selected by the United States Environmental Protection Agency in the September 24, 2003, Record of Decision for OU2. The Consent Decree also requires International Paper to pay the United States' direct and indirect costs associated with OU2 from May 19, 2003, onward. Under the Consent Decree, the United States will make a \$350,000 payment to International Paper to resolve International Paper's OU2 contribution claims against the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. International Paper Co.*, et al. Civil Action No. 00-C-0693-C, D.J. Ref. 90-11-2-1317/1.

The Consent Decree may be examined at the Office of the United States Attorney, Suite 303, City Station, 660 West Washington Avenue, Madison, Wisconsin 53703, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy, please enclose a check in the amount of \$51.00 (25 cents

per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05-3010 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-75-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on February 2, 2005, a proposed Settlement Agreement in *In re: Polaroid Corporation, et al.*, Case No. 01-10864 (PJW), was lodged with the United States Bankruptcy Court for the District of Delaware.

In this action the United States, on behalf of the United States Environmental Protection Agency ("EPA"), timely filed a Proof of Claim against Polaroid Corporation pursuant to section 107(a) of CERCLA, as amended, 42 U.S.C. 9607, in connection with the Peterson/Puritan, Inc. Superfund Site, located in the towns of Cumberland and Lincoln, Rhode Island (the "Site"). Pursuant to the terms of the Settlement Agreement between the United States and Reorganized Polaroid, the United States shall have an allowed general unsecured claim in the amount of \$11 million, and Reorganized Polaroid shall receive a covenant not to sue for future response costs relating to the Site and as provided in the Settlement Agreement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *In re: Polaroid Corporation, et al.*, Case No. 01-10864 (PJW).

The Settlement Agreement may be examined at the offices of EPA Region I, One Congress Street, Suite 1100, SES, Boston, MA 02114-2023. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site: <http://www.usdoj.gov/enrd/open.html>. A copy of the Settlement

Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), a fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$2.25 (25 cents per page reproduction cost), payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05-3013 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 28 U.S.C. 50.7, notice is hereby given that on January 31, 2005, a proposed consent Decree in *United States v. Thomasville Furniture Industries, Inc. et al.*, Civ. No. 6:05CV00001, was lodged with the United States District Court for the Western District of Virginia.

The proposed consent decree would resolve the United States' claims, on behalf of the Environmental Protection Agency ("EPA"), under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), against Thomasville Furniture Industries, Inc., ("Thomasville"), Univar U.S.A., Inc. ("Univar"), and Buckingham County, a political subdivision of the Commonwealth of Virginia, to recover costs incurred by the United States in performing response actions at the Buckingham County Landfill Superfund Site ("Site") in Dillwyn, Virginia as set forth in the terms of the decree.

Both Thomasville and Univar are liable for the United States' response costs under Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3), because they, or their predecessors, arranged for disposal of CERCLA listed hazardous materials at the Site which led to a release of hazardous substances causing EPA to incur response costs. Buckingham County is liable for the United States' response costs under Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1), as the current owner and operator of the Site.

Under the terms of the Consent Decree, Thomasville, Univar, and Buckingham County have agreed to pay \$1,976,000 of EPA's unreimbursed response costs of \$2,052,458.26 at the Site. The United States has reserved its right to pursue an additional \$171,688, incurred to implement a discrete drum removal action at the Site in 1999, from Buckingham County in a separate action. The proposed settlement addresses past costs only, and thus the Consent Decree reserves all parties' rights with regard to future costs, except for the Defendants' statute of limitations defenses.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Thomasville Furniture Industries, Inc. et al.*, Civ. No. 6:05CV00001, D.J. Ref. 90-11-2-07971.

The Consent Decree may be examined at the Office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Suite 1, Roanoke, VA 24011. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/open.html>. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of \$22.50 (90 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05-3011 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 18, 2004, and published in the **Federal Register** on October 25, 2004, (69 FR 62295), Cody Laboratories, Inc., 301 Yellowstone Avenue, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Cocaine (9041)	II
Oxycodone (9143)	II
Dihydromorphine (9145)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Meperidine (9230)	II
Oxymorphone (9652)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cody Laboratories, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cody Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 11, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05-3028 Filed 2-16-05; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR**Office of the Secretary****Submission for OMB Review:
Comment Request**

February 11, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Grain Handling Facilities (29 CFR 1910.272).

OMB Number: 1218-0206.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions;

Federal Government; and State, local, or tribal government.

Number of Respondents: 19,791.

Number of Annual Responses: 1,406,486.

Estimated Time Per Response: Varies from 2 minutes to affix a tag on deenergized equipment to 3 hours to develop or modify procedures for tags and locks.

Total Burden Hours: 73,572.

Total Annualized capital/startup costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: The Grain Handling Facilities Standard (the Standard) (29 CFR 1910.272) specifies several paperwork requirements. The following sections describe what information is collected under each requirement, who uses the information, and how they use it.

Paragraph (d) of the standard requires the employer to develop and implement an emergency action plan so that employees will be aware of the appropriate actions to take in the event of an emergency.

Paragraph (e)(1) requires that employers provide training to employees at least annually and when changes in job assignment will expose them to new hazards.

Paragraph (f)(1) requires the employer to issue a permit for all hot work. Under paragraph (f)(2) the permit shall certify that the requirements contained in 1910.272(a) have been implemented prior to beginning the hot work operations and shall be kept on file until completion of the hot work operation.

Paragraph (g)(1)(i) requires the employer to issue a permit for entering bins, silos, or tanks unless the employer or the employer's representative is present during the entire operation. The permit shall certify that the precautions contained in paragraph (g) have been implemented prior to employees entering bins, silos or tanks and shall be kept on file until completion of the entry operations.

Paragraph (g)(4) requires the employer to implement procedures for the use of tags and locks which will prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted.

Paragraphs (i)(1) and (i)(2) require the employer to inform contractors performing work at the grain handling facility of known potential fire and explosion hazards related to the contractor's work area and to explain to the contractor the applicable provisions of the emergency action plan.

Paragraph (j)(1) requires the employer to develop and implement a written housekeeping program that establishes the frequency and method(s) determined best to reduce accumulations of fugitive grain dust on ledges, floors, equipment, and other exposed surfaces.

The purpose of the housekeeping program is to require employers to have a planned course of action for the control and reduction of dust in grain handling facilities reducing the fuel available in a grain facility. The housekeeping program must specify in writing the frequency that housekeeping will be performed and the dust control methods that the employer believes will best reduce dust accumulations in the facility.

Under paragraph (m)(1), the employer is required to implement preventive maintenance procedures consisting of regularly scheduled inspections of at least the mechanical and safety control equipment associated with dryers, grain stream processing equipment, dust collection equipment including filter collectors, and bucket elevators. Paragraph (m)(3) requires a certification be maintained of each inspection.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 05-3075 Filed 2-16-05; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR**Office of the Secretary****Submission for OMB Review:
Comment Request**

February 11, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.
- Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Refuse Piles and Impounding Structures, Recordkeeping and Reporting Requirements.

OMB Number: 1219-0015.

Form Number: None.

Type of Response: Recordkeeping and reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 770.

Cite/reference	Number of respondents	Frequency	Annual responses	Average time per response (hours)	Annual burden hours
77.215 New Refuse Piles Abandonment Plans	1	On occasion	1	16	16
77.216 New Impoundments	25	On occasion	25	8	200
Revisions	4	On occasion	4	1,300	5,200
Fire Extinguisher Plans	6	On occasion	6	40	240
Annual Certifications (existing)	1	On occasion	.25	20	5
Inspections w/monitoring Instruments w/o monitoring Instruments	39	Annual	39	2	78
	296	17x/yr.	5,032	3	15,096
	444	17x/yr.	7,548	2	15,096
Total			12,655		35,931

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): \$7,372,120.

Description: Title 30 CFR part 77, subpart C, sets forth regulations for surface installations. More specifically, 30 CFR 30.215 addresses refuse piles and 30 CFR 77.216 addresses impoundments. Impoundments are structures that are used to impound water, sediment, or slurry or any combination of materials; and refuse piles are deposits of coal mine waste

that are removed during mining operations or separated from mined coal and deposited on the surface. The failure of these structures can have a devastating affect on a community. To avoid or minimize such disasters, standards exist for the construction and maintenance of these structures, for annual certifications, for certification for hazardous refuse piles, for the frequency of inspections, and the methods of abandonment for impoundments and impounding structures.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Examinations & Testing of Electrical Equipment Including Exam, Testing, and Maintenance of High Voltage Longwalls.

OMB Number: 1219-0116.

Form Number: None.

Type of Response: Recordkeeping and reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 1,600.

Cite/reference	Frequency	Total responses	Response time (hours)	Annual burden hours
18.53(h)	On Occasion	3	1.1	3
75.820(b) and (e)	Daily	17,500	0.83	1,453
78.821(d)	Weekly	2,500	1.5	3,750
75.512 and 75.703 3(d)(11)	Weekly	760,100	0.5	380,050
77.502	Monthly	271,272	1.25	339,090
75.800-3&4 and 77.800-1&2	Monthly	31,188	0.75	23,391
75.900-3&4	Monthly	65,760	1.5	98,640
77.900-1&2	Monthly	18,084	0.75	13,563
75.1001-1(b)&(c)	6 Months	1,836	1.5	2,754
75.351	Monthly	7,128	1.25	8,910
Total		1,175,371		871,604

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): \$0.

Description: The Federal Mine Safety and Health Act of 1977 (Act) and 30

CFR parts 75 and 77, Mandatory standards for coal mines make the collection of information necessary.

It has long been known that inadequate maintenance of electric equipment is a major cause of serious electrical accidents in the coal mining

industry. It is imperative that mine operators adopt and follow an effective maintenance program to ensure that electric equipment is maintained in a safe operating condition if electrocutions, mine fires, and mine explosions are to be prevented. The

subject regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment.

The respondents for the paperwork provisions of the subject regulations are coal mine operators. The records of tests and examinations are reviewed by coal miners, coal mine officials, and MSHA and State inspectors. The records are intended to indicate whether examinations and tests were conducted and give insight into the hazardous conditions that have been encountered and those that may be encountered. These records greatly assist those who use them in making decisions that will ultimately affect the safety and health of miners.

Miners examine the records to determine if electric equipment is safe to operate and to determine if reported safety defects have been corrected. Mine officials examine the records to evaluate the effectiveness of their electrical maintenance programs, to determine that the required tests and examinations have been conducted, and to determine if reported safety defects have been corrected. MSHA and State inspectors review the records to determine if the required tests and examinations have been conducted and to identify units of electric equipment that may pose a potential safety hazard, and to evaluate the effectiveness of the coal mine operator's electrical maintenance programs. By comparing the records

with the actual condition of electric equipment, MSHA inspectors may, in some cases, be able to identify weaknesses in the coal mine operator's electrical maintenance programs and require that these weaknesses be corrected.

Darrin A. King,
Acting Departmental Clearance Officer
 [FR Doc. 05-3076 Filed 2-16-05; 8:45 am]
BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 9, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316

(this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220-0050.

Frequency: Quarterly and weekly.

Type of Response: Reporting and recordkeeping.

Affected Public: Individuals or households.

Collection of Information	Total respondents	Annual responses	Average response time (hours)	Annual burden hours
Quarterly Interview Survey:				
Interview	10,157	40,628	1.17	47,400
Re-interview	3,283	3,283	0.25	821
Incentives test questions	6,500	6,500	0.01	55
Diary Survey (CE-801):				
Interview	7,530	22,590	0.42	9,413
Re-interview	954	954	0.25	239
Weekly Diary (Recordkeeping)	7,530	15,060	1.75	26,355
Total	*17,687	**82,515		84,283

*Re-interview and incentive test question respondents are a subset of the original number of respondents for each survey. Also, for the Diary, the "Record of Your Daily Expenses" respondents are the same as the "Household Questionnaire" respondents. Therefore, they are not counted again in the total number of respondents.

**The incentive test questions are part of the "Quarterly Interview Survey" for the test group; therefore, they are not counted in the total number of annual responses.

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): \$0.

Description: The Consumer Expenditure Surveys are used to gather information on expenditures, income,

and other related subjects. These data are used to periodically update the national Consumer Price Index. In addition the data are used by a variety of researchers in academia, government agencies, and the private sector. The data are collected from a national probability sample of households

designed to represent the total civilian non-institutional population.

This information collection request includes the BLS' plans to conduct a one year incentives experiment for the Quarterly Interview Survey from November 2005 through October 2006.

This incentives experiment was not referenced in the 60-day notice.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05-3077 Filed 2-16-05; 8:45 am]

BILLING CODE 4510-28-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05-026)]

NASA Summit Industry Panel 2005; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Summit Industry Panel 2005.

DATES: Wednesday, March 9, 2005, 1 p.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, Auditorium—West Lobby.

FOR FURTHER INFORMATION CONTACT: Mr. John White, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-5157. Persons with disabilities who require assistance should indicate this.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Vision for Space Exploration
- Integrated Space Operations Summit Update

—Industry Panel Team Activities

Attendees will be requested to sign a register. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: February 10, 2005.

P. Diane Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space Administration.*

[FR Doc. 05-3006 Filed 2-16-05; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 21, 2005 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-837-1694 or fax number 301-837-3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 9, 2004 (69 FR 71436). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Financial Disclosure Form.

OMB number: 3095-0058.

Agency form number: Standard Form 714.

Type of review: Regular.

Affected public: Business or other for-profit, Federal government.

Estimated number of respondents: 25,897.

Estimated time per response: 2 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 51,794 hours.

Abstract: Executive Order 12958 as amended, "Classified National Security Information" authorizes the Information Security Oversight Office to develop standard forms that promote the implementation of the Government's security classification program. These forms promote consistency and uniformity in the protection of classified information.

The Financial Disclosure Form contains information that is used to make personnel security determinations, including whether to grant a security clearance; to allow access to classified information, sensitive areas, and equipment; or to permit assignment to sensitive national security positions. The data may later be used as a part of a review process to evaluate continued eligibility for access to classified information or as evidence in legal proceedings.

The Financial Disclosure Form helps law enforcement obtain pertinent information in the preliminary stages of potential espionage and counter terrorism cases.

Dated: February 10, 2005.

Shelly L. Myers,

Deputy Chief Information Officer.

[FR Doc. 05-3012 Filed 2-16-05; 8:45 am]

BILLING CODE 7515-01-P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 536, "Operator Licensing Examination Data".

2. *Current OMB approval number:* 3150-0131.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* All holders of operator licenses or construction permits for nuclear power reactors.

5. *The number of annual respondents:* 80.

6. *The number of hours needed annually to complete the requirement or request:* 80.

7. *Abstract:* NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for operator licensing initial examinations; (2) the estimated dates of the examinations; (3) if the examination will be facility developed or NRC developed, and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

Submit, by April 18, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by telephone at 301-415-7233, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV.

Dated at Rockville, Maryland, this 10th day of February 2005.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05-3050 Filed 2-16-05; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions 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 has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on December 13, 2004, in vol. 69 No. 238, FR 72225, at which time a 60-calendar day comment period was announced. This comment period ended February 14, 2005. No comments were received in response to this notice. This information collection submission has now been submitted to OMB for review. Comments are again 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 under review, OMB control number 3420-0015, is summarized below.

DATES: Comments must be received within 30-calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

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.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395-3897.

Summary of Form Under Review

Type of Request: Form Renewal.

Title: Application for Financing.

Form Number: OPIC-115.

Frequency of Use: One per investor, per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per project.

Number of Responses: 300 per year.

Federal Cost: \$21,600 per year.

Authority for Information Collection: Sections 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The OPIC 115 form is the principal document used by OPIC to determine the investor's and project's eligibility for debt financing, to assess the environmental impact and developmental effects of the project, to measure the economic effects for the United States and the host country economy, and to collect information for underwriting analysis.

Dated: February 14, 2005.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 05-3082 Filed 2-16-05; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27946]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 11, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 8, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at

law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 8, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Wisconsin Energy Corporation et al. (70-10276)

Wisconsin Energy Corporation ("Wisconsin Energy"), 231 West Michigan Street, Milwaukee, WI 53201 and W.E. Power, LLC, 301 West Wisconsin Avenue, Milwaukee, WI 53203 ("W.E. Power" and together, "Applicants"), have filed an application ("Application") under sections 9(a), 10 and 3(a)(1) of the Act.

I. Introduction

Applicants request authorization to acquire two 545 MW gas-fired, combined cycle generating units located in Port Washington, Wisconsin ("Port Washington Units") which are being constructed by Port Washington Generating Station, LLC ("Project Company"), an indirect subsidiary company of W.E. Power.

II. Description of the Applicants

A. Wisconsin Energy

Applicants state that Wisconsin Energy is a Wisconsin Corporation and an exempt public utility holding company under section 3(a)(1) of the Act.¹ Wisconsin Energy's utility subsidiaries include Wisconsin Electric Power Company ("Wisconsin Electric"), Wisconsin Gas LLC ("Wisconsin Gas"), Edison Sault Electric Company ("Edison Sault"), American Transmission Company LLC ("ATC"), ATC Management Inc. ("ATC Management") and W.E. Power. Applicants state that, on a consolidated basis for the year ended December 31, 2003, Wisconsin Energy had total operating revenues of more than \$4 billion. Applicants further state that, as of September 30, 2004, Wisconsin Energy had consolidated total assets of \$9.012 billion.

Wisconsin Electric, a Wisconsin corporation, is a wholly owned, direct, public utility company subsidiary of Wisconsin Energy. Wisconsin Electric owns electric generation and distribution facilities located in Wisconsin and the Upper Peninsula of

Michigan and natural gas distribution facilities located in Wisconsin. Applicants state that Wisconsin Electric claims exemption under section 3(a)(1) by rule 2 and is also the subject of S.E.C. File No. 70-10110, requesting an exemption by order.

Wisconsin Electric generates, distributes, and sells, both at wholesale and retail, electric energy in a territory of approximately 12,000 square miles, with a population estimated at 2,300,000 in southeastern Wisconsin, east central, and northern Wisconsin, and in the upper peninsula of Michigan. Applicants state that, as of and for the year ended December 31, 2003, Wisconsin Electric had approximately 1,068,000 electric customers and electric operating revenues of \$1.986 billion and total operating revenues of \$2.522 billion. Applicants further state that, on a consolidated basis, as of September 30, 2004, Wisconsin Electric had total assets of \$6.678 billion.

Wisconsin Electric also purchases, distributes and sells natural gas to retail customers and transports customer-owned gas in three distinct service areas of approximately 3,800 square miles in Wisconsin. Applicants state that Wisconsin Electric's gas service territory has an estimated population of 1,200,000 and as of December 31, 2003, Wisconsin Electric served approximately 428,700 gas customers. Applicants state that Wisconsin Electric's gas distribution system includes approximately 8,800 miles of mains connected at 22 gate stations to the pipeline transmission systems of ANR Pipeline Company, Guardian Pipeline, L.L.C., Natural Gas Pipeline Company of America, Northern Natural Gas Company, and Great Lakes Transmission Company. In addition, Wisconsin Electric has a liquefied natural gas storage plant with a send-out capability of 70,000 dekatherms per day.

Applicants state that Wisconsin Electric operates two district steam systems that supply steam for space heating and process uses. These systems are located in Milwaukee and in Wauwatosa, Wisconsin and are subject to regulation by the Public Service Commission of Wisconsin ("PSCW").

Applicants state that Wisconsin Gas, a Wisconsin limited liability company, is a wholly-owned, direct gas public utility subsidiary of Wisconsin Energy authorized to provide retail gas distribution service in designated territories Wisconsin and transports customer-owned gas. Applicants state that Wisconsin Gas also provides water utility service to customers in the suburban Milwaukee area and is subject to the regulation of the PSCW as to retail

gas and water rates, standards of service, issuance of long-term securities, construction of certain new facilities, transactions with affiliates, billing practices and various other matters. For the year ended December 31, 2003, Wisconsin Gas had operating revenues of \$714.8 million and as of September 30, 2004, Wisconsin Gas had total assets of approximately \$1.357 billion.

Applicants state that Edison Sault is a wholly owned, direct electric public utility subsidiary of Wisconsin Energy. Edison Sault is authorized to provide retail electric service in certain territories in Michigan and is subject to the regulation of the Michigan Public Service Commission as to various matters associated with retail electric service in Michigan. Applicants state that Edison Sault generates, distributes and sells electric energy in a territory of approximately 2,000 square miles with a population of approximately 55,000 in the eastern upper peninsula of Michigan and also provides wholesale electric service under contract with one rural cooperative. On a consolidated basis, as of and for the year ended December 31, 2003, Edison Sault had total assets of approximately \$72.4 million and operating revenues of approximately \$42.4 million.

ATC is a Wisconsin limited liability company organized in response to Wisconsin legislation as a single-purpose transmission company to assume ownership and operation of the transmission facilities that had previously belonged to Wisconsin Electric, Edison Sault and several other Wisconsin electric utility companies. Applicants state that in return for the transfer of the transmission facilities, Wisconsin Electric and Edison Sault each acquired membership interests in ATC and Wisconsin Electric acquired shares in ATC Management, a Wisconsin corporation organized to provide management services to ATC. As of December 31, 2003, Wisconsin Energy owned, through Wisconsin Electric and Edison Sault, 39.4 percent of ATC, and through Wisconsin Electric, 40.1 percent of ATC Management.

B. W.E. Power, LLC

W.E. Power, a Wisconsin limited liability company, is a wholly owned, direct intermediate holding company subsidiary of Wisconsin Energy. Applicants state that W.E. Power was formed in 2001 to design, construct, own, finance and lease to Wisconsin Electric 2,320 megawatts of new generating capacity in Wisconsin, including the generating and transmission facilities discussed below. Applicants state that W.E. Power does

¹ See Wisconsin Energy Corp., HCAR No. 24267 (Dec. 18, 1986), as most recently confirmed in Wisconsin Energy Corp., et al., HCAR No. 27329 (Dec. 28, 2000) ("2000 Order").

not and will not own any facilities directly. W.E. Power directly owns a 100 percent interest in Project Company.

C. Project Company

Applicants state that Project Company, a Wisconsin limited liability company, was formed specifically to develop, construct and own a 100 percent interest in the Port Washington Units. In addition, Project Company will develop, construct and own a 100 percent interest in certain transmission facilities necessary to interconnect the Port Washington Units with the ATC transmission grid.

III. Proposed Transaction

Applicants request authorization for Project Company to acquire the Port Washington Units and the associated transmission facilities necessary to interconnect the units with the ATC transmission grid ("Transaction"). Upon completion of construction and the satisfaction of certain conditions precedent, including the successful testing of the units, Project Company will lease the Port Washington Units to Wisconsin Electric under the terms of 25-year facility leases, one for each unit ("Facility Leases"), and certain other related contractual arrangements ("Lease Transaction"). Applicants state that once the Port Washington Units are operational, control of the appurtenant transmission facilities will be transferred to ATC.

Applicants propose to implement the Lease Transaction using a "leased generation" structure specifically authorized under Wisconsin's "Leased Generation Law."² Applicants state that this law establishes a new regulatory framework under which nonutility affiliates may develop, construct and own large-scale dedicated generating facilities within the state of Wisconsin and lease those facilities to their regulated, franchised public utility affiliates. The legislative intent behind the Leased Generation Law is to "provide an incentive for utility holding companies to continue to provide generation services for the affiliate utility's native load customers."³ To that end, Applicants state that the statute specifically permits a public utility company to acquire generating resources by leasing them from an affiliate as an alternative to the public

utility company constructing the generating facilities itself. The Leased Generation Law allows a public utility company to build generation indirectly through an affiliate. The Leased Generation Law is limited to leases between a public utility company and an affiliated entity; it does not apply to leases between a public utility company and third parties.

Once the lease provisions become effective, Wisconsin Electric will make fixed monthly lease payments to Project Company for the terms of the Facility Leases. In return, Wisconsin Electric will have the right to possess and operate the Port Washington Units. The Port Washington Units will be integrated with, and operated as part of, Wisconsin Electric's existing regulated generation fleet. Wisconsin Electric will be responsible for all operations, maintenance, and fuel costs for the Port Washington Units.

Applicants state that neither Project Company nor its immediate parent, W.E. Power, will operate or control the Port Washington Units or associated transmission facilities. At the end of the terms of the Facility Leases, Wisconsin Electric may, at its option, renew each Facility Lease for a renewal term determined under the terms of the Facility Lease, buy each Port Washington Unit outright from Project Company or return the units to Project Company in good condition.

Wisconsin Energy requests an order affirming that, following the Transaction, it will continue to be exempt under section 3(a)(1) of the Act and W.E. Power will become and exempt intermediate holding company under section 3(a)(1) of the Act.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05-3057 Filed 2-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51189; File No. SR-CBOE-2005-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Amend its Obvious Error Rule

February 10, 2005.

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 January 26, 2005, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The proposed rule change has been filed by CBOE as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ On February 9, 2005, CBOE submitted Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its obvious error rule, CBOE Rule 6.25 (Nullification and Adjustment of Equity Options Transactions) to adopt an erroneous quote provision. The Exchange also proposes to make two minor grammatical changes to CBOE Rule 24.16 (Nullification and Adjustment of Index Option Transactions). Additions are italicized. Deletions are bracketed.

* * * * *

Rule 6.25 Nullification and Adjustment of Equity Options Transactions

* * * * *

(a) Trades Subject to Review

* * * * *

(1)-(4) No Change.

(5) *Erroneous Quote in Underlying:* *Electronic trades (this provision has no applicability to trades executed in open outcry) resulting from an erroneous quote in the underlying security may be adjusted or nullified as set forth in paragraph (a)(1) above. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market (as defined in Rule 1.1(v)) during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Amendment No. 1 made technical corrections to the proposed rule text.

² See 2001 Wis. Legis. Serv. 16, § 3008mc (West) (codified as Wis. Stat. § 196.52(9)(a)(3)(2002)).

³ See Approval of Affiliated Interest Transactions Between W.E. Power; Wisconsin Elec. Power Co.; and Wisconsin Energy Corp., PSCW Docket Nos. 05-AE-109, 05-CE-117, 137-CE-104, and 6650-CG-211 (December 19, 2002) ("PSCW Order")

during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

(b)–(e) No Change.

Interpretations and Policies * * *
No change.

* * * * *

Rule 24.16 Nullification and Adjustment of Index Option Transactions

* * * * *

(a) Trades Subject to Review

* * * * *

(1)–(7) No Change.

(b) Procedures for Reviewing Transactions

(1) Notification: Any member or person associated with a member that believes it participated in a transaction that may be adjusted or nullified in accordance with paragraph (a) must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question. For transactions occurring after 2:45 p.m. (CT/CST)), notification must be provided promptly but not later than fifteen (15) minutes after the close of trading of that security on CBOE. Absent unusual circumstances, Trading Officials shall not grant relief under this Rule unless notification is made within the prescribed time periods. In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.

(2) No Change

(c) Adjustments

Unless otherwise specified in Rule 24.16(a)(1)–(6), transactions will be adjusted provided the adjusted price does not violate the customer's limit price. Otherwise, the transaction will be nullified. With respect to Rule 24.16(a)(1)–(5), the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS or HOSS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to Rule 24.16(a)(6), the transaction shall be adjusted to a price that is \$0.10 under parity.

(d)–(e) No Change

Interpretations and Policies * * *
.01–.02 No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's obvious error rule, CBOE Rule 6.25,⁶ establishes guidelines for the adjustment and nullification of transactions in equity options.⁷ Under the Rule, four types of transactions may qualify as obvious errors and hence be adjusted or nullified: (1) Obvious price errors; (2) transactions in series quoted no bid at a nickel; (3) transactions resulting from verifiable disruptions of Exchange systems; and (4) transactions resulting from an erroneous print in the underlying market. The purpose of this proposed rule change is to re-insert in CBOE Rule 6.25 a fifth type of qualifying transactions resulting from erroneous quotes in the underlying security. This provision previously existed in CBOE Rule 6.25.⁸ In SR–CBOE–2004–83, the Exchange proposed to delete the “erroneous quote in the underlying” provision from CBOE Rule 6.25. However, since the implementation of the changes set forth in SR–CBOE–2004–83, the Exchange has experienced several instances involving erroneous quotes in the underlying security, and therefore, believes that it is necessary to amend CBOE Rule 6.25 to again provide for this objective obvious error provision for erroneous quotes in the underlying security.

⁶ See Securities Exchange Act Release No. 50880 (December 17, 2004), 69 FR 77790 (December 28, 2004) (File No. SR–CBOE–2004–83).

⁷ CBOE Rule 24.16 governs obvious errors for transactions in index options and options on ETFs.

⁸ See Securities Exchange Act Release No. 48827 (November 24, 2003), 68 FR 67498 (December 2, 2003) (approving File No. SR–CBOE–2001–04).

In this regard, electronic trades resulting from an erroneous quote in the underlying security may be adjusted or nullified.⁹ An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market, as defined in CBOE Rule 1.1(v), during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this proposed rule provision, the average quote width shall be determined by adding the quote widths of each separate quote during the four-minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question). CBOE notes that this provision operates in the same manner as provisions contained in CBOE Rules 24.16 and 43.5(b)(4).

The Exchange also proposes to make two grammatical changes to CBOE Rule 24.16. The first would clarify the reference to Central Time as (CT), rather than (CST) in paragraph (b)(1) of CBOE Rule 24.16. The second grammatical change would add the word “rule” to paragraph (c) of CBOE Rule 24.16.

2. Statutory Basis

CBOE represents that the filing provides an objective guideline for the nullification or adjustment of transactions executed at clearly erroneous prices. For this reason, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act¹¹ that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any

⁹ Transactions qualifying for price adjustment (*i.e.*, transactions between two CBOE Market-Makers) will be adjusted in accordance with CBOE Rule 6.25(a)(1). Transactions not qualifying for price adjustment (*i.e.*, transactions involving a non-CBOE Market-Maker) will be nullified.

¹⁰ 15 U.S.C. 78(f)(b).

¹¹ 15 U.S.C. 78(f)(b)(5).

burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Furthermore, the Exchange provided the Commission with 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. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal to amend CBOE Rule 6.25 by adding a provision relating to erroneous quotes in the underlying market is substantially similar to provisions contained in CBOE Rules 24.16(a)(5) and 43.5 and to a provision that was previously contained in CBOE Rule 6.25. Thus, the Commission does not believe that the proposed rule change raises any new issues. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁴

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2005-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-12. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-12 and should be submitted on or before March 10, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-656 Filed 2-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51174; File No. SR-NSCC-2003-22]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Amend the Standards of Financial Responsibility Required of Mutual Fund and Insurance Services Applicants and Members that Are Banks, Trust Companies, or Broker-Dealers

February 9, 2005.

I. Introduction

On November 10, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on November 29, 2004, amended proposed rule change File No. SR-NSCC-2003-22 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on December 13, 2004.² No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The proposed rule change amends Addendum B, "Standards of Financial Responsibility and Operational Capability," and Addendum I, "Standards of Financial Responsibility and Operational Capability For Fund Members," of NSCC's Rules and Procedures to enhance the standards of financial responsibility required of applicants and members that are banks, trust companies, and broker-dealers using or applying to use NSCC's non-guaranteed services as Mutual Fund/Insurance Services Members under Rule 2 and Fund Members under Rule 51.³ Addendum B establishes financial criteria applicable to Mutual Fund/Insurance Services Members and

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 50797 (December 6, 2004), 69 FR 72238.

³ Mutual Fund Services and Insurance Processing Services are non-guaranteed services.

applicants admitted or seeking admission under Rule 2. Addendum I establishes the financial criteria applicable to Fund Members and applicants admitted or seeking admission under Rule 51.

The proposed rule change (i) raises the minimum excess net capital requirement applicable to such broker-dealer applicants and members from \$25,000 to \$50,000 and (ii) changes the standards of financial responsibility required of banks and trust companies by referring to different types of criteria than are currently used for this purpose. The effective date for the proposed rule change as applied to current members is one year from the date of Commission approval. The one year period, arrived at after consultations with the affected members, is necessary to allow members that do not meet the increased or changed capital requirements sufficient time to evaluate their options and implement any necessary changes without undue disruption to their customers. The proposed rule change also amends Addendum I to require an established business history of six months instead of three years which is consistent with the required established business history for applicants for other types of membership in NSCC.

1. Increase of Minimum Excess Net Capital Required of Broker-Dealers Using Mutual Fund and Insurance Services

NSCC's current minimum excess net capital requirement applicable to broker-dealer applicants and members using non-guaranteed services was implemented in 1993.⁴ In 1998, NSCC increased its minimum excess net capital requirements under Rule 2 for broker-dealer applicants and members using NSCC guaranteed services from \$50,000 to \$500,000 subject to certain limited exceptions.⁵ At that time, no change was made to the financial requirements applicable to the use of non-guaranteed services. NSCC now believes it is appropriate to do so because of increased transaction volumes and settlement obligations.

NSCC currently has 290 broker-dealer members to which the increased excess net capital requirement will apply. Thirteen of the 290 broker-dealer members have been identified as not meeting the increased capital

requirement. The purpose of delaying effectiveness of the proposed rule change is to allow these thirteen members time in which to obtain and apply additional excess net capital or to make alternate arrangements, such as clearing through another NSCC member, without disruption to their businesses.

NSCC currently requires a larger clearing fund deposit from broker-dealer members which have a minimum excess net capital of less than \$50,000. When the proposed minimum excess net capital requirement is increased to \$50,000, the minimum clearing fund requirements currently imposed will no longer be applicable because \$50,000 in excess net capital will be required of these broker-dealers in all instances.

2. Amendment to Standards of Financial Responsibility Applied to Banks and Trust Companies Using Mutual Fund Services and Insurance Processing Service

Addendum B currently requires that banks and trust companies that are applying to be or are Mutual Fund/Insurance Services Members under Rule 2 have \$100,000 minimum excess net capital over the capital requirement imposed by the applicable State or Federal regulatory authority. Addendum I is silent on the criteria applicable to banks and trust companies for purposes of being Fund Members under Rule 51.

Under the proposed rule change, the standards of financial responsibility applicable to banks and trust company applicants applying to use and members using Mutual Fund Services and Insurance Processing Services will be applicable both to Mutual Fund/Insurance Services Members under Rule 2 and to Fund Members under Rule 51.

Under the proposed standard, a bank or trust company will be required to have a Tier 1 risk-based capital ratio of at least 6% or greater. A trust company which is not required to calculate a risk-based capital ratio by its regulators will be required to have at least \$2,000,000 in capital.

As applied to banks, the revised criteria will apply the standard adopted by the Federal Deposit Insurance Corporation ("FDIC") to compute risk-based capital ratios. The proposed standard of a minimum Tier 1 risk-based capital ratio of 6% is currently categorized as "well-capitalized" under the guidelines issued by the Board of Governors of the Federal Reserve System. All current NSCC Mutual Fund/Insurance Services Members and Fund Members that are banks exceed this requirement.

With respect to trust companies, the current standard of \$100,000 in excess

capital over the capital required by applicable State or Federal regulations will be replaced by a requirement that all trust companies have \$2,000,000 in capital. Because State regulations vary in their respective capital requirements and because some States do not have a capital requirement, the revised criteria will provide a uniform and consistent standard to all trust companies regardless of whether they are members of the Federal Reserve System or subject to nonuniform State regulatory requirements. The proposed \$2,000,000 capital requirement is the same capital standard required for membership in The Depository Trust Company.

Some trust companies which are not required to calculate a Tier 1 risk-based capital ratio pursuant to FDIC or Federal Reserve Act requirements calculate this ratio for other purposes. NSCC will therefore accept as an alternative to the minimum \$2,000,000 capital requirement the 6% Tier 1 risk-based capital ratio from those trust companies which provide this calculation for regulatory purposes.⁶

NSCC currently has sixty-six bank/trust company members to which the revised capital requirements will apply. Only one trust company has been identified as not meeting the new standard.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.⁷ The Commission finds that NSCC's proposed rule change is consistent with this requirement because by enhancing the standards of financial responsibility applicable to NSCC members using NSCC's Mutual Fund Services and Insurance Processing Service, it should help NSCC protect itself and its members from undue financial risk. As a result, the proposal should help NSCC assure the safeguarding of securities and funds which are in its custody or control.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed

⁶ The proposed rule change makes a technical amendment to Addendum B regarding the capital standards applicable to bank applicants for full membership under NSCC Rule 2. In particular, the proposed rule change amends Section I.B.2.(a)(i) by replacing the listed components of bank capital with a reference to bank capital as it is defined in the Consolidated Report of Condition ("CALL Report").

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁴ Securities Exchange Act Release No. 33525 (January 26, 1994), 59 FR 9805.

⁵ Securities Exchange Act Release No. 40081 (June 10, 1998), 63 FR 32905. A municipal securities broker under Rule 15c3-1(a)(8) of the Act is required to maintain \$100,000 in excess net capital, and a clearing broker is required to maintain \$1,000,000 in excess net capital.

rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NSCC-2003-22) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-655 Filed 2-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51188; File No. SR-NYSE-2004-63]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend Exchange Rules Relating to the Return of Membership Certificates, Notice and Return of Exchange-Issued Identification Cards, and Minor Violations of Rules

February 10, 2005.

On November 1, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to: (1) Delete the requirement in NYSE Rule 343(d) to return certificates of membership upon termination of customer offices or status as a member organization; (2) add NYSE Rule 35.80 to require members and member organizations to notify the Exchange's security office and surrender Exchange-issued identification cards within 24 hours of all employee terminations, re-assignments to non-Floor duties, or cancellations of such identification cards; (3) rescind NYSE Rule 412(g), which currently allows the Exchange to impose fees of up to \$100 per securities account per day for violations of NYSE Rule 412; and (4) enable violations of proposed NYSE Rule 35.80 to be administered through the Exchange's minor rule violation plan (NYSE Rule 476A). On December 15, 2004 and December 23, 2004, the Exchange filed

Amendment Nos. 1³ and 2⁴ to the proposed rule change, respectively.

The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on January 7, 2005.⁵ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁷ because rules that are reasonably designed to strengthen the Exchange's security procedures will protect investors and the public interest. The Commission also believes that the Exchange's addition to its minor rule violation plan is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁸ which require that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. In addition, because NYSE Rule 476A provides procedural rights to a person fined under that rule to contest the fine and permit a hearing on the matter, the Commission believes the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.⁹

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act¹⁰ which governs minor rule violation plans. The Commission believes that the change to the Exchange's minor rule violation

plan will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE rules and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's minor rule violation plan provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on case-by-case basis, whether fines of more or less than the recommended amount are appropriate for violations under the minor rule violation plan or a violation requires formal disciplinary action.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act¹¹ and Rule 19d-1(c)(2) under the Act,¹² that the proposed rule change (SR-NYSE-2004-63), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-653 Filed 2-16-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51184; File No. SR-PCX-2004-129]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Minimum Price Improvement Standards

February 10, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated December 15, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange included current rule text that was omitted from the original rule filing and made technical changes to the rule text. Amendment No. 1 replaced the original filing in its entirety.

⁴ See Partial Amendment dated December 23, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange: (i) submitted the proposed rule text changes in an Exhibit 4, which was inadvertently omitted from Amendment No. 1; and (ii) made minor technical corrections to the existing and proposed rule text.

⁵ See Securities Exchange Act Release No. 50942 (December 29, 2004), 70 FR 1487.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

⁹ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹⁰ 17 CFR 240.19d-1(c)(2).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 240.19d-1(c)(2).

¹³ 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 29, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 24, 2005, PCX amended the proposal.³ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), proposes to modify Commentary .05 to PCXE Rule 7.6(a) to provide for order entry and trading of securities in sub-penny increments. The Exchange also proposes to modify Commentary .01 to PCXE Rule 6.16 to clarify that, for all securities traded pursuant to Commentary .05 to PCXE Rule 7.6(a), the minimum amount of price improvement necessary to execute an incoming marketable order on a proprietary basis is \$0.01. The text of the proposed rule change is available on the Exchange's Web site (<http://www.pacificex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on its Archipelago Exchange ("ArcaEx") facility, PCX is proposing to extend its

request for exemptive relief for rounding sub-penny quotes and trades to securities that are priced greater than \$1.00. PCX has requested this extension until June 30, 2005. Recently, PCX was granted exemptive relief for rounding sub-penny prices for securities priced less than \$1.00.⁴ In accordance with that exemption, Commentary .05 to PCXE Rule 7.6(a) was modified to reflect a sub-penny minimum price variation for securities priced less than \$1.00 on a pilot basis through September 30, 2005. The Exchange proposes adding to this commentary to allow for order entry and execution in increments smaller than \$0.01 for Nasdaq National Market ("NNM"), SmallCap, and exchange-listed securities. In addition, the Exchange acknowledges the Commission's concern that allowing trading in sub-penny increments could permit ArcaEx ETP Holders to trade ahead of customers by improving upon the quoted price in sub-penny increments.⁵ Accordingly, the Exchange is also proposing to revise PCXE Rule 6.16 by providing that the minimum amount of price improvement necessary to execute an incoming marketable order on a proprietary basis by an ETP Holder when holding an unexecuted customer limit order otherwise due an execution pursuant to PCXE Rule 6.16 in that same security is \$0.01.

In conjunction with this proposal, the Exchange has requested exemptive relief that would permit, through June 30, 2005, ArcaEx's ETP Holders to provide for order entry and trading of securities traded on ArcaEx (NNM securities, SmallCap securities, and exchange-listed securities) that are executed and reported in sub-penny increments, while vendors that disseminate ArcaEx quotation information do so in penny increments.⁶

Further, to advance the Commission's review, and as a condition to the exemptive relief sought, the Exchange has agreed to provide the Commission with monthly reports on its activity in sub-penny increments. Such

⁴ See letter from David S. Shillman, Associate Director, Division of Market Regulation ("Division"), Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated September 24, 2004.

⁵ See PCXE Rule 1.1(n).

⁶ See letter from Mai Shiver, Director of Regulatory Policy, PCX, to Annette Nazareth, Director, Division, Commission, dated December 28, 2004. In this letter, the Exchange requested exemptive relief from Rules 11 Ac1-1, 11 Ac1-2, and 11 Ac1-4 to allow ArcaEx, its ETP Holders, and vendors that disseminate ArcaEx quotation information to round sub-penny quotes to the nearest penny increment (up, for orders to sell; down, for orders to buy) for display purposes, while such quotes may be entered and executed in increments less than \$0.01.

information will include reported volume of orders received and executed in sub-penny increments (in terms of both trades and shares), the execution price points, and the nature of the sub-penny orders received and executed (*i.e.*, agency, principal, or otherwise).

The Exchange believes that allowing sub-penny executions on ArcaEx in certain securities would afford ETP Holders with trading opportunities that are consistent with those available at competing exchanges such as the National Stock Exchange and the Chicago Stock Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2004-129 on the subject line.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In the amendment ("Amendment No. 1"), PCX made technical changes to the proposed rule text.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-129. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-129 and should be submitted on or before March 10, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires that the rules of an exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

Simultaneous with this order, the Commission is approving an exemption until June 30, 2005, from Rules 11 Ac1-

⁹In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰15 U.S.C. 78f(b)(5).

1, 11 Ac1-2, and 11 Ac1-4 under the Act¹¹ that permits ArcaEx, ETP Holders of ArcaEx, and vendors that disseminate ArcaEx quote information to enter, execute, and report quotations in exchange-listed, NNM, and SmallCap securities in increments less than \$0.01, although such quotations will be disseminated in rounded, penny increments without a rounding identifier.¹² The changes to Commentary .05 to PCXE Rule 7.6(a) incorporate the terms of that Commission exemption into PCXE's rules. The changes to Commentary .01 to PCXE Rule 6.16 provide that an ETP Holder must price-improve an incoming marketable order by at least \$0.01 when holding an unexecuted customer limit order otherwise due an execution pursuant to PCXE Rule 6.16(a). This is an important investor protection because an ETP Holder will be prohibited from stepping ahead of a customer limit order by a sub-penny amount even though sub-penny orders generally may be entered on ArcaEx. The Commission notes that it previously has approved an identical price improvement standard on other exchanges.¹³

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. Accelerated approval will provide protection for customer limit orders simultaneous with the effectiveness of the Commission exemption that permits sub-penny quoting, for a limited period, on ArcaEx.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change, as amended (SR-PCX-2004-129), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-654 Filed 2-16-05; 8:45 am]

BILLING CODE 8010-01-P

¹¹17 CFR 240.11 Ac1-1, 240.11 Ac1-2, and 240.11 Ac1-4.

¹²See letter from David S. Shillman, Associate Director, Division, Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated February 10, 2005.

¹³See Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001) (approving penny price improvement increment on Chicago Stock Exchange); Securities Exchange Act Release No. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (same for Cincinnati—now National—Stock Exchange).

¹⁴15 U.S.C. 78s(b)(2).

¹⁵17 CFR.200.30-3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202-395-6974;

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965-0454 or by writing to the address listed above.

1. *Railroad Employment Questionnaire—20 CFR 404.1401, 404.1406-.1408—0960-0078.* SSA uses form SSA-671 to secure sufficient information to effect the required coordination with the Railroad Retirement Board for Social Security claims processing. It is completed whenever claimants give indications of having been employed in the railroad industry. The respondents are applicants for Social Security benefits,

who have had railroad employment, or dependents of railroad workers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 125,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 10,417 hours.

2. Government Pension

Questionnaire—20 CFR 404.408a—0960-0160. The Social Security Act and regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefit amount reduced by two-thirds of the pension amount. The data collected on form SSA-3885 is used by SSA to determine if the individual's Social Security benefit will be reduced, the amount of the reduction, and if one of the exceptions in 20 CFR 404.408a applies. The respondents are individuals who are receiving, or will receive, Social Security spouse's benefits and also receive their own Government pension.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 76,000.

Frequency of Response: 1.

Average Burden per Response: 12.5 minutes.

Estimated Annual Burden: 15,833 hours.

3. Teacher Questionnaire (SSA-5665-BK); Request for Administrative Information (SSA-5666-BK)—20 CFR 416.924a and 20 CFR 404.1520—0960-0646. If an individual who is claiming disability under title XVI or title II is currently, or has recently been, in an

education program, SSA must obtain information about his or her functioning from teachers, instructors, and other education personnel who have the opportunity to observe the individual on a day-to-day basis. Educational programs are an important source of evidence and often provide formal assessment results and other kinds of information from a variety of disciplines. Evidence obtained from educational programs varies a great deal, however, in format, content, reliability, and usefulness. The need exists, therefore, for an information collection instrument that will assure a degree of uniformity and consistency in the quantity and quality of information received about a claimant's (or beneficiary's/recipient's) impairment-related limitations.

SSA-5665-BK

Type of Request: Revision of OMB-approved information collection.

Number of Respondents: 557,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 185,667 hours.

SSA-5666

Type of Request: Revision of OMB-approved information collection.

Number of Respondents: 555,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 138,750 hours.

4. Statement Regarding Date of Birth and Citizenship—20 CFR 404.716—0960-0016. Form SSA-702 collects information needed when preferred or

other evidence is not available to prove age or citizenship for an individual applying for Social Security benefits. SSA uses this form for individuals who must establish age as a factor of entitlement or U.S. citizenship as a payment factor. Respondents are applicants for one or more Social Security benefits who need to establish their dates of birth as a factor of entitlement or U.S. citizenship as a factor of payment.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 200 hours.

5. The Ticket to Work and Self-Sufficiency Program—20 CFR 411.160-.730—0960-0644. The Ticket to Work and Self-Sufficiency program allows individuals with disabilities who are receiving SSA payments to work towards decreased dependence on government cash benefits programs without jeopardizing their benefits during the transition period to employment. The program allows disability payment recipients to choose a provider from an employment network (EN), who will guide these beneficiaries in obtaining, regaining, and maintaining self-supporting employment. 20 CFR 411.160-.730 discusses the regulations governing this program. The respondents are individuals entitled to Social Security benefits based on disability or individuals entitled to SSI; Program Managers; EN contractors; and VRAs.

Type of Request: Extension of an OMB-approved information collection.

CFR sections	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
411.140(c) [X-refer sections 411.145, 411.150, 411.325(a), (b), (c), & (d), 411.320(f)].	70,000	2/year	60	140,000.
411.325(e) [X-refer section 411.395(b)]	70,000	12/year	60	840,000.
411.325(f) [X-refer section 411.395(a)]	60,000	1/year	5	5,000.
411.190 (a) [X-refer section 411.195]	250	1/year	30	125.
411.220(a)(1)	55	Varies	30	28.
441.245(b)(1)	12,000	1	1	200.
411.325(d)	25	1	480	200.
411.365	82	1	240	328.
411.575 [X-refer section 411.500]	6,000	1	30	3,000.
411.605(b) [X-refer section 411.610]	27,000	Varies	5	2,250.
411.435(c)	100	Once	60	100.
411.615	1,000	Once	60	1,000.
411.625	50	Once	60	50.
411.210(b)	2,000	Once	30	1,000.
411.590(b)	100	Once	60	100.
411.655	1	Once/year	120	2.
411.200	150	12/year	15	450.
Total annual respondents	248,813		Total Annual Burden Hours.	993,833.

Total Estimated Annual Burden: 993,833 hours.

6. *Help America Vote Act—0960–NEW.*

Background

On October 29, 2002, President George W. Bush signed into law H.R. 3295, the Help America Vote Act (HAVA) of 2002, which mandates the verification of newly registered voters. HAVA places certain requirements upon SSA in terms of verifying information to be used for each State's voter registration process.

SSA's role in HAVA is defined in Section 303 of the law. Section 303 requires each State to implement a computerized statewide voter registration list and to verify voter information with the State motor vehicle administration (MVA) records, or if none exist, with SSA records.

HAVA Information Collection

Individuals registering to vote must provide their driver's license number to the State election agency. If they have no driver's license or State-issued identity card they must supply the last four digits of the Social Security number (SSN). The State election agency will forward the new registrant name, date of birth (DOB), and the last four digits of the SSN to the State MVA.

SSA requires State MVAs to use the American Association of Motor Vehicle Administrations (AAMVA) as a consolidation point for data transfer as is currently done for SSN verification of a driver's license applicant. The data, as input by the MVA, routes the applicant's information to the AAMVA network hub. AAMVA forwards the transaction to SSA's HAVA verification system. The result will be returned from SSA to the AAMVA hub for distribution to the State MVA. The respondents to the HAVA collection are the various State MVAs responsible under the act for verifying voter registration information.

Type of Request: New Information Collection.

Number of Respondents: 50 State MVAs.

Total Annual Responses: *1,000,000.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 33,333 hours.

*The actual number of responses per state will vary based on population. Therefore, the total number of responses is based on data of new voter applications received by all 50 States in 1999–2000.

7. *Public Understanding Measurement System (PUMS)—0960–0612.*

As required by Section 2(b) of the Government Performance and Results Act (GPRA), which provides that Agencies establish the means for measuring their progress in achieving agency-level goals, SSA established the PUMS in 1998 as a tool for measuring its performance in meeting its strategic objectives in the area of public knowledge about and understanding of the Social Security program. The instrument used in PUMS is a national phone survey of adult Americans (age 18 and over) conducted annually for SSA by a professional polling organization.

The PUMS survey instrument is designed to collect knowledge data from key populations toward which SSA has targeted education and outreach programs. Additionally, the survey is intended to assure a valid knowledge measure for key populations at the national level. This information is a crucial step in making SSA more focused and effective in its communication programs. The respondents are randomly selected adults residing in the United States.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,400.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 350 hours.

8. *Statement of Income and Resources—20 CFR 416.207, 416.301–.310, 416.704 and 416.708—0960–0124.* The information collected on form SSA–8010–BK is used in Supplemental Security Income (SSI) claims and redeterminations to obtain information about the income and resources of: Ineligible spouses, parents/spouses of parents, and children living in the claimant's/beneficiary's household; essential persons; and sponsors of aliens (including spouses of sponsors who live with the sponsor). The information is needed to make initial or continuing eligibility determinations for SSI claimants/beneficiaries who are subject to deeming. If eligible, the information is used to determine the amount of the SSI payment. The respondents are persons whose income and resources must be considered in determining the eligibility of SSI claimants or beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 341,000.

Frequency of Response: 1.

Average Burden per Response: 26 minutes.

Estimated Annual Burden: 147,767 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at (410) 965–0454, or by writing to the address listed above.

1. *Advance Notice of Termination of Child's Benefits and Student's Statement Regarding School Attendance—20 CFR 404.350–404.352, 404.367–404.368—0960–0105.*

The information collected on Form SSA–1372 is needed to determine whether children of an insured worker are eligible for student benefits. The data allows SSA to determine student entitlement and whether entitlement will end. The respondents are student claimants for Social Security benefits, their respective schools and, in some cases, their payees.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 33,333 hours.

2. *Statement Regarding Marriage—20 CFR 404.726—0960–0017.*

Form SSA–753 elicits information from third parties to verify the applicant's statement about intent, cohabitation, and holding out to the public as married, which are basic tenets of a common-law marriage. The responses are used by SSA to determine if a valid marital relationship exists and to make an accurate determination regarding entitlement to spouse/widow(er) benefits. The respondents are individuals who are familiar with and can provide confirmation of an applicant's common-law marriage.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden per Response: 9 minutes.

Estimated Annual Burden: 6,000 hours.

3. *Request for Address Information From Motor Vehicles Records; Request for Address Information From Employment Commissions Records—4 CFR 104.2—0960–0341.*

SSA sends the SSA–L711 to State Motor Vehicle Administrations to obtain the last known address from driver's license and registration records. SSA sends the SSA–L712 to State Employment Commissions to obtain the last known

address from State unemployment/employment wage records. SSA uses the information to locate debtors to arrange for payment of debts owed to SSA. The respondents are State Motor Vehicle Administrations and State Employment Commissions.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,400.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 80 hours.

4. *General Request for Social Security Records, eFOIA—20 CFR 402.130—0960—NEW.* SSA uses the information collected on this electronic request for Social Security records to respond to the public's request for information under the rights provided by the Freedom of Information Act (FOIA), and to track those requests by amount received, type of request, fees charged and responses sent within the required 20 days. Respondents are individuals or agencies requesting documents under FOIA.

Type of Request: New information collection.

Number of Respondents: 300,000.

Frequency of Response: 1.

Average Burden per Response: 3 minutes.

Estimated Annual Burden: 15,000 hours.

5. *Social Security Number*

Verification Service (SSNVS)—0960—0660.

Background

Under Internal Revenue Service regulations, employers are obligated to provide wage and tax data to SSA using form W-2, Wage and Tax Statement or its electronic equivalent. As part of this process, the employer must furnish the employee's name and their SSN. This information must match SSA's records in order for the employee's wage and tax data to be properly posted to their Earnings Record. Information that is incorrectly provided to the Agency must be corrected by the employer using an amended reporting form, which is a labor-intensive and time-consuming process for both SSA and the employer. Therefore, to help ensure that employers provide accurate name and SSN information, SSA piloted SSNVS with 100 employers and now plans to implement the service nationally.

SSNVS Collection. SSNVS is an optional free and secure Internet service for employers that allows them to perform advance verification of their employees' name and SSN information against SSA records. SSA will use the information collected through the SSNVS to verify that employee name

and SSN information, provided by employers, matches SSA records. SSA will respond to the employer informing them only of matches and mismatches of submitted information. Respondents are employers who provide wage and tax data to SSA and elect to use the service.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 200,000.

Frequency of Response: 120.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 2,000,000 hours.

6. *Application for SSI—20 CFR 416.305–335—0960–0229.* SSA uses the information collected on form SSA-8000-BK or its electronic equivalent, the Modernized SSI Claims System (MSSICS), to determine eligibility for SSI and the amount of benefits payable to the applicant. During the personal interview process the MSSICS system takes less time to complete because the system propagates like information and only asks relevant questions of the applicant. Approximately 97% of SSI applications are taken via MSSICS. The respondents are applicants for SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Form SSA-8000

Number of Respondents: 33,851.

Frequency of Response: 1.

Average Burden per Response: 41 minutes.

Estimated Annual Burden: 23,132 hours.

MSSICS

Number of Respondents: 1,094,523.

Frequency of Response: 1.

Average Burden per Response: 36 minutes.

Estimated Annual Burden: 656,714 hours.

Total Burden Hours: 679,846.

Dated: February 10, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05-3029 Filed 2-16-05; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 4994]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Junior Faculty Development Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/EUR-05-05.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: April 15, 2005.

Executive Summary: The Office of Academic Exchange Programs/European Programs Branch of the Bureau of Educational and Cultural Affairs (ECA/A/E) announces an open competition for the Junior Faculty Development Program (JFDP). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501 (c) (3) may submit proposals to place visiting faculty from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Serbia and Montenegro, Tajikistan, Turkmenistan, and Uzbekistan at U.S. universities for a one academic semester (five months) program. The grantee organization for this program will support and oversee the activities of the faculty throughout their stay in the United States. In addition, the grantee organization will recruit and select candidates for the JFDP in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Serbia and Montenegro, Tajikistan, Turkmenistan, and Uzbekistan to begin the program in the United States in January 2006.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The Junior Faculty Development Program (JFDP) will offer full fellowships to university instructors from participating countries. Selected through an open, merit-based competition, JFDP Fellows will attend U.S. universities for one academic semester to work with faculty mentors

and to audit courses in order to broaden their knowledge in their fields of study and to acquire understanding of the U.S. educational system. The JFDP will encourage its Fellows to develop professional relationships with the U.S. academic community, and to forge ties between their U.S. colleagues and colleagues in their home countries, and to share their experiences and knowledge with students and professors at their home institutions. Throughout their stay in the United States, JFDP Fellows will audit courses, attend conferences and seminars, and teach a course or give lectures whenever possible. The major goal of the program is to allow scholars from the participating countries to exchange ideas with U.S. scholars in their respective fields of teaching, and to increase collaboration and cooperation between universities in the United States and the participating countries. Participation in the JFDP under this grant is restricted to university instructors from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Serbia and Montenegro, Tajikistan, Turkmenistan, and Uzbekistan in humanities and social sciences. Programs must comply with J-1 Visa regulations. Subject to the availability of funds, it is anticipated that this grant will begin on or about June 1, 2005. Please refer to the Solicitation Package for further information.

In a cooperative agreement, ECA/A/E is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E activities and responsibilities for this program are as follows:

- (1) Participating in the design and direction of program activities;
- (2) Approval of key personnel;
- (3) Approval and input for all program agendas and timelines;
- (4) Guidance in execution of all project components;
- (5) Arrangement for State Department speakers during workshops;
- (6) Assistance with SEVIS-related issues;
- (7) Assistance with participant emergencies;
- (8) Providing background information related to participants' home countries and cultures;
- (9) Liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;
- (10) Participating in selection of evaluation mechanisms.

II. Award Information

Type of Award: Cooperative Agreement. The Bureau's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$1,500,000.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, June 1, 2005.

Anticipated Project Completion Date: December 31, 2006.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A-110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to \$60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to \$1,500,000, to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to

provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package

Please contact the Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, Phone: 202-619-4060; Fax: 202-260-7985, boreckaom@state.gov to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/EUR-05-05 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Olivia Borecka and refer to the Funding Opportunity Number ECA/A/E/EUR-05-05 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at <http://exchanges.state.gov/education/rfgps/menu.htm>. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent per the instructions under IV.3e. "Submission Dates and Times section" below.

IV.3a. 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 U.S. Government. This 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. Please ensure that your DUNS number is included in the appropriate box of the SF-424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS-2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at <http://exchanges.state.gov> or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD-SA-44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401-9810, FAX: (202) 401-9809.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into your proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable,

attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that

evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: *i.e.* sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The Bureau anticipates awarding one grant in the amount of \$1,500,000 to support 70 fully funded fellows, 3–6 per participating country. Applicant organizations are encouraged, through cost sharing and other methods, to provide as many fellowships as possible based on estimated funding. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity.

IV.3e.2. Allowable costs for the program include the following:

- (1) Overseas recruitment and selection of candidates;
- (2) Participant travel expenses, stipends, accident and sickness insurance, visa fees, professional development costs;
- (3) Orientations, participant conferences;
- (4) Host university fees;
- (5) Alumni and follow-on activities;

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. *Submission Dates and Times:* Application Deadline Date: April 15, 2005.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and

delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF-424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR-05-05, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF-424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Sections at the U.S. embassies for their review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for

advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:*

Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:*

Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:*

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau

supported programs are not isolated events.

9. *Project Evaluation*: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

10. *Cost-effectiveness*: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing*: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. *Award Notices*: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements*: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A-122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A-21, "Cost Principles for Educational Institutions."

OMB Circular A-87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A-110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A-133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information: <http://www.whitehouse.gov/omb/grants>. <http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI>.

VI.3. *Reporting Requirements*: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports which should include record of program activities from that period.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Olivia Borecka, Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, ECA/A/E/ EUR-05-05, U.S. Department of State, SA-44, 301 4th Street, SW., Washington, DC 20547, Phone: 202-619-4060; Fax: 202-260-7985, boreckaom@state.gov. All correspondence with the Bureau concerning this RFGP should reference

the above title and number ECA/A/E/ EUR-05-05.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 9, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05-3083 Filed 2-16-05; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Seven Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FAA invites public comment on seven currently approved

public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before April 13, 2005.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Federal Aviation Administration, Information Systems and Technology Services Staff, ABA-20, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267-9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. *2120-0003: Malfunction or Defect Report.* Collection of this information allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements since their effectiveness is reflected in the number of equipment failures or lack thereof. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents. The current estimated annual reporting burden is 8,407 hours.

2. *2120-0027: Application for Certificate of Waiver or Authorization.* Part A of Subtitle VII of the Revised Table 49, United States Code, authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR Parts 91, 101, and 105 prescribe regulations governing the general operation and flight of aircraft, moored balloons, kits, unmanned rockets, unmanned free balloons, and parachute jumping. Applicants are individual airmen, state and local governments, and businesses. The current estimated annual reporting burden is 12,202 hours.

3. *2120-0042: Aircraft Registration.* The information collected is used by the FAA to register aircraft or hold an aircraft in trust. The information required to register and prove ownership of an aircraft is required by any person wishing to register an

aircraft. The current estimated annual reporting burden is 73,572 hours.

4. *2120-0507: Development of Major Repair Data.* SFAR 36 (to part 121) relieves qualifying applicants (Aircraft maintenance, commercial aviation, aircraft repair stations, air carriers, commercial operators) of the burden to obtain FAA approval of data developed by them for the major repairs on a case-by-case basis; and provides for one-time approvals. The current estimated annual reporting burden is 326 hours.

5. *2120-0514: War Risk Insurance.* The requested information is included in air carriers' applications for insurance when insurance is not available from private sources. The current estimated annual reporting burden is 1,668 hours.

6. *2120-0679: Reduced Vertical Separation Minimum (RVSM):* Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous States of the United States (U.S.), Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services must submit their application to the Certificate Holding District Office (CHDO). The CHDO registers RVSM approved airframes in the FAA RVSM Approvals Database. When operators complete airworthiness, continued airworthiness and operations program requirements, the CHDO grants operational approval. The current estimated annual reporting burden is 68,250 hours.

7. *2120-0698: Advisory Circular (AC): Reporting of Laser Illumination of Civil Aircraft.* This collection covers the procedures for pilots to report the unauthorized laser illumination of aircraft to air traffic control, and if necessary to issue emergency notification of that unauthorized illumination to other pilots in the area. The current estimated annual reporting burden is 100 hours.

Issued in Washington, DC, on February 10, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, ABA-20.

[FR Doc. 05-3017 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

DATES: The meeting will be held March 8-10, 2005, starting at 9 a.m.

ADDRESSES: The meeting will be held at The MITRE Corporation, 7525 Colshire Dr., Building 1, South Lobby Entrance, McLean, Virginia 22102-7508.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>; MITRE Contact: Mr. Matthew DeGarmo; telephone (703) 883-7320.

Note: Foreign National attendees must e-mail their contact information to Ms. Marca Johnson at marca@direcway.com no later than March 2, 2005; contact info should include the company you are representing and your country of origin. Additionally you will be required to present your passport for admission to MITRE for this meeting. All participants should be prepared to show photo identification.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- March 8:
 - Opening Plenary Session (Welcome and Introductory Remarks, Approval of First Plenary Summary, Resolve Parking Lot Issues from First Plenary).
 - Review SC-203 Activities since First Plenary.
 - Presentation and Formulation of Proposed Work Plan.
 - Organize Writing Teams.
- March 9:
 - Break into Writing Teams, Commence Tasks.
- March 10:
 - Writing Teams Continue Tasks as necessary.
 - Reform the Plenary.
 - Closing Plenary Session (Writing Teams Report Out, Other Business, Review Actions Items/Work Program, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain

information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 4, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05-3016 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed FAA Order 8110.TVP, Type Validation and Post-Type Validation Procedures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and request for comments on the proposed Federal Aviation Administration Order 8110.TVP. This proposed order defines FAA policy and procedures in type certification and post-type certification for imported and exported products. We also define the expectations, roles and responsibilities of the importing authority, the exporting authority, and the applicant. We set up specific procedures for certification personnel working with the European Aviation Safety Agency (EASA) and member authorities of the joint Aviation Authorities of Europe (JAA).

DATES: Comments must be received on or before March 11, 2005.

ADDRESSES: Send all comments on the proposed revised Order to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Gregory A. Edwards, AIR-110. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, or electronically submit comments to the following Internet address: 9-AWA-AVS-AIR-TVPOrder@faa.gov. Include in the subject line of your message the title of the document, "TVP Order."

FOR FURTHER INFORMATION CONTACT:

Gregory A. Edwards, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR-110, Room 815, 800 Independence

Avenue, SW., Washington, DC 20591. Telephone (202) 267-9287, Fax (202) 267-5340, or e-mail at: greg.edwards@faa.gov

SUPPLEMENTARY INFORMATION:

Comments Invited

Your are invited to comment on the draft order listed in this notice by sending such written data, views, or arguments to the above listed address. Please identify "TVP Order" as the subject of your comments. You may also examine comments received on the draft order before and after the comment closing date at the FAA Headquarters Building, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final Order.

Background

In the mid-1990s, the JAA and we recognized the need to streamline the certification and continued airworthiness processes we apply to imported aviation products. We established sets of type validation and post-type validation principles in a letter of understanding, signed in November 1997. These principles were later amended in November 2001.

The European Parliament approved legislation setting up EASA in July 2002. The new agency, which began operating in September 2003, assumed the certification and validation authority previously exercised by the individual National Aviation Authorities. EASA recognizes existing bilateral agreements between the United States and European Union member states until a single, new bilateral agreement is negotiated between the United States and the European Union. Forming EASA gave everyone the opportunity to look at the validation and post-validation processes, to incorporate lessons learned, and tailor them to the new European aviation certification system. As a result, we streamlined the principles and extended the scope.

How To Obtain Copies

You can get an electronic copy via the Internet at <http://www.faa.gov/certification/aircraft/DraftDoc/Comments.htm> or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on February 11, 2005.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05-3021 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Loudoun, Fauquier, Fairfax, Prince William, and Stafford Counties, VA

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent; withdrawal.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public of its intent to withdraw a notice of intent to prepare an Environmental Impact Statement in cooperating with the Virginia Department of Transportation for potential transportation improvements in the western portion of Northern Virginia, between Route 7 in Loudoun County and Interstate 95 in Stafford County, to address growing regional transportation needs.

FOR FURTHER INFORMATION CONTACT: Edward S. Sundra, Senior Environmental Specialist, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240-0249, Telephone 804-775-3338.

SUPPLEMENTARY INFORMATION: On December 19, 2000, the Federal Highway Administration published a notice of intent in the **Federal Register** (69 FR 79450, December 19, 2000) to prepare an Environmental Impact Statement in cooperation with the Virginia Department of Transportation for potential transportation improvements in the western portion of Northern Virginia. The project, more commonly known as the Western Transportation Corridor, was proposed to be located between Route 7 in Loudoun County and Interstate 95 in Stafford County and was being developed to address growing regional transportation needs. However, like many other states in the country, the Commonwealth of Virginia has had to deal with budgetary and fiscal priorities brought about by the economic recession. As a result, the Virginia Department of Transportation stopped development of the Western Transportation Corridor and terminated the consultant contract in 2003 for the preparation of the Environmental Impact Statement.

Despite the termination of the consultant contact, the Virginia Department of Transportation considered other options that might lead to the development of the Western Transportation Corridor. In 2004, the Virginia Department of Transportation put out a request to the private sector soliciting their interest in developing the Western Transportation Corridor. The solicitation did not elicit any interest, so the Virginia Department of Transportation will not continue to pursue the development of the Western Transportation Corridor at this time or the preparation of an Environmental Impact Statement.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: February 8, 2005.

Edward S. Sundra,

Senior Environmental Specialist.

[FR Doc. 05-3079 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on December 10, 2004 (69 FR 71869).

DATES: Comments must be submitted on or before March 21, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493-6292), or Debra Steward, Office of Information

Technology and Productivity Improvement, RAD-20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104-13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On December 10, 2004, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 69 FR 71869. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden. The proposed requirements are being submitted for clearance by OMB as required by the PRA.

Title: Safety Integration Plans.

OMB Control Number: 2130-0557.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: The Federal Railroad Administration (FRA) and the Surface Transportation Board (STB), working in conjunction with each other, issued

joint final rules establishing procedures for the development and implementation of safety integration plans ("SIPs" or "plans") by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. The scope of the transactions covered under the two rules is the same. FRA will use the information collected, notably the required SIPs, to maintain and promote a safe rail environment by ensuring that affected railroads (Class Is and some Class IIs) address critical safety issues unique to the amalgamation of large, complex railroad operations.

Annual Estimated Burden Hours: 528 hours.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501-3520.

Issued in Washington, DC on February 9, 2005.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 05-3015 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received

a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Uniontown Central Railroad (UTCV) (Waiver Petition Docket Number FRA-2004-19999)

The Uniontown Central Railroad (UTCV) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all windows.

This request is for two (2) cabooses, Car Numbers PC 18086 (built in 1946) and P&LE 504 (built in 1956), and one locomotive, UTCV 5656. The UTCV claims that its operation has low incidence of vandalism, the windows of these cabooses and locomotive are of odd sizes, and the costs of FRA Type I and II glazing are high. In addition, the UTCV stated that the maximum speed of its equipment is 20 miles per hour.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2004-19999) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC, on February 9, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05-3018 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003-14826, Notice 2]

Nissan North America Inc., Notice of Grant of Application for Decision of Inconsequential Noncompliance

Nissan North America (Nissan) has determined that some 2002-2003 Model Year (MY) Altimas are equipped with side marker lamps that fail to comply with certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices and Associated Equipment." Nissan has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Nissan has also applied to be exempted from the notification and remedy requirements of 49 U.S.C Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** (68 FR 60147) on October 21, 2003. Opportunity was afforded for public comment until November 20, 2003. Comments were received from lighting manufacturers Koito Manufacturing Co., LTD. (Koito), and North American Lighting (NAL). Nissan submitted a letter September 28, 2004, in support of its petition; this letter referenced a FMVSS No. 108 final rule published in the **Federal Register** (69 FR 48805) on August 11, 2004. Nissan also submitted data in support of its letter on October 22, 2004.

Paragraph S5.1.1 of FMVSS No.108 states that "* * * each vehicle shall be equipped with at least the number of lamps, reflective devices, and associated equipment specified in Tables I and III and S7, as applicable. Required equipment shall be designed to conform to the SAE Standards or Recommended Practices referenced in those tables * * * Table III applies to passenger cars

and motorcycles and to multipurpose passenger vehicles, trucks, trailers, and buses less than 80 inches in overall width." For side marker lamps, Table III lists SAE J592e, July 1972, which in turn requires section J "Photometry Test" of SAE J575 to be met. Section J of SAE J575 states that "when making photometric measurements at specified test points, the candlepower requirements between test points shall not be less than the lower specified value of two closest adjacent test points for minimum values." The specified photometric value required for amber side markers such as those used on the subject Nissan Altimas is 0.62 cd.

Nissan stated that extensive testing has shown that the side marker lamps consistently meet the photometric requirements at the required test points, but that the lamps fail to satisfy the requirement to maintain the lower minimum intensity value of two test points between those test points. However, Nissan stated that the noncompliance does not affect the primary purpose of the lamps to provide proper visibility allowing identification of the front edge of the vehicle at night. Nissan argued that the reported noncompliance is inconsequential as it relates to motor vehicle safety. In its letter received by the agency on September 28, 2004, Nissan discussed the applicability of the cited final rule that amended requirements of FMVSS No. 108. Nissan pointed out that the final rule contained a provision for side marker lamps mounted less than 750 mm above the road surface that allows compliance with photometric requirements at a 5 degree downward visibility angle instead of the previously required 10 degree downward visibility angle. Nissan stated that the Altima side marker lamps would be compliant under the amended Standard because the light output at 5 degrees downward surpasses the minimum requirement of 0.62 cd at, and between, test points.

Both of the public comments received, from Koito and NAL, supported granting Nissan's petition. Both companies stated they believe the noncompliance in question is inconsequential to motor vehicle safety. They supported this conclusion with various comments that indicated a belief that the ability to recognize the presence of the subject Altimas, as well as the overall length of these vehicles, is not adversely impacted by the noncompliance in question.

We have reviewed Nissan's rationale for granting the petition and we agree. The aforementioned final rule published on August 11, 2004, did indeed amend the photometric requirement for low-

mounted lamps, including side marker lamps, to allow compliance at a 5 degree downward visibility angle instead of at a 10 degree downward visibility angle as previously required. This change is present in the following text under section S5.3.2.3 of the revised FMVSS No. 108, "For signal lamps and reflected devices mounted less than 750 mm above the road surface as measured to the lamp axis of reference, the vertical test point angles located below the horizontal plane subject to photometric and visibility requirements of this standard may be reduced to 5 degrees." In making this revision, the agency previously explained that such low-mounted lamps typically cannot be observed at greater downward angles. This situation is exactly the same as which exists on the Altima front side marker lamp; it complies at 5 degrees down.

In consideration of the foregoing, NHTSA has decided that Nissan has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety, and that it should be exempted from the notification and remedy requirements of the statute. Accordingly, Nissan's application is hereby granted.

Authority: 49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 10, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05-3020 Filed 2-16-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, VA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are

filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT:

Technical and licensing information on the invention may be obtained by writing to: Sal Sheredos, Department of Veterans Affairs, Acting Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202-254-0473; e-mail at: saleem@vard.org. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

US Provisional Patent Application No. 60/600,390 "Treating Neurological Disorders with Neuro-Specific Gap Blockers".

Dated: February 10, 2005.

Gordon H. Mansfield,

Deputy Secretary, Department of Veterans Affairs.

[FR Doc. 05-3085 Filed 2-16-05; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Thursday,
February 17, 2005**

Part II

Department of Transportation

Office of the Secretary

14 CFR Parts 241 and 249

**Aviation Data Modernization; Proposed
Rule**

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Parts 241 and 249**

[Dockets No. OST-1998-4043]

RIN 2105-AC71

Aviation Data Modernization**AGENCY:** Office of the Secretary, Department of Transportation.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation (the Department) is proposing to revise the rules governing the nature, scope, source, and means for collecting and processing aviation traffic data. Those reporting requirements are known as the: Origin—Destination Survey of Airline Passenger Traffic (O&D Survey); and Form 41, Schedule T-100—U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-flight Market and Form 41, Schedule T-100(f)—Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market (collectively, the T-100/T-100(f)). Current traffic statistics no longer adequately measure the size, scope and strength of the air travel industry. This NPRM proposes to simplify the requirements placed upon Carriers reporting the O&D Survey. The proposed O&D Survey will eliminate the ambiguity in the identification of the Participating Carrier and eliminate the need for manual data collection by designating the Issuing Carrier as the Participating Carrier. It will also increase accuracy by expanding the volume of data to 100 percent of Ticketed Itineraries, and make the data more useful to Department, airport, and industry planners by collecting broader information about the Ticketed Itinerary sale and the scheduled itinerary details. The proposed T-100/T-100(f) will improve the quality of the data by maximizing the congruence of the O&D Survey and the T-100/T-100(f).

DATES: Comments must be submitted by April 18, 2005.

FOR FURTHER INFORMATION CONTACT:

Richard Pittaway, Office of Aviation Analysis, 400 Seventh St. SW., Room 6401, Washington, DC 20590, (202) 366-8856.

SUPPLEMENTARY INFORMATION:**Electronic Access**

You can view and download this document by going to the Web site of the Department's Docket Management System (<http://dms.dot.gov/>). On that page, click on "simple search." On the

next page, type in the last four digits of the docket number shown on the first page of this document, 4043. Then click on "search." An electronic copy of this document also may be downloaded from <http://regulations.gov> and from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: http://www.archives.gov/federal_register/index.html and the Government Printing Office's database at: <http://www.gpoaccess.gov/fr/index.html>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Public Meeting

Based on the significant proposed changes to the O&D reporting system, the Department is considering holding a public meeting. If necessary, the public meeting would allow the Department to gather additional input from the Air Carriers and other stakeholders. Any meeting would be open to the public and a record of the meeting would be placed in the rulemaking docket. If the Department decides a public meeting is necessary, the Department will publish a notice announcing the meeting in the **Federal Register**.

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A. Authority

The Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443) requires the Department of Transportation (the Department), under the authority of the Secretary for Transportation (49 U.S.C. 329(b)(1)), to collect and disseminate information on civil aeronautics and aviation transportation in the U.S., other than that collected and disseminated by the National Transportation Safety Board. The Department must, at minimum, collect information on the origin and destination of passengers and information on the number of passengers traveling by air between any two points in air transportation. Additionally, the Department must be responsive to the needs of the public and disseminate information to make it easier to adapt the air transportation system to the present and future needs of the commerce of the U.S. (49 U.S.C. 40101(a)(7)). In meeting this responsibility, the Department collects data submitted under 14 CFR Part 217 (Reporting Traffic Statistics by Foreign Air Carriers in Civilian Scheduled, Charter, and Nonscheduled Services), 14 CFR Part 241 (Uniform System of Accounts and Reports for Large Certificated Air Carriers) and 14 CFR Part 298 (Exemptions for Air Taxi and Commuter Air Carriers).

Under 14 CFR Part 217, Foreign Air Carriers that are authorized by the Department to provide scheduled passenger services to or from the U.S. must file Form 41 Schedule T-100(f) "Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market," accumulated in accordance with the data elements prescribed in Section 217.5 (14 CFR Part 217 section 217.3). These requirements reflect changes made to international data submissions by large Air Carriers (Docket No. OST-1996-1049, RIN 2105-AC34, 62 FR 6715; Docket No. OST-1998-4043, RIN 2139-AA08, 67 FR 49217).

Under 14 CFR Part 241, all U.S. certificated and commuter U.S. Air Carriers must report their traffic

movements in the T-100. Under 14 CFR Part 217, all Foreign Air Carriers that operate to the U.S. must report their traffic movements involving a U.S. point in the T-100(f). Participation in the O&D Survey is required by 14 CFR Part 241 Section 19-7. The source documents are airline tickets ending in double-zero (major domestic markets) or zero (all other markets), reported only by the first honoring and Operating Air Carrier, which shall report the required data for the entire Ticketed Itinerary.

B. Background

This NPRM is part of an effort by the Department to conduct a broad-based review of the requirements for aviation data and to modernize the way the Department collects, processes and disseminates aviation data. Specifically, it addresses the collection and processing of traffic reporting requirements described in the O&D Survey and T-100/T-100(f). It reflects prior analyses of the aviation data collected and processed by the Department and the effective use of that data by the government, the airline industry, consumers, and other stakeholders, which indicate a need to revise and update the O&D Survey and T-100/T-100(f).

1. Current Method of Collecting O&D Survey Data

The O&D Survey collects a sample of itineraries quarterly from large certificated U.S. Air Carriers. Foreign Air Carriers granted antitrust immunity as part of code-share agreements with U.S. Air Carriers contribute O&D Survey data under a similar but separate program. The current method of gathering data for the O&D Survey requires large certificated Air Carriers that transport passengers (i.e. "Participating Carriers") to examine each flight coupon to determine whether the ticket, or Ticketed Itinerary, is reportable. Reportable tickets are those with a ticket number ending in a double-zero (major domestic markets) or zero (all other markets). In practice, tickets ending in zero are reported, presumably representing ten percent of all Ticketed Itineraries. The ticket must be reported unless it is apparent that another Participating Carrier has already reported it. If it is not apparent, then the Participating Carrier must report the ticket. Data are reported quarterly.

If the Participating Carrier issued the ticket, it will likely have saved the itinerary data for use in reporting the ticket to the Department's O&D Survey. If the Participating Carrier did not issue the ticket, the Carrier must either receive the necessary data from the

Carrier that issued the ticket or employ staff to examine the physical passenger document and transcribe as much of the Ticketed Itinerary as possible from a used flight coupon.

2. Current Method of Collecting T-100/T-100(f)

The current method of gathering data for the T-100/T-100(f) requires Reporting Carriers (e.g. all Carriers required by 14 CFR Part 217, 14 CFR Part 241, and 14 CFR Part 298 to report operating statistics) to report the movement of traffic in accordance with the uniform classifications prescribed. They are compiled by Flight-Stage as actually performed and represent 100 percent of operations. The requirements reflect revisions made to T-100/T-100(f) reporting requirements for both Foreign and Domestic Air Carriers (Docket No. OST-1996-1049, RIN 2105-AC34, 62 FR 6715; Docket No. OST-1998-4043, RIN 2139-AA08, 67 FR 49217). Data are submitted monthly.

3. Office of Inspector General's Report

At the request of The Bureau of Transportation Statistics (BTS), the Office of the Inspector General (OIG) audited the Passenger Origin-Destination Survey (O&D Survey) data submitted by the Air Carriers to the Department. The OIG report, released in February 1998, acknowledged that passenger data was critical for basic departmental responsibilities and for making sound policy decisions. It declared the O&D Survey to be insufficiently reliable for use in supporting these decisions. Specifically, the OIG report concluded that "[a]lthough O&D data are used by Department analysts to provide quantitative support for key policy and funding decisions, we found that O&D data are unreliable for use in making these important decisions." (Office of Inspector General Audit Report Number AV-1998-086 Feb. 24, 1998 p.iii).

4. Advanced Notice of Proposed Rulemaking

In July 1998, the Office of the Assistant Secretary for Aviation and International Affairs and BTS jointly issued an advance notice of proposed rulemaking (ANPRM) (July 15, 1998, 63 FR 28128) as a first step in reviewing aviation data collected by the Department (Docket OST-1998-4043-1). The Department solicited comments about (1) whether the existing airline traffic and financial data should be amended, supplemented or replaced; (2) whether selected forms and reports should be retained, modified, or eliminated; (3) whether aviation data

should be filed electronically; and (4) how the aviation data system should be reengineered to enhance efficiency and reduce costs for both the Department and the airline industry. The ANPRM explored not only the scope of traffic and financial information, but also the sources of data, the timing of the reporting of data, the methods of processing data, and the release of data to the public. The Department subsequently conducted additional outreach and research activities to further assess data requirements and potential improvements to the reporting and processing systems. In the ANPRM, the Department stated its goal that the aviation data systems should be reviewed and modernized to adapt to the present and future needs of commerce.

As a result of the ANPRM, the Department issued an NPRM on August 28, 2001, to assessment changes to the T-100/T-100(f) Traffic Reporting System (Docket No. OST-1998-4043, RIN 2139-AA08, 66 FR 45201). On July 30, 2002, the Department issued a final rule modifying the T-100/T-100(f) Traffic Reporting System (Docket No. OST-1998-4043, RIN 2139-AA08, 67 FR 49217). This NPRM proposes additional data modernization changes that were not previously addressed in prior rulemakings.

C. Need for Data Modernization

In 1947, the U.S. Government under the Civil Aeronautics Board (CAB) began keeping information about the origin and destination of passenger air travel based on passenger reservations. In 1968, the O&D Survey was overhauled and the basis of counting passengers was changed to the present system of counting sold tickets reported after first use. With the exception of a few added data elements to record code-share ticketing, the O&D Survey collected today has changed little since 1968, although some changes were made to the T-100/T-100(f) (Docket OST-1996-1049, RIN 2105-AC34, 62 FR 6715; Docket OST-1998-4043, RIN 2139-AA08, 67 FR 49217). The industry, however, has changed a great deal since then.

1. Background

Worldwide, the scheduled air transportation industry is divided into those Carriers that share passengers with one another on the same Air Travel Ticket, a practice called interlining, and those Carriers that operate independently without interline agreements. For both types of Carriers, only one Carrier serves as the Issuing Carrier, but for interlining Carriers, the

Issuing Carrier plays a coordinating role for all other Carriers included in the Ticketed Itinerary. The Issuing Carrier is responsible for holding the ticket purchaser's funds until they are earned, paying taxes due to government agencies, and paying the travel agent commission, if any. The Issuing Carrier is also known as the plating Carrier because, in the age when flight coupons had red carbon paper backing, the Issuing Carrier's three-digit identifier was stamped on a metal plate that travel agents and airline ticket agents used to imprint the first three positions of a 13-digit ticket number of an Air Travel Ticket.

The Issuing Carrier holds the ticket purchaser's funds until they have been earned by providing transportation to the passenger. When the passenger's travel plans include travel on multiple Carriers on the same Ticketed Itinerary, the Carrier that transports the passenger provides evidence to the Issuing Carrier that the passenger has been transported in order to receive its share of the funds. This process is called "interline settlement" or "interline billing." When presented with evidence that the passenger has been transported, the Issuing Carrier credits the billing Carrier with its prorated share of the passenger's fare. Since sharing passengers internationally is common, the interline billing process is standardized worldwide across all Carriers that choose to interline passengers. Because travel agencies all over the world sell tickets on Carriers located in many countries, and because passenger travel plans often involved multiple Carriers, interlining Carriers and travel agents worldwide created the standard agent ticket, which is used universally by interlining Carriers. These Carriers use identical, or near identical, billing processes to facilitate the handling of shared tickets. Even when travel is scheduled on a single Carrier, extenuating circumstances due to weather, mechanical, or other operational difficulties can result in passengers being transported on multiple Carriers. After accommodating a displaced passenger, the Carriers use standard interline billing processes to transfer funds from the Issuing Carrier to the Carrier that transported the passenger. Carriers that do not choose to interline passengers and that do not rely on travel agents to distribute their travel products are not bound by these standard procedures and agreements, but most Carriers choose to use industry standard procedures nonetheless.

Tax authorities generally require the Issuing Carrier to remit all taxes and fees associated with the Air Travel

Ticket on behalf of all Carriers that appear on the Ticketed Itinerary. The Issuing Carrier, regardless of the identity of the Carrier that will operate each Flight Coupon Stage, will remit the tax tied to each Flight Coupon Stage. A case in point is the Aviation and Transportation Security Act (ATSA), Public law 107-71. Under the ATSA, the Issuing Carrier remits the September 11th Security fee. Even though the fee is calculated based upon the number of Flight Coupon Stages in the Air Travel Ticket, carriers that transport the passengers have no responsibility for collecting and remitting this fee.

For example, a passenger purchasing non-stop service transportation from Washington to St. Louis and back will be assessed the September 11th Security Fee one time for each One-way Trip. The Issuing Carrier will remit the September 11th Security Fee within 60 days of the purchase of the ticket, regardless of the scheduled travel date. Here, if U.S. Airways, Inc. (US Airways) issues a Ticketed Itinerary with outbound travel on US Airways and return travel scheduled several months later on United Air Lines (United), it is the responsibility of US Airways, as the Issuing Carrier, to remit the September 11th Security fees for travel on both outbound and return travel. Passengers pay the September 11th Security fee based on the number of enplanements described in the Ticketed Itinerary, not on the number of actual enplanements that the exigencies of travel actually require the passenger to make. If, on the day the passenger leaves Washington, a problem arises that results in the passenger traveling to another city (and, perhaps, on another Carrier) to change planes before continuing on to St. Louis, the passenger is not assessed a second September 11th Security Fee because the assessment of the September 11th Security Fee was made by the Issuing Carrier when the itinerary was issued.

It is a misnomer to say that travel agents issue tickets. Travel agents distribute (sell or issue for free) Ticketed Itineraries on behalf of an Issuing Carrier, and send the pertinent information about the sale, and the proceeds of the sale, to the Issuing Carrier. Originally, travel agents remitted funds directly to Issuing Carriers. With growing numbers of airlines, the international nature of air travel, and growing numbers of travel agencies, Carriers and travel agencies throughout the world formed clearing houses, which came to be known as Bank Settlement Plans (BSPs), to provide a central location for handling Air Travel Tickets distributed (sold) by travel agents. There is a BSP for each

country or, sometimes, clusters of countries. Travel agencies in North America remit sales to the Airlines Reporting Corporation (ARC), organized in the early 1980s, which operates in much the same way that BSPs operate in other parts of the world.

When the current O&D Survey was established in the 1960s, the most common accounting system was a lift-based system. The airline industry used flown flight coupons, also known as lifts, as the primary source of accounting and marketing data. It was customary to make a reservation, and then ticket the reservation at a later time. The ticket consisted of one flight coupon for each enplanement and a summary or auditor's coupon. Every flight coupon contained all the information about the itinerary.

Moving all evidence of the ticket sale to each airline's accounting center was time-consuming and laborious. In the years prior to the widespread use of computers, tickets sold in the U.S. took weeks to reach the Carrier; tickets sold in foreign countries would typically take months. Some ticket sales were processed within a week or two, but very often sales took so long that the passenger had completed the journey before the Issuing Carrier processed the sale of the Air Travel Ticket. In contrast, after each flight departure, the airport personnel sent a flight envelope containing all the flight coupons to the Operating Air Carrier's accounting offices for processing. The flown flight coupons came to the accounting center organized in flight envelopes for flights departed mostly in the prior week. By virtue of the ubiquitous red carbon paper, every flight coupon included a copy of the entire itinerary. Therefore, in a pre-computer environment, a lift-based accounting system organized around the lifted flight coupons made sense. Taxes and commissions had to wait until the sale records reached the Issuing Carrier, but in a lift-based accounting system, a Carrier's accounting and market data needs were met with the information on the lifted flight coupon.

In 1968, the CAB designed the O&D Survey around the lifted flight coupon to reflect the standard procedures that were in use in the airline industry. Collecting the ticket sale data after one coupon had been used was not only in line with Carrier accounting practices of the time but also had two other advantages. First, this collection method grouped the reported tickets together in a date close to the passenger's use of a flight coupon rather than the ticket issue date. Second, it kept fully refunded and

fully exchanged tickets from being included in the O&D Survey.

The CAB also recognized that manual procedures are labor intensive and expensive. In keeping with the desire to minimize the burden of collection, the CAB specified very few elements from the ticket for collection, required only 10 percent of the tickets to be examined, and limited the number of surveys to four a year.

The Carriers were early adopters of computer systems. The first of the customer interactions to be automated was the reservation process. The major Carriers built large reservation systems to match passengers to departing aircraft. The reservations system computers had an operating system that was designed specifically for the requirements of Carrier reservation systems. Passengers and travel agents worldwide called Carriers to make a reservation and the airline employees entered the passenger information. Several of the Carriers eventually packaged their systems as a product, called a Computer Reservation System (CRS). They sold the ability to access the reservations system to the travel agents. Marketed as Sabre, PARS, Apollo, and System One, the CRS owners gained revenue from others' access to the system, and Carriers lowered their costs because travel agents, rather than airline employees, were now entering the passenger information into the reservations system.

When the reservations systems began to issue automated tickets, the travel agent and the airline ticket counters achieved higher efficiency and productivity. Automated ticketing lowered costs by copying data already in the reservations system onto a paper ticket. However, since the reservations computer operating system was incompatible with the Carrier accounting computers, the information from the ticketing record had to be copied again onto an electronic record that was transmitted to the Carrier's accounting computer systems. Since the accounting system received a copy of the ticket data but not a direct link to the reservations system, the accounting system had no direct way of recording changes made in the reservation system.¹ Changes to the passenger's reservation that were important enough to cause an agent to re-issue the ticket would, in turn, generate a new ticket record that would be forwarded to the accounting system. Changes to the passenger's reservation that did not

cause an agent to re-issue the ticket would not be communicated to the accounting system. Nevertheless, whereas moving manual ticket data from the ticket sellers to the Carriers had been laborious, slow, and costly, the automated computerized ticketing process opened up new possibilities to move ticket information quickly, efficiently, and at low cost to Carriers.

Automated ticket processing opened up cost saving opportunities in passenger revenue accounting. The huge cost of rewriting an accounting system from lift-based to sales-based was justified, in part, because the lift-based accounting system required hundreds of employees trained to process the lifted flight coupons. Because a sales-based accounting system makes use of information already stored in the computer, Carriers gradually shifted away from reliance on information from lifted flight coupons and toward reliance on information stored from the ticket sale. By 2004, Carriers use sales-based accounting systems almost exclusively.

Regardless of the accounting system, there remained a gap in data when the itinerary included multiple Carriers. Only the Carrier that issued the ticket had a complete computer record of it. A Carrier that transported a passenger on a ticket that it did not issue had to employ staff to enter the itinerary into its computer system. In the 1980s, American Airlines initiated agreements to share ticket information about shared passengers with Trans World Airlines, United Air Lines and Eastern Airlines to avoid the cost of manually re-typing each other's tickets. In 1990, the system of sharing ticket information was formalized with an industry standard record structure for all Carriers called Transmission Control Number (TCN) record. Whenever a Carrier needed to share information about a ticket with the other Carriers in the itinerary, a TCN record could be sent between Carriers. Responsibility to oversee the data sharing was given to the Airline Tariff Publishing Company (ATPCO). ATPCO would forward TCN records to the operating Carriers in the itinerary on behalf of the Issuing Carrier. The ATPCO TCN exchange service was offered to all Carriers, although not all Carriers decided to participate.

The TCN data sharing was created as an optional service to facilitate more efficient information exchange among interlining Carriers electing to use the service, not as a compulsory system. Tickets continued to be created without a corresponding TCN record. Conversely, multiple TCNs were sometimes created to describe a single

sale. Sometimes this happened because TCN records were generated for tickets for customers who failed to complete the purchase. Other times, customers demanded a change that resulted in a second TCN being created while the first could not reliably be nullified. Testing can generate a TCN or, sometimes, TCNs by the thousands, for which there was no ticket sale. Carriers' passenger revenue accounting systems were designed to find the TCNs they needed for accounting purposes, ignore the extraneous TCNs, and still be able to accept manual data on tickets for which no TCN exists. Not all Carriers used TCN records in the course of business. Of those that did, some created TCNs for their own internally-issued tickets, while other Carriers did not.

After the CRSs became known as Global Distribution Systems (GDSs) in the 1990s, they inherited the responsibility to create the TCN records for travel agency tickets. With this development, TCNs became the vehicle to send information about the ticket from the travel agencies to the Issuing Carrier as well as to any other Carrier that participated in the itinerary. The GDSs sell the TCN information to the Carriers for a small fee. The GDSs also sell the travel agent's reservation information. The product, called marketing information data tapes (MIDT), contains no information about the price of the travel except the selling class codes and is limited to segments booked through travel agencies. The MIDT data are marketed to Carriers for use in business planning activities.

While increasing computerization simplified many of the carriers' data collection, processing, and exchange activities, manual collection of the O&D Survey information became more difficult for the Participating Carriers. With reliance on computerized ticketing and the shift to sales-based accounting systems, there was little interest or need to continue the practice of using carbon paper to print the whole itinerary on all of the ticket's flight coupons. Examination of coupons, standard procedure in the old lift-based system, is not necessary in the normal course of business when using a sales-based accounting system. Since the Department's O&D Survey continued to require the Operating Air Carrier to provide information from the lifted flight coupons, it became increasingly vital for the Operating Air Carrier to receive information about the issuance of the ticket from the Issuing Carrier. If the first Participating Carrier is not the Issuing Carrier or did not receive that sale information from the Issuing

¹ This was true at some carriers until the advent of electronic ticketing in the mid-1990s.

Carrier, then the Participating Carrier is required to employ staff to locate that lifted flight coupon. This is an intensely manual process, and it is a significant burden on limited human and financial resources of the Operating Air Carrier. In the pre-computer era, Carriers could draw on accounting department employees trained in obtaining information from lifted flight coupons, but increasing reliance on computer records and sales-based accounting systems left Carriers with only a small number of employees with sufficient training to glean the O&D Survey information from a lifted flight coupon. Sales processing by computer has become so reliable that as of May 2004, the GDSs no longer print a paper version of the auditor's coupon. Employees with the skills needed to extract the necessary information from visual examination of a lifted flight coupon have become increasingly scarce.

The level of effort that the current O&D Survey imposes on an Operating Air Carrier to identify whether it is the first Participating Carrier in the itinerary is compounded by the number of Carriers the Department exempts from reporting to the O&D Survey. Tens of thousands of passengers fly each day on commuter Carriers and Foreign Air Carriers operating under code-share agreements. As a result of code-share ticketing procedures, the identity of the Operating Air Carrier is often hidden from an outside observer. When the Issuing Carrier does not provide the itinerary details to the Operating Air Carrier, via a TCN record or other means, then it is difficult for the Operating Air Carrier to determine whether any of the other Carriers whose Airline Designator appears on the ticket as the Marketing Carrier is scheduled to operate the flight. A Participating Carrier may not be aware that a Code-Share partner is scheduled to operate a flight. The CFR specifically absolves the Participating Carrier from the burden of determining the scheduled Operating Air Carrier if the Issuing Carrier did not notify it and it is not a Carrier involved in the code-share agreement.

If the reporting carrier does not know the operating carrier on a downline code-share segment, it would use the ticketed carrier's code for both the operating and the ticketed carriers. The reporting carrier is not responsible for knowing the operating carrier of a downline code-share where it is not a party to the code-share segment.

—14 CFR Sec 19-7 V. Selection of Sample and Recording of Data (D)(2)(b)

In addition to the higher cost, examination of a printed paper coupon to obtain information that is usually

transferred by computer yields less information than it did in the 1960s, when manual processing was the norm. Electronic ticketing has become the standard practice for most U.S. Air Carriers. However, when authorization to board a plane must be communicated between Carriers, and electronic means are for any number of reasons unavailable, issuing a paper flight coupon remains the standard practice of the industry.

The O&D Survey requires Participating Carriers to report information about an entire ticket based on the knowledge of the flight coupon they have in hand. Paper coupons today generally only contain the information for a single flight segment. The itinerary must be deciphered by examining the pricing area of the ticket. Unfortunately, the pricing area lists city codes instead of airport codes. For cities with only one airport, the limitation poses no problem, but for cities such as New York, the pricing area will list the price to NYC. The use of NYC obscures whether the passenger is scheduled to arrive at LaGuardia (LGA) or Kennedy (JFK) or, for that matter, at Newark (EWR) or Newburgh (SWF) airports.

The passengers' purchased itinerary has always been limited to four segments per ticket because only four could be printed plainly on carbon paper copies. If a passenger's itinerary required more than four flight coupons, the Carriers used two or more tickets in conjunction with each other. When the itinerary was long enough to require spanning two tickets, the information from the second ticket was never available to the Participating Carrier. Recognizing this, the Department exempted the Participating Carrier from reporting the second and subsequent conjuncted tickets from the O&D Survey. However, even when some portions of the Ticketed Itinerary go unreported, the total amount collected for the ticket is still reported in full. Reported flight coupons are artificially over-valued when the full ticket value, but only the partial itinerary, is reported. The number of partially reported itineraries currently being reported in the O&D Survey is assumed to be low, but since they are not detectable, there is no ability to quantify them, and, therefore, the impact of exempting long itineraries on the current O&D Survey is unknown.

Reliance on the ability of the Operating Air Carrier to examine the lifted flight coupons no longer provides the best reasonably obtainable economic information about the purchase of air travel on scheduled Carriers. The Department acknowledges that the

current O&D Survey burdens Participating Carriers with obligations to examine the details of lifted flight coupons that they would not ordinarily do in the course of their business.

Significant among these burdens is the obligation to determine first Participating Carrier. Under the requirements of the current O&D Survey, the only way to meet the obligation of determining whether an Operating Air Carrier is the first Participating Carrier is for each Operating Air Carrier to examine the complete routing of every Ticketed Itinerary that was used to transport passengers in the quarter. There is no other way for Operating Air Carriers to determine whether or not it is apparent that another Participating Carrier has already reported the ticket.

The Survey data are taken from the coupon that is lifted by a participating carrier, unless it is apparent from the lifted coupon that another participating carrier has already recorded and reported the data, in which instance the ticket coupon is non-reportable for the second honoring/participating carrier.
—14 CFR Sec 19-7 Appendix A (I.) General Description of O&D Survey (B) Narrative Description

The "unless it is apparent" standard for determining whether an Operating Air Carrier is responsible for reporting a Ticketed Itinerary is a difficult standard to meet. Every Operating Air Carrier must diligently examine every Ticketed Itinerary to find out whether it has a ticket number ending in zero. For ticket numbers ending in zero, when the Operating Air Carrier is the initial Carrier in the routing, then clearly it should report the Ticketed Itinerary. When the Operating Air Carrier is the second or third Carrier in the routing, it must compare the identifiers of the previous Carriers in the routing to the list of Participating Carriers provided by the Department's Office of Airline Information (OAI). Under the current regulation, even the most diligent Participating Carrier will not report all O&D Survey tickets correctly if there is an unrecognized code-share flight present in the itinerary, the itinerary spans multiple physical tickets (known as conjuncted tickets), or the itinerary includes cities with multiple airports.

2. Review of Deficiencies in the Current O&D Survey

Respondents to Docket OST-1998-4043-1 (ANPRM, July 15, 1998; 63 FR 28128) agreed that the O&D Survey, as it exists, exempts too many passengers from the report, is cumbersome and expensive to compile, and fails to collect key elements of information. In addition, the results of the O&D Survey

published by the Department are unwieldy to use. The Department wishes to address problems such as those identified in the 1998 OIG report, which concluded that O&D data were unreliable for use in key policy and funding decisions.² For example, the Inspector General determined that of 8,894 city pairs, the O&D Survey report on 6,661 city pairs (69 percent) did not meet the Department's accuracy criteria when using enplanement statistics as a benchmark. The Inspector General (IG) used the enplanement statistics as a reliable comparison because they are also used by the Carriers for aircraft operational purposes. The IG cited several reasons for the inaccuracies, most of which were attributed to the fact that the basic reporting requirements of the O&D Survey have not been aligned with current industry practices.

a. Reporting Exemptions

Exemptions from reporting, granted in the 1960s, have become a major problem in today's O&D Survey. For example, Carriers flying planes with 60 or fewer seats are exempt from reporting. As such, passengers whose entire itineraries are flown on smaller Carriers will not be reported, yet their participation in the air transportation system is critical. Similarly, code-share agreements between large and small Carriers were non-existent when the current O&D Survey was designed. Today, Carriers of all sizes are connected to a global air transportation system through global alliances and international ticket agreements. This intertwining of service adds complexity and increases the potential for error when reporting Ticketed Itineraries.

For example, the IG pointed out that a Participating Carrier is exempt from proper reporting of the code-share relationship if it has no knowledge of that relationship. In a code-share situation, the Carrier that transports the passenger (Operating Air Carrier) is not the Carrier printed on the itinerary (Marketing Carrier). The Carrier that issues the ticket is responsible for knowing when this is occurring and notifying the passenger of the code-share situation. However, when the Participating Carrier is not the Issuing Carrier, the Participating Carrier cannot always report the code-share portions of the Ticketed Itinerary properly.

Code-sharing with regional Carrier partners has created a situation wherein customers can begin travel on a regional Carrier that does not report the O&D Survey because of size exemptions. In

that case, the second Carrier in an itinerary should report the ticket. However, the second Carrier may not be a code-share partner with the regional Carrier that first transported the passenger. The second Carrier will believe the ticket to have been reported by the first Carrier when, in fact, it has not been reported. This causes the entire itinerary to go unreported.

Exceptions for Foreign Air Carriers also impact the accuracy of the O&D Survey, and the IG cited this exception as a prominent problem. Excluding those Foreign Air Carriers granted antitrust immunity for alliances with U.S. carriers, Foreign Air Carriers may transport passengers without reporting their Origin and Destination traffic to the Department. In consequence, some travelers bound for foreign countries are counted in the Department's statistics, and some are not. Excluding these passengers introduces a bias into the statistics that is difficult to evaluate. As the code-share and marketing alliances between U.S. and Foreign Air Carriers developed throughout the 1990s, this reporting gap became even more significant.

b. Sample Size

The IG pointed out that having Participating Carriers report only those tickets ending in zero or double-zero is not an appropriate sample design. It is not certain that those tickets will be randomly distributed across all Ticketed Itineraries. A survey must be based on a random sample of the population if the results of the survey are to be generalized to the entire population. Unfortunately, there are indications that the sample used in the existing O&D Survey is not entirely random, although it is not always clear how this non-randomness occurs.

When the O&D Survey was established, ticket numbers were preprinted sequentially on paper ticket stock. As each customer appeared, each had an equal chance of receiving a ticket number ending in zero. Since ticket numbers are now assigned by a computer program, the possibility that ticket numbers are assigned for reasons other than randomness arises. For example, a tour operator might use its block of ticket numbers to issue all the ticket numbers that end in the same digit to members of a particular tour, resulting in all those tickets being selected for the sample or excluded from the sample depending on which tour was assigned ticket numbers ending in zero. One Carrier has analyzed its ticket numbers and found that 11 percent end in zero, which would not occur if the numbers were

entirely random. While the sample is intended to be 10 percent of all tickets, analysis by BTS' Office of Statistical Quality in 2001 concluded that the actual sample size ranged from 10.1 percent in 1999 to 9.6 percent in 2000. This is a larger variation than one would expect purely from normal sampling error, suggesting some non-randomness in the creation or selection of ticket numbers.

c. Definition of Origin and Destination

The common understanding of a True O&D is a passenger who is traveling from the origin of the trip to arrive at the destination of the trip where the individual intends to conduct business or engage in leisure activity. Passengers generally prefer to arrive at the True O&D destination in the fewest possible Flight-Stages, but often a passenger travels over many Flight-Stages, many Flight Coupon Stages, and, sometimes, many modes of transportation to reach the True O&D destination, and in the case of a very remote destination, the journey might take several days. The Department's intent has always been to track, to the greatest extent possible, the passenger's intended True O&D.

Carriers, airports, the Department, and other stakeholders use various methodologies to approximate the passenger's True O&D. The standard approximation is known as a One-way Trip. The principal determination of One-way Trip is based on the time spent on the ground between sequential Flight-Coupon Stages. A short time between sequential Flight-Coupon Stages implies a connection in a continuing One-way Trip. A long time on the ground between sequential Flight-Coupon Stages implies an end of the prior One-way Trip and a beginning of the next One-way Trip. Flight Number and Fare Basis Code are sometimes used, in addition to time on the ground, to calculate a One-way Trip. The One-way Trip is usually completed in a single day, although the definition of One-way Trip encompasses the possibility that travel continues overnight and into the following day(s).

However, the information Carriers currently supply in the Department's O&D Survey is devoid of flight number, travel date, departure time and arrival time, so the data collected by the Department has left it without the ability to use time spent on the ground to establish a One-way Trip. As a result, since the beginning of the O&D Survey, the Department has used continuous direction of travel as its approximation of True O&D. This methodology is known as Directional Passenger construction. In a regulated airline

² Office of Inspector General Audit Report Number AV-1998-086 Feb. 24, 1998 p. iii.

environment, determining passenger trips by measure of least circuitry was an adequate measure of passenger travel. In that environment, passengers had no incentive to travel in any direction other than toward their destination as efficiently as possible. However, following the extensive development of hub-and-spoke systems following deregulation, passengers are often motivated by price or incentivized by Carrier loyalty programs that reward taking circuitous connecting flights even when a non-stop flight is offered.

The Department's Directional Passenger concept considers a passenger to be on a continuous trip so long as the passenger continues in the same direction regardless of the number of days the journey takes, subject to certain circuitry rules that allow some backtracking. For example, the Department's circuitry based rules consider an itinerary of Albuquerque to Denver to Reno to be a single Directional Passenger trip. However, an itinerary of Albuquerque to Denver to Las Vegas will never be considered as a single directional trip because the location of Las Vegas airport in relation to Albuquerque causes the circuitry check to break the trip into two directional passenger trips. Because the Department does not collect flight date or flight time, the O&D Survey always identifies Albuquerque to Denver to Reno as a single Directional Passenger trip, regardless of the number of days the passenger stays in Denver. On the other hand, regardless of the short number of hours spent in Denver, the O&D Survey always identifies Albuquerque to Denver to Las Vegas as one Albuquerque to Denver Directional Passenger trip and counts the Denver to Las Vegas stage as a separate Directional Passenger trip.

Itinerary construction and circuitry rules together determine Directional Passengers. When an Albuquerque-Las Vegas passenger purchases a round trip ticket traveling through Denver on both the outbound and the return trip, then the directional passenger rules will recognize the pattern, and determine that the outbound journey should be considered a single Albuquerque-Las Vegas trip and the return trip to be a single Las Vegas-Albuquerque trip. However, when an Albuquerque-Las Vegas passenger purchases a round trip ticket with the outbound journey changing planes in Denver and a return trip changing planes in San Francisco, then the directional passenger rules will interpret the outbound journey to be an Albuquerque-Denver trip, the return trip will be a San Francisco-Albuquerque trip with a separate Denver-San

Francisco trip sandwiched between them. In this situation, the Directional Passenger construction views Las Vegas as a connecting city and does not recognize the passenger's true intention to visit Las Vegas. Itineraries like Albuquerque to Denver to Las Vegas have increased as a result of the development of extensive hub-and-spoke operations by incumbent carriers. Clearly, approximating True O&D using the Directional Passenger method is less accurate in the current environment than it was when it was instituted.

The Department cannot approximate True O&D consistently across all itineraries using the O&D Survey as it is currently collected. Furthermore, the Department cannot determine Directional Passengers on a consistent basis because travel that is part of a stand alone Directional Passenger trip is treated differently than if that travel is part of a round trip, and round trips are treated differently depending on the airport in which a passenger might choose to change planes.

In authorizing Passenger Facility Charges (PFCs), the Congress recognized the concept of One-way Trip in civil aviation law. No PFC on any passenger may be imposed for more than two boardings on a One-way Trip (14 CFR 158.9(a)(1)). The concept of One-way Trip was further enshrined in Federal law on November 19, 2001, when Congress established the September 11th Security Fee. Section 44940(b) and (c) of ATSA provides that the fee may not exceed \$2.50 per enplanement or \$5.00 per One-way Trip. Congress did not specify the definition of One-way Trip, but it is commonly understood that it was to be a journey from the passenger's point of view, concomitant with common practice.

The Carriers assess PFCs and September 11th Security Fees using time in hub as the principal determinant of a One-way Trip. The Department believes that the Carrier's method of determination for the One-way Trips is an acceptable methodology. However, because the Department uses directional travel as the determinant of its passenger counts, it cannot effectively monitor the enforcement of these Federal laws. Since the Department's Directional Passenger methodology for determining passenger counts does not match the One-way Trip methodology for determining passenger counts being used by the Air Carriers to assess the fees, the Department's counts can, at best, predict only the approximate value of the fees due to government agencies.

The Department's inability to measure One-way Trips consistent with industry standards leaves it without an adequate

measure of passenger demand for air travel in the U.S. The OIG issues reports on airline metrics³ that use the number of air travelers enplaned as the measure of air traffic demand. While the number of enplanements can be an accurate measure of passenger demand at individual airports, it has unfortunate implications when used as a measure of nationwide air traffic demand. When Carriers discontinue non-stop service between two airports, leaving connecting service as the sole option of passengers traveling between these airports, the number of enplanements doubles since passengers must now enplane a second aircraft. When enplanements are used as the sole measure of nationwide air travel demand, discontinuing direct service has the perverse effect of making it appear as if air travel demand is increasing. Thus the reduction in the true number of persons traveling after September 11, 2001 likely would be underestimated when using enplanements as a measure of demand, because the airlines' reduction in the number of non-stop flights caused the travelers to enplane more times to reach their destination. The Department believes that some of the perceived lack of accuracy in the O&D Survey is a result of measuring passenger traffic in terms of the Directional Passenger in an era when airlines are providing incentives for passengers to use circuitous connecting services.

d. Fares, Taxes, and Fees

Taxation of scheduled passenger aviation today is a combination of percentage of fare, ticket tax, itinerary-specific taxes such as international departure tax, and enplanement fees such as September 11th Security Fees, subject to limitations on the number of charges and fees that can be assessed on a One-way Trip. Because the O&D Survey commingles taxes and fees with the fare amount, exact measurement of the portion of the ticket price that represents tax has been an educated guess even when taxes were based on a percentage of the fare.

e. Passengers Versus Passenger Trips

It is generally believed that all the passenger counts reported in a quarter represent passengers scheduled to fly in that quarter. Rather, the current O&D Survey bundles all the travel on a Ticketed Itinerary in a single quarter. The complete itinerary is reported as if

³ For example, Airline Industry Metrics, Trends on Demand and Capacity, Aviation System Performance, Airline Finances, and Service to Small Airports Number: CC-2004-006 (http://www.oig.dot.gov/show_pdf.php?id=1237).

it took place entirely within the quarter in which travel commences. Therefore, a misunderstanding often exists between passengers reported and passenger trips. For example, all passengers who travel to a destination in December and return in January have all their travel reported in the December quarter; none of the passengers' journeys are reported in the first quarter of the next year.

f. Reporting Consistency

Different Carriers report data elements in different ways. For example, some Carriers with single-service cabins report all service as first-class, while others with single service cabins report all service as coach. Additional reliability problems occur because the Issuing Carrier sometimes provides the Participating Carrier with the information saved when the Ticketed Itinerary was issued, and sometimes it does not. When the Issuing Carrier does not provide information to the Participating Carrier, the Participating Carrier can only know what is printed on the lifted flight coupon and may find it difficult to report an itinerary correctly. Lack of correct knowledge is explicitly excused in the CFR.

When the Participating Carrier attempts to decipher the city codes for the complete itinerary using the pricing area of the ticket, inaccuracies can result. The designated city codes—not the airport codes—are present in the pricing section of the ticket. When the Carrier serves multiple airports in a metropolitan area, such as Dulles and Reagan National Airports in Washington, the pricing area displays WAS instead of the airport code. The segment's actual airport in that circumstance is unknown to the Participating Carrier. This is also the case with bulk tickets. Participating Carriers that are also Issuing Carriers can report the ticket price accurately, while Participating Carriers that did not issue the ticket, and did not receive a TCN, cannot report the actual amount paid. If the ticket value is not printed on the paper document, the Participating Carrier cannot know how to report it correctly.

The majority of users of the government's O&D Survey data purchase the data from third-party providers, which use internal decision rules to interpret the data. These independent companies obtain the data from the Department and reprocess it for sale. These companies make assumptions about the distortions that are inherent therein. For example, the third party providers perform extensive analysis on the data to separate the

amount that was likely paid as fare from the amount that was likely paid as tax. Because the decision rules are specific to third-party providers, different interpretations of the same original data exist.

D. O&D Survey Data Usage

A diverse group of stakeholders including the Executive Branch and Congress use traffic data to help them in making decisions that affect the national air transportation system and the U.S. economy. Most responses to the ANPRM, including airports, labor unions, equipment manufacturers and industry consultants, identified the Department's aviation data as their most important source of data. These stakeholders depend upon the Department to provide accurate, timely, and comprehensive aviation data.

1. The Department

Air transportation is a significant sector of the nation's economy. Despite wars and economic downturns, the nation continues to experience long-term increases in demand for air travel. Through its efforts to measure economic activity, the Department affirms its role in fostering opportunities for transportation providers to create and maintain the best transportation system in the world and to enhance the quality of life of the American people, today and into the future. The Department uses aviation data to carry out its mandates, among them (1) improving international air services by seeking market liberalization, (2) ensuring the benefits of a deregulated, competitive domestic airline industry, and (3) developing policies to improve air service and/or access to the commercial aviation system for small and rural communities.

In particular, the Department uses O&D Survey information and the T-100/T-100(f):

- To exercise the Department's responsibilities for economic oversight of the airline industry as mandated under 49 U.S.C. 40101, including, but not limited to:
 - (7A) "Developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of the commerce of the United States";
 - (9) "Preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation";
 - (10) "Avoiding unreasonable industry concentration, excessive market domination, monopoly powers,

and other conditions that would tend to allow at least one air carrier * * * unreasonably to increase prices, reduce services, or exclude competition in air transportation";

- (12A) "Encouraging, developing, and maintaining an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices";
- (13) "Encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry"; and
- (16) "Ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service";
 - As a base of information to assess, maintain, and preserve competition in the airline industry and in specific aviation markets, under various federal laws and programs, such as:
 - To investigate allegations of unfair and deceptive practices and unfair methods of competition, under 49 U.S.C. 41712;
 - To review proposed mergers and acquisitions to assess their competitive effect;
 - To review code-share and marketing agreements between domestic major Air Carriers, under 49 U.S.C. 41720; and
 - To review applications for antitrust immunity between U.S. and Foreign Air Carriers, under 49 U.S.C. 41308;
 - To administer the Essential Air Services program assessing the air service needs of small communities (49 U.S.C. 41743);
 - To administer the Small Community Air Service Development Program;
 - To administer funds under the Aviation Investment and Reform Act for the 21st Century;
 - To administer the Air Transportation Safety and System Stabilization Act;
 - To monitor the trends and developments in the operating and competitive structures to ensure that Department policies remain consistent with commercial developments;
 - To determine an Air Carrier's initial fitness to provide air transportation and review an Air Carrier's continuing fitness to provide air transportation (49 U.S.C. 41102);
 - To evaluate certificate transfer applications (49 U.S.C. 41105);
 - To grant or deny permits for Foreign Air Carriers to provide transportation as a Foreign Air Carrier to

the U.S. by determining whether the public interest is being served in granting the permit (49 U.S.C. 41302) and to approve the transfer of such permit to another Foreign Air Carrier by determining whether the public interest is served (49 U.S.C. 41303); and

- To assemble information and prepare reports required and requested by the President and the Congress.

The O&D Survey and T-100/T-100(f), as currently collected, particularly impact the Department's evaluation of Air Carrier service to smaller communities. The Essential Air Services program (EAS) and the Small Community Air Service Development Program are directed towards smaller markets and require evaluation of service and fares. For example, under EAS, the Department determines the minimum level of service required at each eligible community by specifying a hub through which the community is linked to the national network, and specifying a minimum service level in terms of flights and available seats. Where necessary, the Department pays a subsidy to an Air Carrier to ensure that the specified level of service is provided. Similarly, research activities such as The Rural Air Fare Study,⁴ which was conducted pursuant to Section 1213 of the Federal Aviation Administration Reauthorization Act of 1996, require data on all passenger air travel, including many smaller markets served exclusively by airlines operating only aircraft having fewer than 60 seats.

The Federal Aviation Administration's (FAA) mandates include (1) regulating civil aviation to promote safety, (2) encouraging and developing civil aeronautics, including new aviation technology, (3) developing and operating a system of air traffic control and navigation for both civil and military aircraft, (4) researching and developing the National Airspace System and civil aeronautics, (5) developing and carrying out programs to control aircraft noise and other environmental effects of civil aviation, and (6) regulating U.S. commercial space transportation.

The FAA also administers the Airport Improvement Program (AIP) (authorized by 49 U.S.C. Chapter 471), which has the broad objective of assisting in the development of a nationwide system of public-use airports adequate to meet the currently projected growth of civil aviation. It also provides funding for airport planning and development projects. In addition, medium and large airports where one or two Carriers

control more than 50 percent of passenger boardings must submit a written competition plan to receive approval to impose a Passenger Facility Charge (PFC) or to receive a grant under the AIP. All aspects of qualifying, planning, allocating, and monitoring of AIP funds rely on the integrity of the data that the Department collects.

The FAA uses O&D data for forecasting long-term growth in air travel demand and for determining corresponding needs for airport development and airspace system improvements. FAA also uses O&D data for conducting cost-benefit analyses of proposed safety rulemakings, infrastructure investments, and air traffic control improvements.

Within the Department, BTS has specific statutory responsibilities (49 U.S.C. 111(c)) to measure traffic flows, travel times, travel costs, and variables influencing traveling behavior and to collect data relating to the performance of transportation systems. BTS is specifically required to collect data that are suitable for conducting cost-benefit analyses.

BTS uses O&D data, together with other sources of passenger travel data (such as its National Household Travel Survey), to analyze passenger travel by all modes of transportation. Since passengers periodically shift the modes of transportation that they use (as they did after the terrorist attacks of September 11, 2001), passenger travel patterns by air are of great importance not only to airlines and airports, but also to transportation planners in other modes as well, such as highways and rail. BTS uses the O&D data to better understand what factors influence passengers' choices about which mode of transportation to use, so that transportation planners can plan appropriately.

The O&D data are used to measure the prices that passengers pay for air travel. These travel cost data are the basis of the Air Travel Price Index (ATPI), the price index developed for measuring airline prices.

Finally, the Department's Research and Special Programs Administration (RSPA) administers the Civil Reserve Air Fleet (CRAF) program, which provides civilian aircraft to the Federal government for use in war or other emergency situations. RSPA uses the T-100 to determine which Carriers can make what aircraft available, while minimizing the adverse effect that these commitments make to the airlines' normal civilian operations. Estimating these adverse effects requires data on the revenue that would be affected by the cancellation of any particular flight.

2. Other Government Agencies

a. The Department of Justice

The Department of Justice (DOJ) uses aviation statistics to assist in the prevention of anti-competitive conduct that is subject to criminal and civil action under the Sherman and Clayton Acts. The Department's aviation statistics have been one of the Justice Department's most important tools used to enforce various criminal statutes related to Sherman Act violations. DOJ also uses them to review mergers and acquisitions.

b. The Department of Homeland Security

The Department of Homeland Security (DHS) uses the Department's aviation data to help predict revenues from the collection of September 11th Security Fees. Because the Department's system bases its determination of passenger trips on least circuitry, and the passengers are paying these fees on the basis of the industry standard One-way Trip, the Department's data provide poor predictions of these revenues. The current O&D Survey concept of Directional Passenger, which does not consistently predict the number of passengers arriving at the airport to change planes, which hampers DHS' airport security manpower forecast. The ability to discern the difference between connecting passengers at a given airport versus passengers beginning their journey at that airport is critical to effectively managing security staffing and other resources at the airport. In addition, the O&D Survey cannot currently provide the critical time-of-day and day-of-week passenger volume data required by DHS to plan and forecast the manpower requirements of airport screeners.

Furthermore, the Air Transportation Safety and System Stabilization Act (Pub. L. 107-42) assigns the responsibility to remit the September 11th Security Fees for all travel described on the Air Travel Ticket to the Carrier that issues the ticket. Since the Department's O&D Survey information does not identify the Carrier that issued the ticket, the Department's data provide insufficient information for DHS to monitor the Carriers responsible for remitting the fees. Since the Federal government does not collect statistics about Carriers issuing tickets, the DHS uses the tickets reported in the O&D Survey as the best available substitute.

c. The Department of Commerce

The Department of Commerce's (DOC) ability to carry out its mandate to promote tourism is hindered by the

⁴ Summary may be found at <http://ostpxweb.dot.gov/aviation/rural/scexec.pdf>.

Department's inability to know with certainty the beginning and ending of One-way Trips. Significant numbers of tourists travel by scheduled air transportation, and the Department's data collection policies leave DOC using only guesses about origins and destinations based on the Department's directional passenger counts.

The DOC's Bureau of Economic Analysis is also responsible for producing the official U.S. Government estimate of the Gross Domestic Product (GDP), and to adjust these estimates for inflation using the GDP Deflator. The GDP Deflator is a price index, similar to the Bureau of Labor Statistics' Consumer Price Index (CPI) that covers a broad range of prices, including prices not paid directly by consumers. The accuracy of the GDP Deflator would benefit from more accurate price data and more timely data. The reporting process proposed in this rulemaking would allow DOT to provide data that are more accurate to DOC. By the time the current quarterly O&D Survey data become available, it is no longer current, and, therefore, cannot be used in the GDP Deflator.

d. The Bureau of Labor Statistics

The Bureau of Labor Statistics (BLS) has a critical need for passenger O&D pricing information on a monthly basis, available promptly, so that it can achieve a more accurate index of air travel prices for incorporation into the monthly CPI. The proposed rule would provide these more accurate price data on a timely monthly basis. BLS' ability to evaluate the cost of air travel and incorporate those evaluations into the consumer price index and the producer price index is compromised by the Department's current statistical techniques. Furthermore, the policy of reporting all travel in the quarter when travel commences compromises the attempt to allocate the cost of air travel to the proper travel month. The Producer Price Index (PPI) is supposed to be calculated net of taxes, but the Department's statistical data does not collect information to enable BLS to separate fares and taxes. Because BLS computes separate price indexes for purchases by consumers (the CPI) and purchases by producers (the PPI), it is important for BLS to be able to separate the purpose for which an airline trip is taken—whether business or leisure. The existing O&D data do not provide such information. The proposed rule would collect information that would enable better analysis of the purpose of travel.

BLS would like to adjust its monthly international price program for Exports by the amount paid by U.S. resident

travelers to the Foreign Air Carriers on all routes. Because of the reporting exemptions granted to Foreign Air Carriers flying to the U.S., some U.S. citizens traveling to foreign destinations on Foreign Air Carriers are counted in the O&D Survey and some U.S. citizens are not. Lack of consistent Foreign Air Carrier statistics hinders BLS' ability to keep its published statistics accurate and effective.

e. The Department of State

The Department of State (DOS) uses the Department's aviation data to provide the information base for policy decisions in international aviation negotiations.

f. The Government Accountability Office

The U.S. Government Accountability Office (GAO) uses O&D data to conduct special studies of the airline industry at the request of Congress. The quality of the analysis that GAO provides to Congress would be substantially improved by the additional and higher quality data collected under the proposed rule.

3. Other Stakeholders

Other stakeholders, such as public and private sector individuals, organizations, and agencies, rely on aviation data.

a. Existing and Potential Carriers

Carriers use the Department's data for traffic forecasting and evaluation of new routes. Evaluation of new market opportunities by Carriers is dependent on the O&D Survey. Even with their access to many internal sources of data, Air Carriers still report that they depend on the O&D Survey data. Almost all Carriers rely on the Department's data as the fundamental, and least expensive, source of industry demand data. For new Carriers, as well as smaller and low cost Air Carriers for which MIDT data is prohibitively expensive, the O&D Survey is the only viable source of traffic data. Third-party providers have developed new tools that enable smaller Carriers to participate in sophisticated route and strategic planning at a much lower cost. The success of such planning exercises is dependent, in part, upon the quantity and quality of data available to the Carriers. In addition, evaluation of traffic and routes is an essential component of aircraft acquisition planning.

b. Airports

Department traffic data provide the basis for analysis by the nation's airports. The O&D Survey, with its fare

information, is the only source of information for airports to study price elasticity. In addition, the O&D Survey is the airports' primary source of data for evaluating new routes. The proposed O&D Survey would provide information about passengers originating at an airport and passengers transiting through an airport, an important distinction when planning for services that the passengers demand. Route evaluations are used to encourage new service from Carriers, and thereby improve their service to the consumer.

Smaller airports have a particular need for information about the destinations of passengers. Airports that do not have passenger volumes high enough to substantiate service to multiple cities need to establish service to cities in the region where the passengers using that airport want to go. When the airport can establish service only to a large city in one direction and most of the potential travelers in the area tend to travel in another direction, then the small airport that might have been viable on its own merits if it had service to the city in the appropriate direction may find that it must rely on the Federal government's small airport subsidy to remain viable. The O&D Survey is the primary source of destination information available to small airports.

Airports and state aeronautical agencies use the data to understand their customers and the airport's role in its regional transportation market. Airports must ensure that Air Carriers have reasonable access to essential airport facilities, so statistical forecasting of passengers is essential. Airport local and regional planning functions use, in part, Department O&D Survey and T-100/T-100(f) data to plan buildings and runways that are vital to expanding the nation's air transportation system into the future. Smaller airports, served primarily by Carriers that are exempt from current O&D Survey reporting requirements, are particularly hampered by the lack of relevant aviation data.

c. Consumers and the General Public

Consumers benefit from the availability and analyses of accurate and complete aviation data. In the past, the Department received numerous inquiries from the public regarding domestic airline fares. In response, the Department began issuing a quarterly report called The Domestic Airline Fares Consumer Report based on the Department's traffic data. It provides information about average prices being paid by consumers in the top 1,000 domestic city pair markets in the

continental U.S. Similarly, Carriers have a vested interest in True O&D to effectively conduct route and other strategic planning. If Carriers are better able to accurately plan their services, consumers will be better served.

In addition, manufacturers, industry associations, consultants, academics, researchers, financial analysts, investors, and the general public use the Department's aviation data as the statistical base for a variety of studies on topics related to aviation.

d. Labor Unions

Labor unions consider the Department's data as a vital component of their negotiation strategies. Accurate and timely data are also crucial during times of economic downturn, particularly when Air Carriers request concessions from their unions.

e. Equipment Manufacturers

Because demand and traffic patterns reflect utilization of aircraft, demand and traffic data in the O&D Survey provide fundamental information on air transport markets that are vital in planning future products. Consequently, aircraft manufacturers are a prime user of the Department's traffic statistics.

E. Limitations of the O&D Survey and T-100/T-100(f)

The deficiencies of the O&D Survey and the T-100/T-100(f) have been known for some time. While changes were made to the T-100 and T-100(f) on July 30, 2002, the O&D Survey has not been substantially updated to reflect changes in the industry. It has become apparent that the cost of inadequate passenger and traffic information is significant for both the government and private sector aviation communities who rely on this data to fulfill their responsibilities and grow their businesses. Furthermore, recent changes in information technology and Carrier reservation and accounting systems have significantly reduced the cost of revising the Department's data collection requirements such that the benefits to all stakeholders of updating the system to provide more timely, accurate, and useful data far exceed the costs.

The current aviation era is characterized by rapid change. Carrier pricing can change multiple times a day. Carrier strategies sometimes change from month to month and require increasingly sophisticated analysis to support and evaluate business decisions and cases. The growth in the number of third-party providers of airline analytical software to evaluate the viability of new routes and other

strategic decisions has made sophisticated Carrier analysis commonplace at even the smallest of Carriers. These software models, used by Carriers, consulting firms, and government agencies, require more detailed, timely, and comprehensive passenger demand data to optimize analyses of a dynamic industry and plan for its future. The Department's responsibility to identify and evaluate emerging trends in commercial aviation is constrained by traffic statistics that are only collected by month and by quarter and that are insufficiently comprehensive and detailed. The continuation of collecting insufficient, quarterly data to measure the transportation industry will severely hamper the ability of Federal, state, and local governments to provide the infrastructure to allow the airline industry to contribute to economic growth. Decisions on aviation infrastructure worth billions of dollars increasingly require more sophisticated analysis for which more accurate, timely, and comprehensive data are critical.

The nation is becoming more dependent on fast, efficient air travel. The nation's economy functions with the understanding that any person or any shipment of goods can be delivered across the nation within hours. Adequate quantitative data about the movement of passengers will help the Department prepare for the future needs of the transportation system.

Prior to September 11, 2001, delays associated with the capacity constraints of the air transportation system were undermining the efficiency of the system. These capacity constraints are now beginning to reemerge as demand recovers. Furthermore, the events of September 11, 2001, and the subsequent effects of those events on the aviation industry, further support the need for additional data modernization. Not only was the collection of data elements inadequate to measure important aspects of the aviation industry, vital information was not available in a timely fashion to interpret the short and medium term impacts of these events. It was also impossible to observe the recovery of the air transportation system in those crucial days after the system was restored.

More specifically, the data was inadequate for the following reasons: first, neither T-100/T-100(f) data (reported monthly) nor O&D Survey data (reported quarterly for ten percent, or less, of completed tickets) revealed daily changes in traffic and fares following 9/11. Without the ability to assess daily traffic levels, the

Department could not fully assess the return of passengers to the nation's air transportation system and the extent to which the recovery was progressing differently in various regions of the country. Second, without any information about the sale of the Ticketed Itineraries, it was impossible to differentiate between the post September 11th passengers who purchased non-refundable tickets prior to September 11th and those travelers that purchased their Ticketed Itineraries after September 11th and thereby gauge the level of passenger confidence. Third, quarterly data submissions resulted in a significant delay in the Department's analysis of the impact of September 11th. The third quarter of 2001 O&D Survey data showed the 20 days most directly impacted by the events of September 11th mixed with the 71 days prior. The next data available in the O&D Survey could not be released until the end of the following quarter. Fourth, in implementing the provisions of the Air Transportation Safety and System Stabilization Act (Public Law 107-42), Congress and the Department exclusively relied on T-100 in providing assistance to Air Carriers and other industry participants. Even though the O&D Survey information is more useful in measuring some aspects of the nation's aviation economy, data collected only quarterly made it unusable for purposes of fulfilling the Air Transportation Safety and System Stabilization Act or for adequately monitoring the recovery of the industry following the terrorist attacks.

Although the events of September 11, 2001 were unprecedented, the need for more detailed, and more time-specific traffic data to monitor the impact of significant events on the industry and its recovery from them is not unique to that situation. Since the terrorist attacks, the industry has experienced the SARS outbreak, the Iraq war, and various elevated code orange alerts. In order to monitor the impact of these extraordinary events on the industry, the Department had to issue requests for supplemental data from the Carriers. Not only do these supplemental requests burden the industry with additional reporting requirements, they also highlight the fundamental need for the Department to routinely collect more detailed, time-specific data to fulfill its statutory obligations to monitor the health of the airline industry and respond to requests from Congress and other government agencies about the impact of such events on an industry that is vital to the U.S. economy. The current data collection

systems are inadequate for providing timely answers to any question with more precision than a month for the T-100/T-100(f) and more precision than a quarter for the O&D Survey. Reliance on data that is only available quarterly for purposes of measuring the dynamics of airline prices is a critical shortcoming of the O&D Survey. The ATPI, for example, is severely handicapped by the limits of quarterly data. Flight date is an important element of the value of a flight and therefore an important factor in the computation of the ATPI.

The Transportation Security Administration (TSA) requires information about passenger travel by time-of-day and by day-of-week to plan airport security screener staffing requirements. The current T-100/T-100(f) averages data across a month and the O&D Survey averages data across an entire calendar quarter, so that variability over time within the calendar quarter cannot be measured. Variability over time and dates can only be measured if the Department begins collecting data about time and date of travel. The volume of passenger traffic varies by time-of-day and day-of-week and lack of information about passenger volumes can result in passenger delays due to too few screeners or in a useless expenditure of Federal dollars due to overstaffing at certain times.

TSA requires some method of forecasting the collection of revenue from the Air Carriers. The September 11th Security fee is remitted by the ticket's Issuing Carrier, but Issuing Carrier is not one of the data elements collected in either the O&D Survey or the T-100/T-100(f), making it difficult for TSA to forecast or monitor the proper remittance of tax dollars.

Neither the O&D Survey nor the T-100/T-100(f) provide any information about the sale of new tickets (*e.g.*, changes in passenger booking windows), a key measure of traveler confidence in the air transportation system. Such information is critical to evaluating the likely financial impact of exogenous events, such as September 11th or SARS, on Carriers. In addition, these data limitations preclude the Department from precisely evaluating the impacts of even endogenous industry events such as potential strikes or Carrier shutdowns.

The problem resulting from the reporting exemption given to Air Carriers so long as they do not operate aircraft with more than 59 seats is illustrated by the emergence of Air Carriers flying substantial fleets of regional jets. For example, the commencement of operations by Independence Air in June of 2004

caused a profound adjustment of fares in small, medium and large markets in the Eastern half of the U.S. However, because Independence Air did not operate aircraft with more than 59 seats, it did not have to report O&D Survey data, thereby resulting in an incomplete picture of the effects of this Air Carrier's start of operations. When a major realignment of fares can result from the actions of an Air Carrier that qualifies for the small aircraft size exemption, then the small aircraft size exemption must be reevaluated.

The FAA acknowledged these and other issues at its 2001 Commercial Aviation Forecast Conference.⁵ Accurate and detailed data on the flow of passengers through the air transportation system is critical to addressing congestion and developing ways to make the system more efficient. The FAA requires data on the number of passengers flying at specific times of day and specific days of the week, allowing it to calculate more accurately the costs and benefits of safety regulations, infrastructure investments, operational changes, and other FAA actions.

Lack of information about catchment areas impacts the Department's ability to assess the effects of competitive services and alternative airports. A number of government agencies are charged with monitoring the airline industry and providing sufficient infrastructure to accommodate its growth. The use of secondary airports increasingly shapes the operating and competitive structures of the airline industry. These agencies increasingly require information that allows them to identify and analyze changes in the catchment areas of various airports, thereby understanding how such changes impact industry structure and airport and airway infrastructure planning and development. For the same reasons, such information would also be enormously useful to other users of the data, including airports, airlines, and aviation consulting firms.

BTS is specifically directed to gather data that are relevant to cost-benefit analysis. One requirement of cost-benefit analysis is estimating the number of people that are affected by a particular proposed regulation or infrastructure improvement or technology investment. A major weakness of the existing O&D Survey is that it does not provide flight-specific data, so it is not possible to estimate how many people are flying on any

particular day of the week or at any particular time. Since infrastructure and air traffic control investments are most likely to produce benefits at times when the airspace system is congested, it is important to be able to measure how many people are flying at these times to measure of the number of people affected by proposed infrastructure and air traffic control improvements.

BTS' current On-Time Data Base allows analysis of the particular flights that are affected by delays, but does not have the ability to know the number of passengers affected by delays. Since the number of passengers affected is likely to be greatest when congestion and delays are highest, current data are likely to understate the impact of delays on the traveling public. Information about the number of people traveling by time-of-day is vital to understanding the dynamics of the air transportation system.

The 10 percent sample is inadequate for fulfilling the Department's mandates and hampers the data quality of the O&D Survey. These data quality issues have a strong effect on programs that include measurements of air service to small communities. The EAS program is particularly impacted. Other programs affected include BTS' quarterly research series (ATPI), an experimental measure currently under development. The ATPI uses O&D Survey data and is dependent upon accurate data for all markets.

The Department's inability to measure True O&D according to the industry standards using One-way Trips hinders its ability to accurately measure nationwide air travel demand. Nationwide measures of air travel demand, airport improvements financed by PFC revenue, and improved airport security financed by the September 11th Security fees all depend on the Department's ability to identify One-way Trips. However, the Department's T-100/T-100(f) statistics count enplanements, while the O&D Survey statistics count Directional Passengers. Consequently, the government is without any method of properly forecasting tax revenue and without means to monitor the effects of tax policy.

F. Need for Regulatory Action

The Department is obligated to collect and disseminate information about civil aeronautics including, at a minimum, information on (1) the origin and destination of passengers in interstate air transportation, and (2) the number of passengers traveling by air between any two points in interstate air transportation (49 U.S.C. 329 (b)). In addition, the Department allocates

⁵ Information may be obtained from <http://apo.faa.gov/2001ConferenceProc/proc2001/procdoc.htm>.

airport improvement funds, provides essential air service subsidies and allocates funds to the air traffic control system. The requirement that the Department judge the need for, and consequences of, a regulation based on accurate statistical information presupposes that sound economic information exists.

The Department has a unique role in collecting transportation industry information. The need for a statutory mandate to collect traffic statistics is underscored by the extensive differences between the various airline business models and the level of technical sophistication that make the task of gathering comprehensive industry-wide data on air transportation a very formidable task for private industry or an industry trade group to undertake. The only other government entities in a position to gather traffic statistics are the nation's airports. Airports are operated by a variety of State, Municipal, County and Regional authorities. Collectively, they do not have the resources to process statistics on all of the passengers flowing through them on a daily basis, and it would be cost prohibitive for each of the major airports to develop parallel statistical systems. It would be a burden on the Air Carriers to require reporting to more than four hundred airports, and a burden on the airports to reassemble the data into a nationwide view of passenger air travel. Although third-party providers offer "enhanced" aviation data, the original sources of third-party provider data remain the T-100/T-100(f) and O&D Survey. The underlying need for traffic information cannot be satisfied anywhere else because there are no other sources of comprehensive traffic data available in the aviation industry. We therefore conclude that the changes proposed in this NPRM are required to provide accurate statistical information.

Respondents to the Department's ANPRM overwhelmingly agreed that the O&D Survey and T-100/T-100(f) segment data are essential. Most named the T-100/T-100(f) and the O&D Survey as the basis for all analytical work done in their organizations. Those that have access to other sources of data reported that they generally crosschecked those sources with information from either the T-100/T-100(f) or the O&D Survey. The Department's traffic data provides the press and consumer groups with the ability to monitor prices and advise the public about low price alternatives to high fares, which fosters a more competitive industry that benefits all consumers. The traffic data and the press and consumer group analysis of

the data strengthen American companies by allowing companies to negotiate with airlines on fares. The traffic data benefits consumers by providing new entrant Air Carriers with the ability to demonstrate the strength of their business plan to investors.

The O&D Survey, however, was singled out most often in responses to the ANPRM as the data source most in need of improvement. The abundance of complaints about the deficiencies that exist in the O&D Survey has caused the public and the aviation industry to be cautious about any conclusions that can be drawn from this data, yet a wide range of stakeholders use it because it is the only available source of economic information that describes key aspects of scheduled air passenger transportation. Data inaccuracies have doubtlessly led to sub-optimal decisions by stakeholders that are as impossible to quantify as they are essential to correct. We therefore conclude that the changes proposed in this NPRM are made necessary by compelling need to improve the safety and economic well being of the American people.

Furthermore, OMB has published guidelines for ensuring that Federal agencies establish practices for ensuring and maximizing the quality, objectivity, utility and integrity of information disseminated by Federal agencies. Disseminated information must be accurate, clear, complete, and presented in an unbiased manner. Where appropriate, data should have full, accurate, transparent documentation and error sources affecting data quality should be identified and disclosed to users. The IG has declared that the Department's O&D Survey does not meet the Department's standard of acceptability of 95 percent accuracy. Since the O&D Survey and T-100/T-100(f) remain the key measure of the economics of the passenger air travel industry, the Department is under obligation to provide the most accurate statistical information that it can reasonably provide. The 1998 OIG report, the 1998 ANPRM, and subsequent outreach activities support the necessity of aviation data modernization. The IG found that to compensate for the unreliable O&D data, Department aviation analysts often requested Air Carriers to provide supplemental data, but they sometimes simply used their experience to apply adjustment factors to the unreliable data. Lack of consistent data collection over time decreases the utility of that data, while every request for supplemental information increases the Air Carriers' and the Department's costs. We therefore conclude that the changes

proposed in this NPRM are necessary to implement Congress' intent for the law.

Because the Executive Branch and Congress utilize this data to form and implement public policies to foster a safe, healthy, efficient, and competitive air transportation system that contributes to aviation safety, national security, and the U.S. economy, agency investment in aviation information is critical. The private markets and other government and quasi-governmental agencies agree that this information is also critical for their needs, but private markets are unable to provide adequate statistical information to address this need. The unreliability of the data undermines the Department's ability to perform its statutory mandate to disseminate information that enables the transportation system to adapt to the present and future needs of commerce and to ensure that public policy remains consistent with changing commercial reality.

G. Development of the Record in This Rulemaking

The Department received 48 comments in Docket OST-1998-4043 in response to its ANPRM (July 15, 1998, 63 FR 28128) from Air Carriers, Foreign Air Carriers, airports, industry consultants, trade associations, and unions. Typical of the responses was that of American Airlines, which, as both a supplier and a user of data, expressed full support of the Department's effort to simplify the data submissions and ensure the accuracy and integrity of the data disseminated to the public. The Regional Airline Association pointed out that it had long advocated modernizing the data. Delta Air Lines supported the initiative so long as it did not require the incursion of unreasonable computer programming costs. The Air Line Pilots Association and the Association of Flight Attendants favored any change that would improve data quality and integrity over the current data.

Comments received about the O&D Survey under the ANPRM indicate that there is significant concern about the data. Even while emphasizing the importance of having access to the Department's traffic data statistics, the respondents stressed that the O&D Survey has serious weaknesses. Respondents repeatedly mentioned that the data elements collected were insufficient to meet the data needs of the public and the aviation industry. There was consensus that the reporting exemptions granted to some Carriers significantly affected the reliability and completeness of the data. There was near universal agreement that the data

collected by the Department suffer from a lack of both quality and consistency. Specific comments point to the O&D Survey's outdated design, which affects the quality and accuracy of data gathered. This is amply demonstrated by the list of improvements that were put forth in the ANPRM. The suggested modifications to make the O&D Survey more reliable include:

- Change the source of data;
- Decrease the data reporting exemptions;
- Improve data validation;
- Improve definitions of data elements to enhance uniformity;
- Improve enforcement of timely receipt of data to guarantee timely release of data;
- Expand the number of elements collected to increase the usefulness in measuring the industry;
- Increase the accuracy of the data to make it more reliable; and
- Decrease the complexity of the form of the published data to make it more useful for decision making.

Stakeholders agree that the collection, processing, and dissemination of aviation data, particularly through the O&D Survey and T-100/T-100(f), are critical to the continued function and well being of the U.S. airline industry. There was general affirmation that the suggestions the Department proposed in the ANPRM were acceptable. Furthermore, Executive Order 12866 obligates the Department to collect, process, and disseminate accurate, timely, and relevant aviation data. The Department's data is insufficient to accurately determine a consistent measure of passenger travel using its same general direction of travel passenger counting methodology. Therefore, it is unable to fulfill its mandate to provide the most relevant aviation data within the current reporting requirements.

The air travel industry has grown rapidly since deregulation. Deregulated markets, code-share and other cooperative marketing agreements, new airline business models, and the adoption of the hub-and-spoke model and the rolling hub variation of that model have changed the fundamental economics of the airline industry. These changes have left the Department attempting to measure an aviation economy that is not the economy that the existing data were designed to measure. As such, 14 CFR Part 241, Section 19-7 ("Passenger origin-destination survey") has outlived the economic model for which it was designed. Despite some adjustments (specifically, Docket No. OST-1996-1049, RIN 2105-AC34, 62 FR 6715;

Docket No. OST-1998-4043, RIN 2139-AA08, 67 FR 49217), these metrics have not kept pace with changes in the industry, nor do they measure essential features of aviation economics as we know them today. Therefore, the Department is issuing this NPRM.

H. Scope of This Rulemaking

The purpose of this rulemaking is to (1) reduce the reporting burden on the Participating Carriers, (2) make the O&D Survey more relevant and useful, (3) reduce the time it takes to disseminate the information and (4) achieve maximum congruence between the O&D Survey and the T-100/T-100(f). In so doing, the rulemaking will aid industry and government users by collecting the most accurate and consistently obtainable economic information about the purchase of air travel on scheduled Carriers to or from, or within, the U.S. This rulemaking will address the identification of the responsible reporting entity, the identification of the data elements required to measure economic activity in the scheduled passenger air transportation industry, and the identification of exemptions that shall be allowed in the reporting process.

The Department seeks to achieve these goals by making the O&D Survey more relevant and useful to all stakeholders. Specific concerns associated with the current O&D Survey reporting requirements include (1) minimizing the number of reporting exemptions, (2) increasing the level of detail, (3) increasing the quantity and quality of information collected, (4) eliminating the need for data providers to resort to manual data collection, thereby reducing reporting costs, (5) establishing more uniform reporting by updating guidelines and instructions to the Carriers, (6) achieving maximum congruence between the O&D Survey and the T-100/T-100(f), and (7) updating the means of submission to enhance the timeliness of data release.

I. O&D Survey Redesign

The Department believes that an accurate O&D Survey based on Revenue Passenger tickets is now both desirable and possible in light of recent changes in airline information technology.

1. Summary of the Proposed O&D Survey

a. Who Shall Report

The Department proposes that all U.S. Air Carriers, and Foreign Air Carriers reporting data under antitrust immunity granted under 49 U.S.C. 41308, that are operating at least one aircraft with 15 or

more seats and issuing tickets for travel on scheduled interstate passenger services to or from, or within, the U.S. participate in the O&D Survey. By this change, the Department proposes to abandon the concept of first Participating Carrier reporting a portion of Ticketed Itineraries in favor of the Issuing Carrier reporting all eligible Ticketed Itineraries. In light of substantial changes in airline ticketing and revenue accounting practices, this alternative is the most efficient and cost effective, allowing for the broadest possible data availability with a minimum of ongoing reporting effort.

b. Data To Be Collected

The Department believes that a fundamental restructuring of the data collected under the O&D Survey is necessary for the Department to fulfill its Congressional mandate to ensure a healthy, safe, efficient, accessible, and competitive transportation system that meets our vital national interests and enhances the quality of life of the American people. The Department acknowledges that this mandate includes meeting the needs of the aviation community that relies on this data, and we have endeavored to incorporate as many of its suggestions as possible in this proposal. The Department recognizes its obligation to measure passenger travel utilizing techniques that Congress, the industry, and the public recognize as valid, current, and reasonable industry measurements. In order to do this, the Department proposes to collect information about the issuance of the Ticketed Itinerary and to collect additional information about the travel described in the itinerary. With these changes, the Department proposes to abandon the concept of Directional Passenger in favor of One-way Trips to define True O&D.

The Department proposes to expand the scope of data that, currently, results in an insufficient volume of data to meet basic tests of validity and reliability. Therefore, the Department is abandoning the reliance on a 10 percent sample and is proposing 100 percent reporting of eligible Ticketed Itineraries. The Department intends to eliminate the limitations imposed on the scope of data that resulted in an overabundance of exceptions that compromised data quality. Therefore, the Department is removing the various exceptions for reporting long itineraries and non-standard itineraries and eliminating alternative data sample collection techniques for travel in major markets.

The Department proposes to expand the scope of data in order to gather data

elements required to understand and disseminate useful information about passenger travel and thereby proposes to eliminate the bundling of ticket taxes and fees with the ticketed fare.

The current O&D Survey includes the following data elements: (1) Point of origin, (2) Carrier on each flight-coupon stage, (3) fare-basis code for each flight-coupon stage, (4) points of stopover or connection (interline and intraline), (5) point of destination, (6) number of passengers, and (7) total dollar value of ticket. The proposed revision of the O&D Survey includes additional traffic elements that occur for each Flight-Stage and sale elements that occur only once for an individual itinerary.

c. Proposed Traffic Elements

1. *Flight-Stage Sequence Number.* A two-character ordinal sequence number beginning with 01 that the Participating Carriers will assign to each Flight-Stage of a Ticketed Itinerary.

2. *Airport Codes.* a. *Flight-Stage Origin Airport.* The airport's IATA location identifier from which a Flight-Stage departs. The Department proposes to accept a city code in lieu of airport code only when the Flight-Stage flight number is OPEN, the itinerary uses a City Code instead of an airport code, and the scheduled Carrier serves multiple airports within the city making the origin airport unknowable.

b. *Flight-Stage Destination Airport.* The airport's IATA location identifier at which a Flight-Stage arrives. The Department proposes to accept a city code in lieu of airport code only when the Flight-Stage flight number is OPEN, the itinerary uses a City Code instead of an airport code, and the scheduled Carrier serves multiple airports within the city making the destination airport unknowable.

3. *Carrier Codes.* a. *Operating Carrier.* The IATA issued Airline Designator code of the U.S. Air Carrier or Foreign Air Carrier operating the equipment used on the Flight-Stage.

b. *Marketing Carrier.* The IATA issued Airline Designator code of the U.S. Air Carrier or Foreign Air Carrier marketing the Flight-Stage.

4. *Scheduled Flight Date.* The date on which the Flight-Stage is scheduled to depart.

5. *Scheduled Departure Time.* The scheduled local flight departure time of the Flight-Stage.

6. *Master Flight Number.* The Airline Designator code and flight number under which the flight inventory is managed.

7. *Scheduled Arrival Date.* The date on which the Flight-Stage is scheduled to arrive.

8. *Scheduled Arrival Time.* The scheduled local arrival time of the Flight-Stage.

9. *Fare Basis Code/Ticket Designator.* The alphanumeric code identifying the fare by class, qualification, and restriction associated with the Flight-Stage.

10. *Ticketing Class of Service.* A one-character code indicating the service cabin within the aircraft in which the passenger is scheduled to be seated under the fare rules stated for each Flight-Stage of the Ticketed Itinerary.

d. Proposed Sale Elements

1. *Issuing Carrier Identifier.* The Issuing Carrier's assigned IATA recognized airline numeric code.

2. *Ticketed Itinerary Identifier.* The alphanumeric identifier for the Ticketed Itinerary. This identifier identifies a unique itinerary for each Issuing Carrier Identifier and Date of Issue.

3. *Date of Issue.* The local date on which the Ticketed Itinerary was issued.

4. *Fare Amount.* The Fare Amount is the monetary amount the Issuing Carrier receives from the ticket purchaser on behalf of all the U.S. Air Carriers or Foreign Air Carriers included in the itinerary. The Fare Amount includes the Carrier-imposed fees and surcharges, such as fuel surcharges, for the carriage of a passenger and allowable free baggage on the passenger's complete itinerary, denominated in U.S. dollars, and accurate to two decimal places, rounded. The Fare Amount excludes taxes and fees imposed by Federal, state, local and foreign governments and excess baggage fees.

5. *Government Taxes and Fees.* a. *Government Imposed Tax/Fee Identifier.* The government tax or fee identifier. The Department's codes will be listed in the Passenger Origin-Destination Survey Directives issued by the Department.

b. *Government Imposed Taxes/Fee Amount.* This field will contain the value of the tax or fee specified by the identifier that precedes it, denominated in U.S. dollars and accurate to two decimal places, rounded.

6. *Ticketing Entity Outlet Type.* The identifying code of the distribution channel through which the Ticketed Itinerary was issued. The Department's codes will be listed in the Passenger Origin-Destination Survey Directives issued by the Department.

7. *Customer Loyalty Program Identifier.* The program identification code assigned to the airline customer loyalty program or alliance customer loyalty program under which the passenger accrues benefits.

8. *Customer Loyalty Program Award Ticket Indicator.* The one-character

identifying code to indicate that customer loyalty program credits were expended in obtaining the Ticketed Itinerary.

9. *Number of Passengers.* The numeric value representing the number of passengers traveling on the Ticketed Itinerary. If multiple passengers have flown on a ticketed itinerary, we are considering requiring carriers to report separate records, with separate fares, for any groups of passengers on the itinerary that have flown under differing fare basis codes or under special discount fares. For example, if lower fares are paid for children within a tour group, the children's fares should be reported in a separate data record with a separate fare. When the projected number of passengers on a group ticket differs from the actual number, we are considering requiring carriers to report the actual number of passengers who flew on the group ticket as of the reporting event. BTS believes that these disaggregations are necessary to calculate its air travel price index. We seek comment on carrier practices and handling of group tickets and on the feasibility of the methodology we are considering.

10. *Itinerary Copy Date.* The date that the Participating Carrier copied the Ticketed Itinerary data for submission to the Department.

2. Discussion of the Proposed O&D Survey

a. Traffic Elements

In its comments to the Department's ANPRM, the Regional Airline Association (Docket OST-1998-4043-11) stated that the measure of passenger traffic used in the O&D Survey fails to satisfy the industry's need for timely and relevant information. Unisys Corporation (Docket OST-1998-4043-22) and Delta Air Lines (Docket OST-1998-4043-21) stated that the O&D Survey should adopt the True O&D concept. The Port of Portland (Docket OST-1998-4043-19) urged the recognition of multi-carrier O&Ds. In requesting that the Department begin using "relevant information," "True O&D," and "multi-carrier O&D" to measure passenger traffic, these respondents made clear that, for the aviation industry, the Directional Passenger is no longer an acceptable measure of True O&D. The Department agrees with the Regional Airline Association that, if we are to provide relevant information about the scheduled air transportation industry, we must change the basic calculation of the True O&D used in the O&D Survey to the calculation of One-way Trip

commonly used in the air travel industry.

Scheduled Air Carriers in the U.S. use a variety of methodologies to construct One-way Trips in order to comply with the provisions of collecting September 11th Security Fees. The most widely accepted is a methodology based on "time in hub." Here, the number of hours spent in an airport is the gauge by which it is determined whether the passenger (1) intended to continue the trip by changing planes, or (2) intended to remain in that city for other purposes. It is sometimes known as "the four hour rule" methodology because four hours is the most common maximum domestic connection time allowed with this method. In this methodology, certain other decision criteria are applied to supplement the time in hub determination, such as special rules for itineraries in which there are no stops that exceed the time allowance, itineraries with "void" and "OPEN" coupons, and itineraries that backtrack over the same set of airports.

The Department proposes to define a One-way Trip in terms of time spent in transit, subject to certain other rules. All other methodologies that are in use at Carriers require proprietary knowledge or were uniquely adapted to the needs of a particular Carrier, and would not apply industry-wide to all Carriers. These characteristics make the other methodologies unsuitable for use by the Department on a universal basis. The Department seeks comments from the industry and the public regarding the optimal method for constructing a One-way Trip. We will consider all the suggestions for appropriate determination of a One-way Trip, and establish a consensus of the guidelines provided by the industry to use in processing data in the O&D Survey for dissemination. We propose to require the following data elements for each segment of the Ticketed Itinerary as input for the One-way Trip determination: (1) Flight-Stage Sequence Number, (2) Airport Codes, (3) Carrier Codes, (4) Scheduled Flight Date, (5) Master Flight Number, (6) Scheduled Departure Time, (7) Scheduled Arrival Date, (8) Scheduled Arrival Time, (9) Fare Basis Code/Ticket Designator, and (10) Ticketing Class of Service.

1. *Flight-Stage Sequence Number.* Every Flight-Stage of an itinerary must have a sequence number assigned to it by the Issuing Carrier. Should problems arise, a positive identifier, assigned by the provider of the data, will help facilitate communication and resolution. Flight-Stage Sequence Number will begin each itinerary with

Flight-Stage 01 and continue with sequential Flight-Stages. Surface Flight Coupon Stages (known within the industry as surface segments, including those provided by designated surface carriers such as railroads) that are included in the itinerary will be included in the numbering sequence. Voids (also known as arrival unknown segments, or ARNK segments) and OPEN segments are to be included in the numbering sequence.

2. *Airport Code.* Airport code for both Flight-Stage Origin Airport and Flight-Stage Destination Airport will be identified by the IATA location identifier that uniquely identifies that airport. American Airlines (Docket OST-1998-4043-5) and others commented that the presence of City Codes in the itinerary in lieu of airport codes resulted in data inconsistency. In the current O&D Survey, Participating Carriers from time to time had to attempt to decipher the itinerary using the pricing area of the ticket. The Department believes that our proposed change, which designates the Issuing Carrier as the Participating Carrier, will eliminate the problem caused by manual examination of the pricing area. However, the Department recognizes that when a Carrier sells an itinerary known as an "OPEN" itinerary, where (1) the itinerary is purchased but not booked, (2) the purchased itinerary includes a City Code instead of an airport code, and (3) the scheduled Carrier provides service to multiple airports at that city, then the airport code is unknowable. In this case, the Air Carrier must issue a ticket where the appropriate value is a City Code and the Department proposes to accept in the O&D Survey the reporting of City Codes in the itinerary only under this circumstance.

3. *Carrier Code.* Where once Carrier Code would have been described simply as the Airline Designator of the U.S. Air Carrier or Foreign Air Carrier that transported the passenger, the onset of code-sharing has introduced multiple Carriers into the ticketing process. The Marketing Carrier Code is the Carrier identifier that the passenger sees when examining the Ticketed Itinerary. The Operating Carrier is the Carrier that operates the aircraft that transports the passenger. Marketing Carrier and Operating Carrier will be identified by the IATA Airline Designator assigned to them. If the Carrier has no IATA Airline Designator code, then the Department will assign a reporting code. When a Carrier markets surface transportation as an extension of its air transportation service, and the transportation is (1) provided by a common carrier that is

not an Air Carrier or Foreign Air Carrier, and (2) described on the Ticketed Itinerary and included in the total fare, then the surface carrier's IATA Airline Designator will serve as the Operating Carrier and the Carrier's IATA Airline Designator will serve as the Marketing Carrier.

4. *Scheduled Flight Date.* The Department's ability to determine One-way Trips from the O&D Survey information is crippled by a lack of information about Scheduled Flight Date. The lack of information about Scheduled Flight Date makes it impossible to know which passengers pass through a location on their itinerary to stay only long enough to change planes, and which passengers remain multiple days at a location.

In its comments, Data Base Products, Inc. (Docket OST-1998-4043-36) cited another inaccuracy, mentioning that the O&D Survey passengers are counted in the quarter in which the first departure took place regardless of the flight date scheduled in the itinerary. It pointed out that this inaccuracy is most noticeable in the transition from fourth quarter to first quarter where all trips are reported in the fourth quarter despite a large number of people departing in December who are ticketed to return in January. The scheduled air transportation industry does not always fluctuate in orderly monthly cyclic patterns. Holidays such as Thanksgiving and Easter have a great effect on air travel patterns and thereby require daily data.

Monthly data are problematic in other ways. From time to time, including times of emergency such as September 11th, the Department has found it necessary to request flight data at the weekly or daily level. Complying with these ad hoc data requests imposes a burden on Air Carriers. By routinely collecting data by flight date instead of by flight month, the Department will be able to avoid the need for special reporting requests by flight date. The ability to analyze air travel by day-of-week and in seven day moving averages will enable the Department to facilitate more robust economic measurement and analysis and be prepared to analyze the effects on air transportation when significant economic, weather and security related shocks to the nation occur. Because the determination of One-way Trips is critical to the Department's assessment of the air transportation industry, the Department proposes to collect information by Scheduled Flight Date.

5. *Scheduled Departure Time.* The Department's ability to determine One-way Trips from the O&D Survey

information is also crippled by a lack of information about Scheduled Departure Time. The lack of information about Scheduled Departure Time makes it impossible to know which passengers pass through a location on their itinerary to stay only long enough to change planes, and which passengers remain for an extended period at a location.

Knowledge of the scheduled time of departure helps the Department understand the economics of the air travel industry. The FAA oversees the development of the nation's air travel infrastructure, and knowledge of Scheduled Departure Time allows it to calculate the costs and benefits of safety regulations and infrastructure improvements. Similarly, departure time will assist the TSA in meeting the needs of airports and Air Carriers with the appropriate staff levels for airport security. Flight-Coupon Stages where the travel plans are OPEN will be assigned an early morning departure time to be determined later, and the results of that determination will be published in the Passenger Origin-Destination Survey Directives issued by the Department.

6. *Master Flight Number.* Master Flight Number shall consist of the two-character Airline Designator of the Carrier that manages the inventory and the flight number under which that Carrier manages the flight. In flights that are not involved in a code-share and not involved in starburst or funnel flight operations, the Master Flight Number will be the same as the Marketing Flight Number. When code-shares, funnel flights and starburst flights are involved, this data element will be used to identify the Airline Designator and true flight number under which the flight inventory is controlled. The Department proposes to collect this data element to fill in the gap between the data the industry uses to track flights and the data the Department collects.

The term "code-share" is not sufficiently precise to describe what has become two distinct concepts. For purposes of this rulemaking, the term Alliance Code-Share will be used to describe the code-share relationship wherein each Carrier keeps its identity and livery distinct from one another and wherein each Carrier has the opportunity to market the other's flights. The term Franchise Code-Share will be used to describe the code-share relationship wherein the Franchise Code-Share Partner never appears as the Marketing Carrier and generally, although not necessarily, paints its aircraft in the livery of the Mainline Partner.

At the inception of code-sharing, the scheduled air passenger industry coined the term Marketing Carrier to distinguish it from the Operating Air Carrier that transported the passenger. According to the ATPCO TCN Ticket Exchange Service Specifications Guide instructions for populating the data element "Coupon/Segment Marketing Carrier" (glossary reference MCAR), the Marketing Carrier is:

The carrier that appears as the Carrier for a segment on the ticket. In a code-sharing arrangement, if a CRS knows the Servicing Carrier (CARR) and the Marketing Carrier (MCAR) both elements CARR and MCAR should be populated. If the CRS only knows the Marketing Carrier (MCAR), Marketing Carrier should be populated and Servicing Carrier should be blank.

According to the ATPCO TCN Ticket Exchange Service Specifications Guide instructions for populating data element "Coupon/Segment Carrier Code" (glossary reference CARR), the Carrier is:

The Carrier that carried the passenger. A CRS will populate this element with the same code as the Marketing Carrier (MCAR) unless the CRS knows of a code-sharing arrangement. If the CRS knows of a code-sharing arrangement, the CRS will code the Carrier that appears on the ticket as the Marketing Carrier (MCAR) and the Carrier that carries the passenger as the Carrier Code (CARR).

The Department, recognizing the importance of keeping track of code-share relationships on Ticketed Itineraries, amended the O&D Survey to provide for code-share ticketing practices. The Department defined the term "Ticketed air carrier", which functions as the equivalent of the industry term Marketing Carrier. The definition of Ticketed Air Carrier in 14 CFR Part 241 Section 19-7 Appendix A, X. Glossary of Terms is:

Under a code-share arrangement, the air carrier whose two-character air carrier code is used for a flight segment, whether or not it actually operates the flight segment.

However, the Department diverged from standard industry practice when we defined Operating Air Carrier in a way that is slightly different than the industry term Coupon/Segment Carrier Code. Operating Air Carrier 14 CFR Part 241 Section 19-7 Appendix A, X. Glossary of Terms is:

Under a code-share arrangement, the air carrier whose aircraft and flight crew are used to perform a flight segment.

In an Alliance Code-Share, the industry's definition of Marketing Carrier is the equivalent of the Department's Ticketed Air Carrier, and the industry's definition of Coupon/

Segment Carrier is the equivalent of the Department's Operating Air Carrier. However, in a Franchise Code-Share, the industry data is populated as if the relationship is a wet-lease and, therefore, the Airline Designator of the Mainline Partner serves as both the Marketing Carrier and the Coupon/Segment Carrier. Although the Department rules require the Issuing Carrier (or Issuing Carrier's agent) to notify the passenger of the identity of each Operating Air Carrier in the routing, standard industry practice does not list the Franchise Code-Share Partner's Airline Designator on the Ticketed Itinerary. Nevertheless, the O&D Survey rules require the Participating Carrier to report the Airline Designator of the Franchise Code-Share Partner Carrier as the Operating Air Carrier, and report the Airline Designator of the Mainline Partner as the Marketing Carrier.

The difference in the treatment of data between the industry and the Department's O&D Survey is most clear when examining an itinerary that includes both an Alliance Code Share and a Franchise Code-Share. For example, if Lufthansa German Airlines (Lufthansa) had authority to sell a code-share itinerary from Frankfurt (FRA) to Dulles (IAD) to Norfolk (ORF), and the IAD to ORF portion is on an aircraft operated by Mesa Airlines (Mesa), then the O&D Survey submission would show two flights. The FRA to IAD portion would be reported as Ticketing Air Carrier of Lufthansa and Operating Air Carrier of Lufthansa. The IAD to ORF portion of the travel would be reported as Ticketing Air Carrier of Lufthansa and the Operating Air Carrier of Mesa. The Department does not know the identity of the Mainline Partner Air Carrier. Logically, in this case, a user would assume Mesa is operating as United Express but there is nothing to preclude Mesa from flying IAD to ORF as US Airways Express, so such assumptions are not to be relied on. The Department's data is used for time series analysis over many years and no user of the data can logically deduce an Air Carrier's livery and operations over many years of service.

The Department has a statutory responsibility to monitor airline code-share relationships. As regional Carriers have increasingly taken multiple Mainline Partner Carriers into code-share arrangements, Franchise Code-Shares have become increasingly difficult for the Department to monitor. When an Air Carrier takes on a Franchise Code-Share relationship with two Mainline Partners that, in turn, have Alliance code-share relationships

with each other, the need for a new data element in the O&D Survey is clear. When a Carrier operates as a Franchise Code-Share Partner for both US Airways and United Air Lines (United), the O&D Survey data records cannot distinguish between (1) flying in the livery of United, ticketed as a US Airways flight and (2) flying in the livery of US Airways, ticketed as a US Airways flight. In situation (1), the identity of the Mainline Partner (United, in this case) is lost. In situation (2), the identity of the Mainline Partner (US Airways, in this case) is not lost, but there is no way for the user of the data to know that. Since the user is provided no ability to distinguish between a record reported in situation (1) and a record reported in situation (2), the value of the data in assessing code-share travel partnerships is greatly diminished.

To further illustrate how Carriers would report the Marketing Carrier, Operating Carrier, and Master Flight Number data elements under this proposed system, consider the following hypothetical examples of itineraries involving a single US Airways Express flight operated by Mesa. Under this scenario, US Airways contracts with Mesa (IATA Airline Designator YV) to operate regional jet service between Charlotte (CLT) and Charleston, SC (CHS) on a fee per departure basis. Mesa operates the aircraft but the aircraft is painted in US Airways' livery. US Airways is wholly responsible for managing the inventory on the flight and bears all of the revenue risk associated with the flight. US Airways markets this flight to its customers as US Airways Express flight 2808. Mesa does not market this flight to the public under its own designator code and has no responsibility for managing the inventory. US Airways' alliance partners United and Lufthansa market US Airways Express flight 2808 as United 7808 and Lufthansa 8808, respectively. Although United and Lufthansa sell seats on US Airways flight 2808 under their respective designators, neither Carrier has any responsibility for managing the inventory on this flight. The following itinerary examples illustrate how the proposed system would work in practice.

Itinerary 1: Lufthansa marketed Munich-Charleston One-way Trip with connection over Charlotte to US Airways Express flight 2808. Under this scenario, the passenger buys a ticket from Munich to Charlotte on LH100, a Lufthansa operated flight. In Charlotte, the passenger will connect to Charleston on LH8808, which is the Lufthansa

marketing flight number for US Airways Express flight US2808 operated by Mesa. For the LH8808 Flight-Stage, the Participating Carrier would populate the Marketing Carrier, Operating Carrier, and Master Flight Number data elements as follows:

Marketing Carrier: LH.

Operating Carrier: YV.

Master Flight Number: US2808.

Itinerary 2: United marketed Chicago-Charleston One-way Trip with connection over Charlotte to US Airways Express flight 2808. Under this scenario, the passenger buys a ticket from Chicago to Charlotte on UA200, a United operated flight. In Charlotte, the passenger will connect to Charleston on UA7808, which is the United marketing flight number for US Airways Express flight US2808 operated by Mesa. For the UA7808 Flight-Stage, the Participating Carrier would populate the Marketing Carrier, Operating Carrier, and Master Flight Number data elements as follows:

Marketing Carrier: UA.

Operating Carrier: YV.

Master Flight Number: US2808.

Itinerary 3: US Airways marketed Charlotte-Charleston One-way Trip, Non-stop on US Airways Express flight 2808. Under this scenario, the passenger buys a ticket from Charlotte to Charleston on US2808. For the US2808 Flight-Stage, the Participating Carrier would populate the Marketing Carrier, Operating Carrier, and Master Flight Number data elements as follows:

Marketing Carrier: US.

Operating Carrier: YV.

Master Flight Number: US2808.

In all three of the situations described above, if the US Airways flight from Charlotte to Charleston were to be operated by US Airways itself (i.e. with mainline equipment rather than by one of its regional affiliates) as hypothetical flight US Airways 518, the Operating Carrier field in all of the above examples would instead reflect "US." The Master Flight Number field would reflect "US518."

It is also important to know the Master Flight Number when Carriers use funnel flights and starburst flights to market their product to consumers. Correlations between the T-100/T-100(f) would be very difficult if the O&D Survey is only reported under the various flight numbers that are assigned in funnel flights and starburst flights. Knowing the Master Flight Number will provide the common element needed for accurate correlation.

The Department must require this data element to fulfill its mandate to protect consumers by monitoring code-share ticketing and other marketing

practices. Therefore, the Department proposes to collect the Master Flight Number, which will consist of the Airline Designator and true flight number of the Mainline Partner that manages the inventory of the flight. The Department invites comment on this topic and on the efficacy and difficulty of populating this data element.

7. Scheduled Arrival Date. The Department's ability to determine One-way Trips is dependent on knowing when a scheduled flight arrives in an airport. Scheduled Arrival Time is meaningless without Scheduled Arrival Date.

8. Scheduled Arrival Time. The Department's ability to determine One-way Trips from the O&D Survey information is further crippled by a lack of information about Scheduled Arrival Time. The lack of information about Scheduled Arrival Time makes it impossible to know which passengers pass through a location on their itinerary to stay only long enough to change planes, and which passengers remain for an extended period at a location.

Flight-Coupon Stages where the travel plans are OPEN will be assigned an arrival time to be determined later and the results of that determination will be published in the Passenger Origin-Destination Survey Directives issued by the Department.

9. Fare Basis Code/Ticket Designator. The Department requires fare basis code and ticket designator to understand the restrictions placed on the purchase of travel and the economics of the air travel industry. Several respondents to the ANPRM requested that the Department collect information that will enable it to provide a classification of fares. The Fare Basis Code is the alphanumeric code identifying the fare by class, qualification, and restrictions associated with the travel segment. The Ticket Designator is the code indicating that the fare basis code is modified by rules associated with the ticket designator code. Ticket Designator is specified in the ATPCO TCN Ticket Exchange Service Specifications Guide instructions for populating data element "Coupon/Segment Fare Basis/Tkt Designator" (glossary reference FBTD) as the code that appears in the same field as the Fare Basis Code separated by an oblique "/".

10. Ticketing Class of Service. In order to understand service demand and to understand the quality of services to communities, the Department proposes to continue the practice of collecting information about class of service, also known as cabin class. In response to the ANPRM, American Airlines (Docket

OST-1998-4043-5) and others noted that non-standard reporting of class of service degrades the usefulness of the published data. The most expensive class of service, generally provided in the cabin located nearest the nose of the plane, is typically referred to as the first class cabin. The least expensive class of service (coach/economy/main) cabin is typically located in the aft-most section of the aircraft. Sometimes a Carrier will avoid offering a class of service marketed as first class, and choose to market the front cabin as business class instead. To further complicate matters, more than one Carrier markets the front cabin of its narrowbody aircraft flying on a domestic route and the front cabin of its widebody aircraft flying on an international route with the same "first class" designation. Today, certain Carriers offer "premium coach" seating and in the future, Carriers may offer an "ultra-premium" (*i.e.* more expensive than first class) cabin. We are unaware of an objective class of service definition maintained anywhere in the industry that distinguishes between these classes of service. Indeed, currently there is no objective class of service definition that would prohibit a Carrier providing only a single class of service from calling it first class, even if that single class of service was comparable to coach class at a Carrier that offers multiple classes of service.

The Department desires to change the class of service designations to make them as objective and as meaningful as possible. However, we believe the marketplace is the best arbiter of a Carrier's claim to offer first class service. We do not wish to codify a particular standard of service or seat pitch as the point that differentiates a first class accommodation from a business class accommodation. The Department seeks consistent class of service designations but there are no objectively defined designations in the industry. Therefore, the Department proposes to provide a framework in which each airline will assign a number to the service cabins in its fleet from the least expensive to the most expensive, such that the least expensive cabin (usually the aft-most cabin) is designated as "1" and each defined cabin class above cabin 1 (*i.e.* those that the Carrier markets at higher price points and that are generally physically located toward the front of the aircraft) will be designated with the next highest ordinal number. The number "2" will generally designate what has heretofore been described as premium coach. The number "3" will generally designate what has heretofore been described as business class or first

class of a two cabin aircraft. The number "4" will generally designate what has been described as first class of a three cabin aircraft. The number "5" will designate ultra-premium first class. The Carriers would provide the Department with up to date definitions of its 5 class of service designations and would use their own internal class of service codes to classify their passengers. When a Carrier operates a fleet of aircraft with a class of service that is arguably similar to the class of service offered by competing Carriers, and if the Department believes a compelling public interest is served by re-designating the passengers as having been transported in a different class of service, the Department reserves the right to re-designate passengers on such an airline into a different class of service. The Department seeks comment from Carriers and the public on the efficacy of this proposal.

b. Sale Elements

1. *Issuing Carrier Identifier.* Every Carrier that issues Ticketed Itineraries must have a unique three-digit numeric identifier. The Issuing Carrier is responsible for the ticket stock on which the itinerary is issued. The Department proposes to identify the Issuing Carrier with the Carrier's assigned IATA three-digit code. This code also serves as the first three digits of the 13-digit ticket number on a standard agent ticket.

2. *Ticketed Itinerary Identifier.* Carriers assign a ticket number or Passenger Name Record (PNR) identifier to every Ticketed Itinerary that is unique when used in conjunction with an Issuing Carrier Identifier and the Date of Issue. This data element will contain the value of that identifier. The Department requires a unique identifier to facilitate communication with the Participating Carriers in the Department's effort to monitor the data and the Participating Carrier requires a unique identifier to facilitate communication with the Department when data must be corrected and resubmitted. The Ticketed Itinerary Identifier is necessary for effective resolution of problems.

3. *Date of Issue.* The Department proposes to require Date of Issue because it is part of the unique identifier of the Ticketed Itinerary. In the past, the Department has often had to require Air Carriers to provide supplemental information about travel because it lacked information about ticket sales dates. DOJ and DOC both require knowledge of the date of sale in the course of carrying out their mandates. The date the Ticketed Itinerary is issued is an important component of

understanding the economics of the airline industry. Falling passenger counts or rising passenger counts have traditionally been the measure of the economic engine that travel provides to the economy. However, for some purposes, the rising and falling volume of daily ticket sales over time is a better measure of industry economics. Another key element of air transportation economics is the measurement of the number of days between ticket sale and first use of the Ticketed Itinerary. Known as the booking window, or advance purchase window, the increase or decrease of the booking window year over year is an important measure of consumer confidence. To understand the dynamics of rising and falling volume of itineraries sold and the size of the booking window, the Department must collect the Date of Issue.

4. *Fare Amount.* The Department's ability to measure fare information independent of taxes collected is vital to the understanding of aviation commerce. Carriers shall convert fares paid in currencies other than U.S. Dollars into U.S. Dollars using whatever currency conversion methods the Carrier customarily uses in its normal course of business. The current O&D Survey requires Participating Carriers to truncate the cents from the reported total amount. This practice artificially lowers the Department's estimate of total amount collected because an unknown number of cents have been dropped from millions of tickets. Rounding to the nearest cent will allow some imprecision to remain, but the Department believes that losing fractions of one half cent is an acceptable degree of imprecision. Fare amounts have customarily not been whole dollar amounts even when they do not require currency conversion to U.S. dollars. Therefore, the Department proposes to collect fare information independent of tax information, and further proposes to collect fare information accurate to two decimal places rounded.

5. *Government Imposed Taxes/Fees.* The ability to identify each and every tax, passenger facility charge, and fee that the consumer must pay is central to the Department's understanding of the economics of travel. Disaggregating taxes and government-imposed fees from the fare will enable the Department to more accurately monitor changes in airfares and separately monitor the changes in taxes and fees paid, both of which have substantial policy considerations.

On January 9, 2003, Captain Duane Woerth, President of the Air Line Pilots Association International, testified

before the Senate Committee on Commerce, Science, and Transportation that airline taxes were choking the industry.⁶ He testified that, according to the Air Transport Association (ATA), taxes on a \$100 domestic ticket could be as high as 44 percent of the amount collected. Without improvements to the O&D Survey, it is impossible to use Department data to precisely determine whether the testimony was based on an example of a typical ticket or an extreme case, and whether it is indicative of an industry-wide trend affecting a substantial number of passengers.

The Department proposes to adopt the industry's standard Government imposed tax/fee identifiers as documented in the ATPCO TCN Ticket Exchange Service Specifications Guide instructions for populating data element "Tax/Miscellaneous Fee Type" (glossary reference TMFT). Carriers shall convert amounts paid in currencies other than U.S. Dollars into U.S. Dollars using whatever currency conversion methods the Carrier customarily uses in its normal course of business. The Department proposes to require the reporting of taxes and fees collected by the Carriers on behalf of government entities and further proposes to collect tax and fee information accurate to two decimal places rounded.

6. *Ticketing Entity Outlet Type*. BLS (Docket OST-1998-4043-54), American Airlines (Docket OST-1998-4043-5), and Northwest Airlines (Docket OST-1998-4043-49), among others, specifically requested that the O&D Survey include a distribution channel component. The Department has conducted studies of airline marketing and distribution practices and how they affect the cost structure of Carriers as well as the associated impact on consumers. Knowledge of the distribution channel used to deliver the ticket to the passenger has become an important part of aviation analysis.

The Department has lacked the data to sufficiently examine such changes precisely at a time when they have become an important part of the Carrier's efforts to reduce costs. The Department proposes to collect an indicator that identifies the type of location responsible for issuing the Ticketed Itinerary. The Department seeks comment regarding the efficacy of using codes based on those already in use in the industry as listed in ATPCO's TCN Ticket Exchange Service Specifications Guide instructions for populating data element "Ticketing

Entity Outlet Type" (glossary reference TIOT).

- A = Airline office
- B = Business corporate account
- C = Consolidator
- D = Direct dial in locations (Consumers, PC Users)
- E = End user access via third party (Internet, Minitel, etc)
- G = General sales office
- I = Internal CRS locations
- M = Multi-access
- N = Non-IATA agents
- P = Pending agents
- S = Self service machine
- T = IATA travel agent
- U = Unknown
- V = Vendor (car, hotel)
- W = Wholesaler or tour operator

The codes will be listed in the Passenger Origin-Destination Survey Directives issued by the Department.

7. *Customer Loyalty Program Identifier*. Some users of the O&D Survey data have requested a data element to record the program name when a passenger has declared a membership in a loyalty program. The need to monitor domestic and international alliances and the causes and consequences of share shift associated with the alliance have become critical in understanding industry trends and discerning their competitive impact. The Department proposes to collect the name of the program in which the passenger is earning credit. We are unaware of any industry standard loyalty program identifiers. The ATPCO TCN Ticket Exchange Service Specifications Guide instructions for populating data element "Coupon/Segment Frequent Flyer Reference" (glossary reference FFRF) indicate that the reference include the "Airline Designator of the airline that assigned the Frequent Flyer Number" which presupposes that loyalty programs belong to an airline rather than an alliance of airlines.

We propose to use the industry standard loyalty program identifiers if a consensus exists, otherwise, the Department will maintain and publish a list of loyalty programs and appropriate identifying codes for those programs. We are aware that not all ticket purchasers declare their membership in a loyalty program at the time the itinerary is ticketed. Passengers that identify themselves as members of a program after the Ticketed Itinerary has been submitted to the O&D Survey will remain unrecognized in the Department's statistics. The Department seeks comment from the industry and the public regarding the ability of the Carriers to reliably populate this element.

8. *Customer Loyalty Program Award Ticket Indicator*. The Department believes that, to carry out its mandate, it must know when a passenger has expended mileage points or award credits to obtain a Ticketed Itinerary. The Department proposes the values of "A" when the customer paid no fare at all, "P" when the customer pays partially with award credits, and "U" when the passenger paid the appropriate fare for passage, but used award credit to upgrade to a more exclusive class of service. The Department seeks comment from the industry and the public regarding the ability of the Carriers to reliably populate this element.

9. *Number of Passengers*. The majority of Ticketed Itineraries are issued to one passenger, but some Ticketed Itineraries describe the travel of multiple passengers traveling together on the same itinerary. The Department must collect the count of passengers included in the Ticketed Itinerary. Without knowledge of this value, the data from several of the other elements, particularly the Fare Amount, become invalid.

10. *Itinerary Copy Date*. Since Ticketed Itinerary databases are operational databases for the Carriers, and since operational systems are by their nature constantly updating data, and since the Department is requiring a copy of the Participating Carrier's Ticketed Itinerary data to be taken at a given point in time, it is important to have that point in time recorded. The copy date will also facilitate the correction of data. Participating Carriers wishing to replace previously submitted data can do so more easily if the Department can identify old and new copies of records using the copy date.

We explored the possibility of omitting this data element on the assumption that the Department could record the date that the data was received. However, this option would record the date of successful data transmission rather than record the date the Participating Carrier's operational data was copied. To best facilitate communication, the Date of Submission must be set by the Participating Carrier at the date the data is copied, not by the Department at the date the data is received. Knowledge of the Itinerary Copy Date will help alleviate questions and concerns about data quality.

c. Other Suggested Elements

Various members of the air transportation community have suggested the following as elements the Department should collect. The Department does not propose to collect

⁶ Source: <http://commerce.senate.gov/pdf/woerth010903.pdf>.

these data elements, but we seek further comment advocating the inclusion of these suggested elements, and we will consider including any one or all of these elements in the list of mandatory elements collected under this rule.

1. *Passenger Type*. The airline industry has an established passenger type code that is used as an indicator of the characteristics of the passenger based on a pricing decision. ATPCO's TCN Ticket Exchange Service Specifications Guide instructions for populating data element "Passenger Type" (glossary reference PAST) describes this as a three-digit code indicating the type of passenger (e.g., ADT for adult fares, CHD for child fares, MIL for military fares and GOV for government fares.) Several Carriers and airports that responded to the ANPRM requested some kind of information about the type of passenger traveling on the Ticketed Itinerary. The Department would also benefit from having passenger data type in planning for air transportation needs of the future. From time to time, the Department is required to conduct reviews of government fares. For example, on at least one occasion, the Department has been asked to supply information on the number of children that fly on commercial Carriers.

The National Transportation Safety Board has recommended that BTS improve the quality of exposure data available for safety analysis (See National Transportation Safety Board, Transportation Safety Databases, Report No. SR-02-02, September 11, 2002, p. 38). Exposure data (i.e., the number of passengers exposed to the risk of an accident in any particular type of transportation) are essential for measuring the accident rate for different types of transportation and measuring the benefits of safety improvements. Aviation safety analysts are particularly interested in certain data that would be collected under the proposed rule on characteristics of airline passengers (e.g., whether the passengers are adults, children, or infants), so that they can estimate the likelihood that passengers would take an alternative mode of transportation if safety regulations increased the cost of flying. BTS believes that information about passenger type will help it calculate a more meaningful ATPL. The Department is considering collecting passenger type as a data element and, therefore, we seek comment on the availability of passenger information, the consistency with which it is populated in airline systems proposed as the source for O&D Survey data in this rulemaking, and the reliability of the Carriers maintaining a

uniform understanding about what each value signifies.

2. *Fare Basis Category*. The Department currently collects class of service information and rudimentary fare classification information in a dual-use field called fare basis code. The current classification has seven possible values: C (Unrestricted Business Class), D (Restricted Business Class), F (Unrestricted First Class), G (Restricted First Class), X (Restricted Coach/Economy Class), and Y (Unrestricted Coach/Economy Class), plus U (Unknown). The dual-use codes indicate (1) the class of service (also known as cabin class) appropriate to the fare basis the passenger purchased and (2) whether or not the passenger's fare basis was issued under one or more restrictions, such as the fare's minimum advance purchase requirement or the fare's eligibility to be refunded. We continue to believe that Ticketing Class of Service is an important element to collect, and we have proposed collecting it as explained under section I.(2)(a)(10) of this document. In addition, we are considering collecting information about fare basis restrictions. We believe that policy makers and the aviation industry as a whole would benefit from information about the purpose for which the passenger is traveling.

Several Air Carriers requested fare categorization in their ANPRM comments. The most often mentioned classification was a business or leisure dichotomy classification. The Department believes that the business—leisure dichotomy is a useful but very subjective evaluation, which is very difficult to categorize in a standardized manner industry-wide, given the data currently available. Our understanding of the difficulties faced by the Air Transport Association in its attempt to build criteria for categorizing business and leisure fares based on existing data elements in Carrier reservations and accounting systems tends to verify that belief.

We believe that classification based on objective and verifiable criteria would provide a more useful classification methodology. The current classification has only a single aspect, "restricted" or "unrestricted." This, though verifiable, is so broad that it provides very little understanding of passenger fares in the current aviation environment. We are, therefore, considering and requesting comment on, classifications based on a combination of three criteria (1) travel eligibility date, (2) purchase eligibility restrictions, and (3) refundability/exchangeability. We believe that

knowledge of these three aspects of a fare would enable a comparison of fares across Carriers and provide useful "passenger type" data while relying on common information stored in carrier accounting and reservations systems.

The Department believes that categorization of fares would be extremely useful to the government and industry users alike, but we recognize that there are substantial difficulties in collecting, categorizing, and validating the data given current data in Carrier reservation and accounting systems. First, the Department would necessarily rely on Carriers' classification designations. The Department cannot independently edit or validate the Carriers' classifications beyond issuing guidelines, which would be as specific as possible, but would necessarily be fairly general in nature. Second, the complexity and diversity of fare basis codes is enormous. Some fare basis codes are designated for single markets. Some are designated for a group of markets. Some are designated for all markets, but carry restrictions that apply only in some markets. Third, the volume of fare basis codes on file for many Carriers is huge. It is not uncommon for an individual carrier to have thousands of fare basis codes and combinations of codes. The volume of fare basis codes in combination with their complexity and diversity make classification of fares a very challenging task. Fourth, fare basis codes do not have a universal meaning across all Carriers in the industry. Pricing structures are unique within each Carrier. A given set of fare basis codes reflects the pricing structure only within the context of the given Carrier.

One approach to a classification plan would be for each carrier to submit its list of fare hierarchies to the Department. The list or lists would include the fare basis codes and the attendant rules for these fare basis codes as expressed in terms of the Department's three classification criteria or some other set of classification criteria suggested by members of the industry. With an understanding of the fares included in each category across multiple Carriers, the Department could publish a map of fares that would serve as the industry fare basis category for purposes of classifying the value of fares across all carriers.

There appear to be two options for collecting this type of data, (1) retain the existing system of classification of "restricted" or "unrestricted", or (2) use the fare basis codes as a means for establishing more accurate comparisons across carriers. Given the inconsistency of fare basis code application from

Carrier to Carrier, some method of mapping by the Department would be required. Whenever possible, the Department prefers data elements that can be objectively collected and consistently validated industry-wide.

The Department seeks further comment on the utility and efficacy of collecting Fare Basis Category based on an aggregated fare basis classifications as well as any other data element that could prove useful to users of the O&D Survey in understanding the nature and purpose of passenger air travel in the U.S. Comments should address (1) the usefulness and efficacy of the continuation of collecting the current "restricted" or "unrestricted" fare designation only, and (2) the usefulness and efficacy of establishing a new system based on some form of mapping fare basis codes according to similar values assigned to different codes by various Carriers by periodically collecting and publishing comprehensive fare hierarchies from each Participating Carrier. We request that comments be as specific as possible in outlining any proposed methodologies and that they address issues involved in making industry-wide comparisons accurate and meaningful.

3. *Commission Amount.* This data element represents the amount paid by the Issuing Carrier to the travel agent for selling a Ticketed Itinerary on its behalf. The Department recognizes that, in general, the role of sales commissions paid to the travel agents on the issuance of a Ticketed Itinerary have diminished in the U.S. However, commission payments have not disappeared from the air travel industry. In light of this, the Department seeks comment regarding the efficacy of collecting this information.

4. *Form of Payment Type.* As shifts occur between payment by cash, credit card, or one of the new forms of Internet payment, collection of this data may provide insight into ticket purchasing behavior. The Department seeks comment on the efficacy of collecting this information.

5. *Electronic Ticket Indicator.* This element, used in conjunction with ticketing entity outlet type, could help isolate information about selling and distribution channels. The Department seeks comment on the collection of an indicator to determine information about electronic ticketing. The proposed values would be the ones used in ATPCO's TCN Ticket Exchange Service Specifications Guide instructions for populating data element "Electronic Ticket Indicator" (glossary reference ETKI).

6. *Passenger Citizenship Nation.* BLS requested citizenship information to determine whether a trip constitutes an export transaction or an import transaction. DOC's International Trade Administration (ITA) requested citizenship information to help in its mandate to facilitate trade and tourism. DOS, which negotiates air treaties with foreign governments, would benefit from citizenship data. The Department seeks comment regarding the efficacy of collecting statistical information about passenger citizenship.

7. *Country Code and Area Code of the Passenger's Phone Number.* US Airways, United Air Lines, Southwest Airlines, the Sabre Group, Northwest Airlines, Continental Airlines, and American Airlines all included in their ANPRM comments their desire that the Department obtain information about the passenger's point of origin. BLS needs citizenship information to determine whether a trip constitutes an export transaction or an import transaction. The passenger's phone number area code, in conjunction with passenger's phone number country code, is one indication of passenger point of origin. In light of the increasing use of cell phones and the increasing disassociation between the area in which a passenger resides and the geographical area of the cell phone's area code, the Department seeks comment regarding the efficacy and the cost/benefit proposition of collecting this information as an indication of passenger residence in general, and in light of announced DHS requirements.

8. *Passenger Zip Code/Postal Code.* Sabre, US Airways, American, Continental, Northwest, and Southwest commented in the ANPRM that they would like to have some measure of the passenger's place of origin. Carriers, such as US Airways and Northwest, identified this need as generic point of sale information. Academics, consultants and Carriers alike want to study point of origin demographics.

United, Airports Council International—North America, and airports that supplied ANPRM comments specifically requested passenger zip code as a point of sale identification to identify the geography of the area served by the airport. Several comments from airports declared that this element would be a vital component of their ability to serve their communities. The Department believes that this element is the best indicator of passenger point of origin, and, perhaps, the single most important data element needed for prudent infrastructure planning and investment. The Department's mandate to ensure that the

transportation system is healthy, efficient, and competitive cannot be fully realized until we know where the users of the system reside. The Department's ability to study the region in which an airport's customers reside, or catchment area analysis, is not currently possible.

The passenger is not currently required to declare a Zip Code/Postal Code as a precondition of purchasing a Ticketed Itinerary from a Carrier, and, therefore, this data element is not available. DHS may seek specific individual identification data on airline passengers that would require the Carriers to collect and store passenger residential Zip Code, among other elements, for a system designed to use passenger information to increase homeland security. If it could be collected without impinging on individual privacy rights, Zip Code/Postal Code would make important point of origin information available for statistical purposes for the first time.

If the Carriers develop the capability to collect and store Zip Code/Postal Code, then the cost of collecting it for statistical purposes will not be significant. In light of the many benefits to the industry, the Department would consider collecting this data element. However, since it is not a data element that is routinely collected by the Carriers we are not proposing to collect this data element at this time. We seek comment regarding the continued interest in collecting this information for statistical purposes.

3. Reporting Requirements

a. Data Source Criteria

One of the most critical questions asked in the ANPRM was whether the Department should change its source of data for the O&D Survey. Heretofore, the Department has required the Operating Air Carrier to use a data stream created specifically for reporting the O&D Survey. The Department has three objectives for the data provided by Carriers. First, the data available to the Department must meet the OMB quality objectives of accuracy, reliability, completeness and non-bias to the extent that it is practical. Second, the source of data must be selected in a way that minimizes the burden of collection on the Participating Carriers. Third, the Department must minimize the effects of changes to itineraries over time, because changes that take place following the reporting event are invisible to the O&D Survey. All sources of data, including alternative data sources proposed in responses to the

ANPRM, must be evaluated on these three criteria.

b. Discussion of Interactions Between the Carriers and Their Customers

The source of data is inextricably linked to the event that triggers the creation of that data. Each source of data suggested in the ANPRM comments represents data captured at a point in time where an interaction between the passenger and the Carrier, or one of its agents, takes place. Adopting a new source of data necessarily means that we accept the state of the data as it existed when that data source was created or introduce a procedure to report subsequent changes to the itinerary.

For an electronic ticket sold over the Internet at the Carrier's website, the creation of a reservation, the creation of the ticket, the financial payment transaction, and the recording of the itinerary by the revenue accounting system of the Issuing Carrier all occur simultaneously when the customer agrees to purchase the itinerary. However, for itineraries sold through other outlets or provided gratis by the Carrier, some of the events occur simultaneously and some occur serially. In a handwritten ticket, all of these events are separate and distinct. It is important to be aware of these distinctions because the Department must establish its procedures and data sources to be equally valid when collecting information about all passengers from all Carriers with the least amount of procedural or statistical bias.

c. Problems in the Current Source of Data

The Department created the current source of O&D data for the express purpose of collecting the O&D Survey. The problems that result in designating an Operating Air Carrier as the Participating Carrier have already been discussed. Since the Operating Air Carrier does not always know enough about the Ticketed Itinerary to report it correctly, unless it is also the Issuing Carrier or the Issuing Carrier provides the necessary information, the Department has been forced to code a large number of reporting exemptions in the current O&D Survey methodology that we now seek to eliminate.

The current CFR grants reporting exemptions for itineraries that are flown entirely on some Carriers. Every Participating Carrier transporting the passenger must examine the itinerary to determine whether it is the first Carrier in the itinerary that is listed by the Department as a Participating Carrier. The Air Carrier is exempted from

reporting a Ticketed Itinerary if another designated Participating Carrier precedes it in the scheduled itinerary. A Ticketed Itinerary is, in effect, exempted from reporting when the code-share ticketing situation makes it appear as if the itinerary has already been reported when, in fact, the itinerary has not been reported. The current system also grants exemptions for reporting all of the travel on reportable Ticketed Itineraries if the Participating Carrier is unable to obtain information about the entire itinerary from the Issuing Carrier and is unable to obtain the information from looking at the passenger's documents. Roberts Roach and Associates, Inc. (Docket OST-1998-4043-4) summed up the frustration of most users of Department data when, in its comments to the ANPRM, it advocated that the Department allow no exceptions whatsoever.

Exemptions are not the only problems associated with the O&D Survey's source data. Under the current rule, the Department requires the full amount collected for the Ticketed Itinerary to be reported even when the full itinerary was not, which causes the reported portions of the itinerary to be overvalued. For example, conjuncted tickets consist of more than four Flight-Stages and require multiple ticket documents. If the first reporting Carrier is not the Issuing Carrier, and can view a partial list of airports but a full fare amount, the identified portion of the Ticketed Itinerary will be overvalued.

Equally troublesome, the Department requires the full itinerary reported, even if the full amount collected for the Ticketed Itinerary is not known. For example, when the Ticketed Itinerary is issued as a bulk ticket, the amount collected is either not shown or appears as zero amount collected. Usually, a bulk ticket is reported by the Issuing Carrier, in which case the fare amount would be known. However, in some circumstances, a passenger who possesses a bulk ticket may be diverted or transferred to another carrier. Under the current rule, should this situation occur, the Participating Carrier will not know the amount of fare collected and will report the amount collected as zero dollars.

The Department recognizes that designating an Operating Air Carrier as the Participating Carrier necessitates that the Department grant reporting exemptions for conditions that exist when the Operating Air Carrier does not and cannot know some of the data elements. Therefore, the Department believes that the currently designated reporting entity, the Operating Air Carrier, does not have sufficient

information to reliably produce a source of data for the Department's O&D Survey.

d. Discussion of the Sources of Data Proposed by ANPRM Respondents

In the ANPRM, the Department solicited input on alternative data sources for the O&D Survey. The following data sources were proposed: (1) The computer reservation systems', or GDS', marketing information data tapes (MIDT) data triggered by the creation of a reservation, (2) Airlines Reporting Corporation's (ARC) sales tapes triggered by the sale of a ticket by a travel agency, (3) ATPCO's TCN records triggered by the creation of a ticket, (4) a new data stream from Carriers that issue electronic tickets triggered by the recording of the ticket in the Carrier's accounting system, and (5) a new data stream of passenger boardings triggered by the Operating Carrier's records from each flight segment.

1. *MIDT*. Metropolitan Washington Airports Authority and the Airports Council International—North America (Docket OST-1998-4043-68) suggested using the GDS systems' MIDT data as a source of data. The GDS MIDT records include customers' travel schedule information and obtaining it from these systems would impose a relatively small burden on industry. However, MIDT data represent only those bookings made through the reservations systems. Tickets purchased directly from the Carriers and through other outlets not connected to the MIDT would be excluded. This, in effect, would create an exemption for the reporting of tickets that were not created through the GDS distribution channel, and would deflate travel statistics. There is no reliable method of measuring the number of Ticketed Itineraries created through non-GDS distribution channels in order to gain a sense of the total number of Ticketed Itineraries issued. The reliability of the O&D Survey would suffer because the proportion of under-reported travel to actual travel would be unmeasurable. Even if the Department made an estimation of that proportion, the proportion of MIDT reservations as a percentage of the universe of tickets would fluctuate over time, which would invalidate the estimates.

As airlines encourage more bookings made directly with the Carrier, the number of tickets captured by MIDT is declining. Moreover, some Carriers' bookings are not represented in the MIDT data due to almost total reliance on direct sales. These situations would cause this source of data to under-report travel in an unmeasurable degree.

Conversely, American Airlines (Docket OST-1998-4043-5) stated that many reservations are never ticketed. The IG estimated the number of unticketed reservations at 15 percent of CRS-based travel reservations.⁷ These unused reservations that inflate the passenger travel statistics would cause the O&D Survey to over-report travel. The proportion of this over-reported travel to actual travel would be as unmeasurable as the under-reported travel. It has been argued that the over-reporting of travel might balance out the under-reporting of travel, but the extent to which that would happen is unmeasurable, leaving the ratio of reservations to tickets sold in a constant state of statistical instability. In addition, the level of over- or under-reporting may disproportionately affect different types of markets (e.g., predominantly leisure versus predominantly business markets) further reducing the validity of the survey for the analytical purpose it was intended to serve. In addition, MIDT data do not include information about fare or about taxes charged. Therefore, MIDT data cannot meet the content, validity, and reliability needs of the O&D Survey.

2. *ARC Travel Agent Sales Data.* Some respondents to the ANPRM suggested that the ARC sales tapes be used as a source of data. ARC is a clearinghouse that receives ticket sales data from travel agency sales reports, processes those sales on behalf of Carriers, and recombines all the agency ticket data into a comprehensive set of ticket data for each Carrier. The ARC ticket data is limited to tickets sold in North America. The proponents of this method suggested that ARC sales could be supplemented with travel agent data from other countries and regions, known as BSPs, but tickets issued through any other outlets would, in effect, be excluded from reporting. As with the MIDT data, even if the proper proportion of agency issued tickets to all valid tickets could be calculated, this plan would presume that the character of agency sold tickets would exactly mirror the character of tickets purchased through other outlets. For the extrapolation to be valid, tickets purchased directly from the Carriers or through direct links via third parties such as Orbitz' Supplier Link tickets and those purchased from other overseas outlets would have to statistically mirror agency-sold tickets for all markets for all Carriers.

Even if a valid extrapolation could be made with extensive testing, the proportion of agency issued tickets as a percentage of all issued tickets has continuously fluctuated and has been steadily declining as Carriers cut costs by providing incentives to passengers to book directly with the Carrier. Calculating the constantly fluctuating sample size, (i.e. the proportion of tickets issued through travel agencies as a percentage of all tickets issued each month) when the count of all tickets is unknown, would be impossible.

It should be noted that, in 2004, ARC and several Carriers began testing a product called the "AIA First & Final Interline Billing Service" based on ARC's Compass data warehouse. This product might assist some Carriers who elect to use it to provide some O&D Survey data to the Department. This is a fundamentally different proposition than using ARC travel agent sales as the sole source of data for the O&D Survey.

3. *Transmission Control Number (TCN) records.* Most of the Air Carriers that responded to the ANPRM either endorsed or acknowledged the possibility of using GDS TCN records combined with TCN records generated by the Carriers. A TCN is a supplementary record created to carry information about a Ticketed Itinerary between interested parties. The information on a TCN record is a copy of the information used to create a Ticketed Itinerary, but the presence of a TCN record does not necessarily guarantee that a Ticketed Itinerary was issued. This distinction is important. An issued Ticketed Itinerary is a legal contract for carriage. Whereas each Ticketed Itinerary will generate exactly one sale record in the Issuing Carrier's accounting system, some Ticketed Itineraries will have generated multiple TCNs and some Ticketed Itineraries will have generated no TCN at all.

The Carriers' passenger revenue accounting systems record the issuance of a Ticketed Itinerary when the company itself issues a Ticketed Itinerary or when it is notified by a travel agent that a Ticketed Itinerary was sold on their ticket stock. The sharing of TCN records in the industry is based on the concept that the TCN is supplementary information about a Ticketed Itinerary, and it is not, itself, a Ticketed Itinerary. The Carrier accounting systems are built to anticipate that there will be missing TCN records and duplicate TCN records in the TCN exchanges between Carriers. Accounting systems are designed to handle these contingencies with a variety of supporting subsystems. Using TCNs as a surrogate for actual Ticketed

Itineraries in these situations would over-report travel when duplicate TCNs are present. Ticketed Itineraries that are issued for which there is no corresponding TCN compound the problem. As with the unreported reservations in the MIDT data, Ticketed Itineraries created under circumstances in which a TCN is not generated result in under-reporting of travel. Like the MIDT, the proportion of over-reported travel and the proportion of under-reported travel are both unmeasurable and, again like the MIDT, we cannot assume that the over- and under-reported tickets are equivalent.

Proponents of this method advocate that the Department require Carriers to manufacture TCNs for tickets for which a TCN does not already exist. Mandating participation of all Carriers in what is now a voluntary TCN exchange could constitute a significant cost for Carriers, particularly those Carriers with a business model that does not benefit them to participate in the TCN system in their usual course of business. A less burdensome alternative for Carriers that do not now participate in the TCN exchange system would be for these Carriers to format an alternate simpler record structure rather than require the Carrier to format the TCN record. The simpler record would be designed specifically for submitting data to the O&D Survey and would be less burdensome to create than the more complex TCN record, which supports the needs of the Carriers' passenger revenue accounting.

TCNs contain sensitive personal identification and financial information that, while an important component of the Carriers' accounting needs, is unwanted by the Department. The Carriers would have to purge the personal information from records prior to transmission to the Department. Purging this data makes the TCN unfit for the use it was designed to serve. Several respondents to the ANPRM endorsed the concept of employing a third party to perform this task on behalf of the Carriers. However, Continental Airlines (Docket OST-1998-4043-44), supported by Wayne County Detroit Metropolitan Airport (Docket OST-1998-4043-23), pointed out that the ultimate burden to accurately report a ticket is on the Carrier. Proposing that a third party cleanse TCNs does not absolve the Carrier of its ultimate responsibility to properly report to the Department. The third party processor would have to be the agent of the Carriers not an agent of the Department because the Department holds the Carriers responsible for the integrity of the data. Thus, introducing

⁷ "Passenger Origin-Destination Data Submitted by Carriers. AV-1998-086 issued Feb. 24, 1998 pp. 33.

a third party to purge personal data would complicate the Carriers' administrative burden because of the added responsibility to select and to monitor a third party processor.

The GDSs create the TCNs for Ticketed Itineraries distributed by travel agents, but the Department holds the Carriers responsible for accurate O&D Survey reporting. In order to improve the accuracy of its O&D Survey data, the Department may have to require Carriers to accept TCNs from the GDSs and match them to their internal list of tickets to verify that a TCN and a Ticketed Itinerary had been created before reporting the itineraries to the Department. Introducing the additional verification step would be an added burden. Carriers that rely on travel agencies to distribute their Ticketed Itineraries would likely find that it would be less burdensome to create original records for its Ticketed Itineraries, and submit them directly to the Department, rather than sort through the GDS generated TCNs from travel agencies to determine whether any TCN records were missing and whether any TCN records did not have a corresponding Ticketed Itinerary. Thus, should the Department use TCN exchange records, Carriers even that now participate in the TCN exchange system might find it less burdensome to simply generate O&D reporting records from their accounting system.

A TCN record contains data that are a copy of itinerary data that was valid as of the date the record was created. Passengers often change plans after the ticket purchase, necessitating the passenger initiate changes to the Ticketed Itinerary. Some changes are considered minor and Carriers, typically, do not perform the exchange transaction for minor changes. Conversely, some subsequent changes to the passenger's itinerary prompt the generation of a new Ticketed Itinerary in exchange for the existing one. Each Carrier makes that determination based on its own needs and performs the exchange transaction according to its own business practices. If the Department uses TCN records as its reporting mechanism, the Department's data needs would necessitate that the Carriers notify the Department of the intended change in travel plans. The need for standardized reporting would, in turn, necessitate standardization of Ticketed Itinerary exchange policies in the industry. Carriers that exchange Ticketed Itineraries would necessarily have to follow the same set of decision criteria in order to standardize the collection of passenger statistics. Carriers with business practices that do

not now require the exchange of Ticketed Itineraries when passengers make significant itinerary changes would have to create a process to simulate such a Ticketed Itinerary exchange.

The TCN system that the Carriers use to share data among themselves efficiently serves its intended purpose. Imposing a requirement to mold the Carriers' TCN data exchange system to the Department's purpose would impose a significant cost and administrative burden to the Carriers, and the increased volume could possibly degrade some of the efficiency of the existing TCN system. As modified, the Carriers' TCN exchange system would be less useful for its original intent yet be less robust than the Department requires. The expense of forcing a functioning system to adapt to a new use would be unwarranted when other sources of data are available.

United (Docket OST-1998-4043-15) acknowledged the problem of over counting passengers due to changed routings, and refunded tickets and stated that the data inaccuracies could easily be addressed. "Air carriers' internal use of TCN reports has shown that relatively simple adjustment factors can be employed to obtain an accurate measure of actual traffic lift." The Department acknowledges that individual Carriers could and do use the information from the TCN exchange system as a substitute for actual Ticketed Itinerary sales for decision support functions. When a Carrier can use its other internal data for validation and its unique experience with TCNs arriving from various sources, it could find information from TCNs quite useful. However, the knowledge and experience of each Carrier within its route structure and within its operating experience is a fundamental requirement of making TCN data a useful source of information. Furthermore, the Carriers have the ability to use information from their accounting systems to edit, supplement, or purge the TCN records they use as the input to their decision support systems. The Department cannot duplicate that ability nor can we duplicate each Carrier's experience and knowledge of the mathematical relationship between the numbers of TCN records to the numbers of actual passengers. If the Department does not require TCN records to be verified by a sale record by the carrier prior to being submitted to the O&D Survey, then using TCN records that are unverified by an actual sale would require that the Carriers maintain a complex set of adjustment factors. Each Carrier's experience with

TCN adjustments would have to be submitted so that it can be included in the Departmental adjustment factor. Since the flow and composition of TCN's changes from month to month and season to season, each Participating Carrier would have to calculate and provide to the Department an accurate adjustment on a monthly basis.

We believe that using unverified TCN's with adjustment factors would be a significant burden on the Participating Carriers without providing the accuracy the Department requires. We believe that using TCN's verified by actual sales would cause a significant burden on the Carrier's existing TCN exchange system, and would also necessitate standardization of exchange ticketing practices that would enable the Department to set up a system to remove exchanged tickets and refunded tickets from the database. Neither of these two options is as compelling as the simple requirement to report tickets verified by a sale and first use of the ticket for travel, and therefore, we are not advocating the use of TCN records as the basis of reporting the O&D Survey.

Nevertheless, the Department recognizes the key role of the Carrier's TCN project in standardizing data elements regarded as important to the Ticketed Itinerary and the industry wide agreement on the definitions of those elements. The Department seeks comment to incorporate this standardized consensus to the extent possible in its proposal to revise the O&D Survey in accordance with established industry practice.

4. *Electronic Tickets.* Continental Airlines (Docket OST-1998-4043-44) proposed that a survey consisting exclusively of electronic tickets would be sufficient data for the O&D Survey. Electronic tickets are widespread in the aviation industry and would include the majority of Ticketed Itineraries sold in the U.S. and used on U.S. Air Carriers. However, not all Ticketed Itineraries are electronic. Non-electronic Ticketed Itineraries would, in effect, be exempt from reporting. In addition, electronic tickets only contain information about Ticketed Itineraries issued through a particular set of circumstances. Even if the proper proportion of electronic tickets to all valid Ticketed Itineraries could be calculated, this plan would presume that the character of electronic tickets would exactly mirror the character of Ticketed Itineraries purchased through other means. Interline itineraries and Ticketed Itineraries issued in foreign countries would be disproportionately represented in the non-electronic Ticketed Itineraries. Since these

populations are likely to have travel patterns that differ from the travel patterns of electronic ticket holders, it is very unlikely that the character of non-electronic Ticketed Itineraries would be mirrored in electronic tickets. The level of over-reporting or under-reporting could disproportionately affect different types of markets (e.g., predominantly leisure versus predominantly business markets), further reducing the validity of the survey for the analytical purposes it was intended to serve. Even if we could validate the extrapolation of known electronic ticket data to unknown non-electronic Ticketed Itinerary data, the proportion of electronic tickets as a percentage of all issued Ticketed Itineraries would continuously fluctuate. Calculating the constantly fluctuating proportion when the count of all Ticketed Itineraries is unknown would be impossible.

5. *Actual Passenger Transportation.* Many of the airports that responded to the ANPRM advocated that the Carrier that operates the passenger's flight perform the O&D Survey reporting as each flight takes place. However, the Carrier that transports the passenger does not always have the itinerary information that would make it possible to determine the True O&D of the One-way Trip from any given passenger flight segment. Even if it did, operational problems, weather problems, and an uncountable variety of human errors or situations involving airport security or even city traffic beyond the passenger's control can affect the way a passenger completes scheduled travel. The supporters of this technique did not suggest a method to reassemble the various segments of a single passenger's journey, reported at various times by multiple Carriers, into a coherent One-way Trip. Diverted flights, delayed flights, and lost flight envelopes would make it impossible to decipher the intended One-way Trip without a lift/sale match system. Carriers that have built lift/sale match database systems have found it to be a long and expensive undertaking. United Air Lines (Docket OST-1998-4043-15) commented that it firmly believed that reconciling to actual lift was both difficult and unnecessary.

The Department believes that construction of a lift/sale match system on an industry-wide basis would be a significant burden for both the Department and the Carriers, which would not be offset by the benefits. Moreover, for purposes of analyzing traffic flows and understanding market size and characteristics (the primary uses of the O&D Survey), the Department believes that it is more

valuable to know the itinerary the customer purchased than to know all of the exigencies of air travel that have interfered with the passenger's stated travel intention. American Airlines (Docket OST-1998-4043-5) and US Airways (Docket OST-1998-4043-7) commented that there would likely be an undesirable time lag incurred in obtaining, reassembling, and processing acceptable accurate Flight-Coupon Stage information. The Department believes that the potential problems of gathering the data from multiple sources, the expense of building the database for reassembling the itinerary data from the multiple sources, and the potential undesirable time lag associated with such a system render the use of this data source for the O&D Survey impractical.

e. Review of Existing Data Sources

By far the least intrusive way of obtaining aviation data from the industry is through the use of existing sources of industry data. Each of the existing sources of data the respondents suggested as a source of data for the O&D Survey provides information at minimal cost to the Carriers. However, none is a comprehensive source of information and therefore fails the test of accuracy, reliability, and completeness. In investigating each proposed data source, the Department has considered the possibility of supplementing each data stream. However, the effort required of the Carriers to supplement the data to enhance the quality adds complexity and cost. In every case, the data still fall short of OMB guidelines for ensuring quality of information disseminated by Federal agencies.

Furthermore, Carrier participation in these sources of data is not universal. The Department's use of any of those data sources would, effectively, mandate Carrier participation in processes in which they have chosen not to participate to date, or have participated at a very low level. Moreover, a Carrier's level of participation in the selected data source might result in varying levels of representation of its passengers in the data reported to the O&D Survey. This would disproportionately disadvantage a particular Carrier, or group of Carriers. The Department seeks comment as to whether the O&D Survey can be satisfactorily revised by reusing another collection of industry data compiled for a purpose other than the O&D Survey (e.g. TCN, MIDT, ARC, etc.). Comments should specify the extent to which the existing industry source of data will (1) maximize accuracy, reliability, completeness, and non-bias, (2)

minimize the burden of collection on the Participating Carriers, and (3) minimize the effects of changes to itineraries over time, as well as the specific modifications required of that data source. Comments should also specify the costs and benefits of using an existing source of industry data, including the costs and benefits of modifications to the existing data source to meet the three criteria described above.

f. Designating the Issuing Carrier as the Participating Carrier

The Port of Portland (Docket OST-1998-4043-19) recommended that the selling Carrier be incorporated into the O&D Survey. The Department prefers the term "Issuing Carrier" to "selling Carrier", since some Revenue Passengers travel on Ticketed Itineraries for which no funds change hands. Nevertheless, we believe this suggestion has merit. This suggestion would require creating a dedicated source of data such as the current one the Department requires from the Operating Air Carrier. It has several advantages, notably the simplicity of gathering information from the Issuing Carrier. A data source created by the Issuing Carrier easily meets two of the three criteria for selection of an appropriate data source for the O&D Survey (See Section I.3—O&D Survey Redesign: Reporting Requirements). The data quality concerns, criterion number one, are minimized because the Issuing Carrier has the most accurate and reliable knowledge of the passenger itinerary. The burden on the Carriers, criterion number two, is less than the burden heretofore placed on the Operating Air Carrier because it removes the burden of requiring the Operating Air Carrier to obtain information from the Issuing Carrier before reporting the itinerary. The changes that take place in an itinerary over time, criterion number three, remain a concern, depending on when the data is copied for submission to the O&D Survey. In all sources of data, a change that takes place after triggering the reporting event is invisible to the O&D Survey.

g. Issuing Carrier's Ticketed Itineraries at the Time of Sale

We considered an O&D Survey design that requires the Issuing Carrier to report the Ticketed Itinerary triggered at the time when the Ticketed Itinerary is entered into its passenger revenue accounting system. Depending on the Carrier, from zero to five percent of Ticketed Itineraries issued are refunded, and between five percent and 20 percent

of Ticketed Itineraries are changed after the itinerary is issued. The Department considered ignoring refunds and changes subsequent to the issue date, but determined that doing so would introduce unacceptable unreliability. The number of refunded tickets is small, but five percent of issued tickets are not inconsequential. The itinerary changes pose a more significant problem.

Carrier systems handle passenger-initiated changes to a Ticketed Itinerary in two ways. In some cases the change will be noted in the existing itinerary record, and in some cases the change will cause a new Ticketed Itinerary to be issued in lieu of the previous one.

When the existing itinerary is changed after it has been reported, then the changes will not be reported to the O&D Survey. Once the O&D reporting criteria are encountered, the Participating Carrier copies the information to a submission record and subsequent changes are invisible to the O&D Survey. In some cases, however, a new Ticketed Itinerary is issued in exchange for the previous one, and the Department would have to formulate a policy to address these cases. Unless the original Ticketed Itinerary is removed when the newly issued itinerary is added, the passenger is counted twice when the reissued Ticketed Itinerary is reported to the O&D Survey. There is inconsistent handling of data between Carriers that issue new tickets in exchange for the previous tickets and Carriers that alter tickets in place. If the reissued ticket is ignored, then it becomes, in effect, an exempted ticket.

The Department considered requiring that Carriers provide the Department with the identifiers of refunded Ticketed Itineraries and identifiers of Ticketed Itineraries that were replaced in an itinerary reissue transaction so that these could be removed from the data and the new Ticketed Itinerary entered instead. The undertaking would be the equivalent of a nation-wide ticket database matching system, and would involve the Department in the accounting details of the revenue accounting peculiarities of each of the Participating Carriers. The diversity of the Carrier business models is reflected in the diversity of their passenger revenue accounting procedures, which would necessitate that correspondingly complex procedures be in place at the Department to handle the various situations that arise from each airline passenger revenue accounting system.

The Department believes processing itinerary changes after the reporting event would greatly compound the complexity and substantially increase the expense of the O&D Survey

reporting system to both industry and government. Recording all of these changes would appear to increase the accuracy of the statistics, but would require considerably more effort and expense from the Carriers and impose dramatically more effort, complexity, and expense on the Department. The Department must consider the possibility that the increase in complexity may increase the incidence of errors that would, in reality, decrease accuracy. Finding and removing previously issued Ticketed Itinerary from the data would be similar in complexity to matching lifted flight coupons to Ticketed Itinerary records. The ANPRM comments by American Airlines (Docket OST-1993-4043-5) and US Airways (Docket OST-1998-4043-7) indicate that the attempt to match the sale and actual use would be time consuming as well as complex. Therefore, the Department believes that maintaining multiple reporting events for the same Ticketed Itinerary would interfere with the Department's goal of processing and disseminating data in a timely fashion. In light of the significant complexity, significant cost, the risk of introducing reporting errors, and the risk of introducing timing delays, the Department is not proposing to undertake a nation-wide ticket database matching system to track changed itineraries. However, we seek comment from industry and the public on the merits of these issues.

h. Issuing Carrier's Ticketed Itineraries at the Time of First Use

An alternative to tracking multiple changes to a Ticketed Itinerary is to delay the reporting of the itinerary until the last acceptable point at which a reliable trigger for a reporting event can be designated. The last unambiguous event that can reasonably be used as a reliable trigger for reporting is the first use of the Ticketed Itinerary. The final use of an itinerary is not acceptable as a reporting event trigger because many months can separate the first use of a Ticketed Itinerary from the final use. If the Department collects data at first use, we can hold the information about subsequent flights until the appropriate month for the Flight-Stage of travel to be disseminated. If the Department collects data at final use, we would be confronted with knowledge of Flight-Stages that occurred from one to 11 months earlier. It is not a reasonable alternative to hold the reporting of all data for 11 months in order to collect data from Ticketed Itineraries with widely spaced travel, it is not reasonable to be constantly updating data that has already been released and

it is not reasonable to ignore all data from the outbound portions of Ticketed Itineraries that describe travel that is spaced more than one month apart. Therefore the first use of a Ticketed Itinerary is the last reasonable and unambiguous event that can be used as a reporting event.

The first use of the Ticketed Itinerary for travel is the triggering event for reporting in the current O&D Survey. Refunds and reissued tickets that occur subsequent to the reporting event are currently ignored. Fortunately, the numbers of refunds and exchanges that take place after a passenger has already begun the journey are extremely low. Whereas we have accumulated ample evidence that naming the Operating Carrier as the Participating Carrier is the root of many of the reporting problems found in the O&D Survey, we have no accumulation of evidence that indicates that the first use of the Ticketed Itinerary for transportation is unsuitable as the trigger for the reporting event. The Carriers have confirmed that the preponderance of refunds and exchanges take place prior to the first flight, and the Department deems the small number of missed itinerary changes due to subsequent refunds and travel changes to be marginal. The Air Carriers have indicated that the most common change request that occurs after the commencement of travel is for a different return flight that is within a few hours of the original. Therefore, the Department has concluded that the designation of first use of the ticket for travel should continue to serve as the trigger for the reporting event.

i. Proposed Source of Data for the O&D Survey

The Department agrees with the Port of Portland (Docket OST-1998-4043-19) that the selling/issuing Carrier should be incorporated into the O&D Survey. Standard industry accounting practices require that the Issuing Carrier hold the passenger's funds in an unearned revenue account until the passenger flies, or exchanges or seeks a refund, of one or more of the Flight-Coupon Stages. The Operating Carrier notifies the Issuing Carrier when the Operating Carrier transports the passenger on a Flight-Stage. When the Operating Carrier is the Issuing Carrier, the notification is an internal transaction; when the Operating Carrier and the Issuing Carrier are different companies, the notification is an external transaction. In either case, the Issuing Carrier is notified that an Operating Carrier has transported a passenger on a Flight-Coupon Stage. The Issuing Carrier will have knowledge

of the triggering event—the first use of the Ticketed Itinerary for travel—because worldwide industry accounting practices already dictate that the Operating Carrier notify the Issuing Carrier that passenger travel has taken place. Moreover, the Issuing Carrier is the only Carrier that has full knowledge of the Ticketed Itinerary, fare, and taxes. Therefore, the Department proposes that the O&D Survey (1) continue to require a dedicated reporting file format, (2) continue to use the Ticketed Itinerary as the source of data, (3) continue to use the first use of the ticket to travel as the trigger for the reportable event, but (4) designate the Issuing Carrier as the reporting entity.

The change in designated reporting entity from Operating Carrier to Issuing Carrier, while keeping the same reporting event trigger, has significant advantages. For Carriers that operate only as Franchise Code-Share Partners on behalf of larger Mainline Partners and do not issue tickets on their own ticket stock, the task of reporting the Code-Share passengers will shift to the respective Mainline Partners. For Carriers that do not interline passengers with other Carriers, the Department anticipates that the change in reporting entity will require very little change in current procedure beyond gathering the additional data elements. This change is a significant improvement for carriers that maintain interline agreements because tickets from re-accommodating passengers as a result of irregular operations represent a large portion of the most troublesome and time consuming itineraries to report. Under this proposal, responsibility for reporting the itineraries of those re-accommodated passengers will go to the Issuing Carrier.

The most significant advantage of the change in reporting responsibility for interlining Carriers is that the identification of the Carrier with the responsibility to report data is no longer ambiguous. The current system requires each itinerary to be scanned to determine whether it is apparent that another Participating Carrier has already reported the Ticketed Itinerary. This is a complex task that requires examination of the itinerary for the presence of other Participating Carriers scheduled earlier in the itinerary. The task requires knowing whether the other Carriers present are Participating Carriers and whether there are any code-share relationships to be considered.

The current O&D System discourages early reporting because Issuing Carriers must have sufficient time to send data to the Participating Carrier. This proposed O&D Survey encourages early

reporting because the Participating Carrier is the Issuing Carrier. The most cost efficient method of reporting is to enable the sale/lift match procedure to copy the requisite data as soon as the Issuing Carrier realizes that the lifted Flight-Stage coupon is the first use of the Ticketed Itinerary for travel. This is a single, clearly identifiable reporting event.

Usually, the knowledge that a Ticketed Itinerary has been issued precedes the first evidence of use of the Ticketed Itinerary in a Carrier's passenger revenue accounting system. However, the Department recognizes that information about the Ticketed Itinerary's issuance sometimes arrives after the evidence of first use. This happens most frequently in itineraries sold in foreign countries. Although the reporting event trigger remains the passenger's use of the ticket, the Department's intent is to obtain the best possible data. Therefore, we propose that the Participating Carrier match the first evidence of flown use with the information from the Ticketed Itinerary's issuance by whatever means the Issuing Carrier creates the match in its normal course of business. The itinerary must be reported when the Issuing Carrier's accounting system resolves the problem. Monitoring for first use includes interline billing notification that a Flight-Stage coupon was used for transportation on another Carrier, including those that were flown on other Carriers as a re-accommodation.

The Department believes that ignoring itinerary changes after the commencement of travel is an acceptable trade off for the simplicity and lower cost of reporting. Continuing the practice of ignoring itinerary changes subsequent to the commencement of travel is consistent with the current O&D Survey. This will minimize disarticulation that will occur in the transition from the old O&D Survey data to the proposed O&D Survey data. The Department seeks comment from the industry and the public as to the advantages or disadvantages of changing the reporting source or changing the reporting event. We request that recommendations of alternative reporting sources or alternative reporting events discuss the explicit and implicit reporting exemptions inherent in the recommended source of data, and the efficacy of processing itinerary changes that may take place after the triggering of the recommended reporting event.

4. Significant Issues Related to the Data To Be Collected

a. Proposed End to Sampling

There are several factors that support the redesign of the current sample selection procedures. There are concerns with bias related to the current sample. The current rule requires a Ticketed Itinerary to be selected when the Ticketed Itinerary number ends in zero. This methodology assumes that all Carriers use ticket numbers, and it assumes that ticket numbers are randomly distributed (*i.e.*, that each passenger has an equal chance of obtaining a Ticketed Itinerary number ending in a specific digit). When the O&D Survey was established, these assumptions were, in all likelihood, valid. All Participating Carriers used carefully controlled and guarded ticket stock that was pre-printed with ticket numbers. There was little incentive to deviate from the simplicity of taking each ticket sequentially from the box for each new customer. Thus, drawing a sample of tickets ending in zero lent itself to obtaining a random 10 percent sample of the passengers.

At least one Participating Carrier that uses ticket numbers on standard agent tickets is aware that ticket numbers ending in a zero constitute 11 percent of their total Ticketed Itineraries, but does not know the cause of the variance from the expected 10 percent. Ticket numbers are assigned to travel agencies and Carriers in blocks of assigned numbers. When a ticket distributor (a ticket agency or Carrier itself) uses preprinted ticket number stock, then the actual paper tickets are physically delivered to the entity that distributes the Ticketed Itineraries. In the air travel industry today, the use of preprinted paper ticket stock is very low. The ticket distributors are assigned a set of numbers that are applied to Automated Ticket and Boarding Pass (ATB) ticket stock and a set of numbers that are applied to electronic tickets. The basis of sampling every Ticketed Itinerary with a number ending in zero assumes that ticket numbers continue to be assigned sequentially to passengers, but there is no guarantee that this assignment process is followed by all ticketing systems.

Members of a travel group, such as an inclusive tour group, might be assigned ticket numbers in some systematic way, such as grouping them according to the final digit of their ticket numbers. Such use would invalidate the Department's assumption that each passenger has an equal chance of being assigned a ticket number ending in zero. We are unaware of any practice of systematic group

assignment of ticket numbers to Ticketed Itineraries other than random assignment, but we are also unaware of a prohibition on such assignment of numbers.

However, currently, three Participating Carriers have requested permission to use non-standard sampling under the current O&D Survey rules because these Carriers do not assign traditional ticket numbers to their Ticketed Itineraries. Because some Carriers do not use ticket numbers, and because there is no longer a compelling reason to believe that ticket numbers are assigned sequentially, or assigned randomly, the Department proposes to discontinue the use of ticket number as a determinant of a 10 percent sample of Ticketed Itineraries.

Even if it were possible to draw an unbiased 10 percent sample, a 10 percent sample is inadequate for fulfilling the Department's mandates, particularly with respect to programs designed to foster air service to small communities. The IG (AV-1998-086, page 26) stated "in these 'thin' markets, the number of passengers, and therefore sample tickets, is relatively small. As a result, errors from a 10% sample are likely to be significant so that the sampling results are unreliable." The Department has calculated that using a valid, random, 10 percent sample, the smallest market in which a 10 percent change in the market could be detected with 95 percent confidence is a market of approximately 29,000 passengers. The fourth quarter 2003 O&D Survey measured 94,347,000 Directional O&D passengers accommodated on 31,385 routes in the 48 contiguous states in that quarter. Of the 31,385 routes, 754 (2.4 percent) had 29,000 or more passengers in the quarter. This means that the Department can measure a 10 percent change in passengers with 95 percent confidence from quarter to quarter on only 2.4 percent of the total number of routes in the 48 contiguous states.

When researching a market with multiple airlines, the minimum number of passengers must exceed 29,000 on each airline in order for the research to attain this level of validity. There are considerably fewer than 754 routes wherein all the Carriers are transporting 29,000 passengers. These 754 routes accounted for more than half the total passengers traveling between the 48 states in that quarter, but the Department's mandate to adapt the air transportation system to the present and future needs of commerce requires the study of many of the remaining 97.6 percent of routes. Of the remaining 97.6 percent of markets, those that suffer the most distortion are ones where the

passenger count is low, such as small city markets. Increasing the sample size would enable more precise measurement of smaller markets. However, detecting a 10 percent change with 95 percent confidence in a study of a market with an estimated total of 10,000 passengers would require a 24.4 percent sample.

The Essential Air Services program (EAS) and the Small Community Air Service Development Program are the two primary examples illustrating the Department's need for more comprehensive data. These programs are focused on smaller markets and require evaluation of service and fares. Under EAS, the Department determines the minimum level of service required at each eligible community, by specifying (1) a hub through which the community is linked to the national network and (2) a minimum service level in terms of flights and available seats. Where necessary, the Department pays a subsidy to a U.S. Air Carrier to ensure that the specified level of service is provided. The Federal government budget for EAS exceeds \$100 million each year.

All but a handful of the EAS markets are less than 20,000 passengers annually, and the majority of EAS markets are less than 10,000 passengers annually. While decisions about EAS markets could be made at confidence levels much lower than 95 percent, the Department has long acknowledged that the 10 percent sample is not sufficiently valid for use in monitoring the EAS program. The candidate Carriers provide fare and destination information to the Department as part of the application process. The O&D Survey is not generally used to validate or refute the Carriers' assertions because the sample size of 10 percent is not sufficiently accurate. Aggregating data to an annual basis from a quarterly basis increases the validity of the O&D Survey data. However, even on an annual basis, for most EAS decisions, increasing the sample size to 24.4 percent is still insufficient to validate the Carriers' assertions with a high level of confidence.

While EAS and the Small Community Air Service Development Program specifically focus on markets served by smaller carriers, the Department's statutory responsibility to adapt the air transportation system to the present and future needs of commerce is much more extensive than the needs of the EAS program. Because these markets are inadequately represented in the current O&D Survey, the Department's mandate requires a disproportionately high amount of time and resources in

studying markets with lower than average traffic volume.

The Department considered the possibility of reducing the cost of the O&D Survey by creating a sample that would collect less data overall and still fulfill the data needs of the users of the O&D Survey. Ideally, the Department could reduce the cost of collection by obtaining samples of varying sizes depending on the markets to be studied. To achieve that efficiency, a system of assigning various sample sizes to corresponding market sizes would need to be established. The Department could develop an algorithm where samples larger than 10 percent could be drawn for those markets where the 10 percent sample is inadequate. The process of increasing the sampling rates disproportionately for relatively rarer subgroups, in order to have adequate sample sizes for estimation, is called oversampling.

In order to oversample specific itineraries based on selected characteristics, the Carriers will have to know those characteristics for every individual itinerary. A collection of all the eligible units that have a known probability of sampling, along with the characteristics that will be used to draw the sample, is known as a sampling frame. Thus, a sampling frame of all itineraries with the relevant sampling variables (characteristics that would determine the oversample such as arrival and departure airports and date of travel) must be assembled. Once this was done, each Carrier would have to apply the different sampling rates for the different subgroups and draw the sample.

Finding a reasonable way to oversample subgroups to obtain estimates for all affected markets would be difficult. The Carriers submit data in the form of Ticketed Itineraries to the O&D Survey. Airport pairs of varying sizes and combinations appear on a single Ticketed Itinerary. Collecting the portion of the Ticketed Itinerary that corresponds to the specific sample size for that market is a complicated task. In April 1986, Department regulations began allowing a stratified sample, but continued to collect data by collecting whole itineraries instead of portions of itineraries appropriate to the stratified sample. The rule stated that large markets were to be sampled at one percent when the Ticketed Itinerary consisted of travel only within that large market, and all itineraries that included travel to any other destination, or combination of destinations, were to be sampled at 10 percent. All Participating Carriers decided that the simplicity of using a single reporting selection

criterion outweighed any savings that might accrue from sending the smaller volume of data. This illustrates the Department's position that due to the technical complexities and additional burden for the Issuing Carriers associated with differential sampling rates, it is less burdensome for Participating Carriers to apply a single sampling rate. Given the need for details on all smaller markets, the only sampling rate that will lead to the fulfillment of both the Department's and industry's needs is a census or 100 percent sample.

Furthermore, as market sizes change over time, the designated sample size for a market would have to be adjusted. Determining market size is not a simple operation. In effect, Ticketed Itineraries have multiple components. In Ticketed Itineraries that include outbound and return travel that are scheduled to be at least 30 days apart, the return portion of travel is reported at least 30 days in advance. Ticketed Itineraries would be sampled at the rate that was in effect when that Ticketed Itinerary was reported. When the designated sample size for one component of the itinerary is adjusted based on changes in that market, Ticketed Itineraries reported before the change would be sampled at the rate in effect before the change, but the Ticketed Itineraries that were reported after the change would be sampled at the rate that was in effect after the change. The sampling at differential rates would occur for up to 11 months, which is the number of months a Ticketed Itinerary can be sold in advance of travel.

Users of the data in those changing markets would have to find a way to properly account for varying sample sizes for Ticketed Itineraries submitted before and after the market sample size was adjusted. Therefore, even if a way could be found for the Participating Carriers to report portions of Ticketed Itineraries appropriate to the stratified sample, the changes in market size over time could make the data very difficult to use. Even if the Carriers were able to implement such a sample design, the complexities associated with weighting make a sample less attractive for Carriers, the Department, and other stakeholders. The Participating Carriers would have to provide data about the entire sampling frame in order for the Department to create correct sampling weights. These sampling weights are necessary when a sample of itineraries is selected instead of all itineraries. Sampling weights would be necessary to ensure that the O&D Survey provides accurate estimates of the total number of itineraries nationally and for each

market. In comparison, we believe that sending the entire census of itineraries will be simpler and much less burdensome than stratified sampling for Participating Carriers.

The Department has considered conducting a census for small markets and a sample for the remaining larger markets. Any parallel system of differential sampling, whether it is in one single survey or multiple related surveys, will lead to a greater burden on Carriers due to the need for a sampling frame with all the necessary sampling variables. However, the cost to Participating Carriers would increase considerably because two systems would be required. Participating Carriers declined use of multiple sample rates in 1986, citing the relatively low expense of transmitting additional records compared to the relatively high expense of additional computer programming work. Since the relative cost of storage and transmission of data has continued to decline, especially compared to the increasing cost of programmers, we believe that the increased complexity of applying multiple sampling rates would be far more burdensome to Participating Carriers than keeping a single O&D reporting system.

The sampling process must be changed in order to draw an unbiased sample. Yet, there is evidence that a 10 percent sample provides insufficient accuracy for the needs of the Department and other users of the O&D Survey data. Using multiple sampling rates adds undue burden upon Participating Carriers. Because the airline ticketing and accounting systems are all computerized, the Department feels that a census would be the most efficient and least burdensome solution for the Participating Carriers and the Department. We therefore propose to end the sampling process and begin the collection of 100 percent of Ticketed Itineraries.

The Department is willing to reconsider sampling, subject to comments from the industry and the public regarding the suitability of continuing to use a sample. The Department's data collection guidelines state that data collection of 100 percent of the population of inferences is the most accurate approach, but that the cost of collection and other resource restrictions should be considered when making this decision. If the cost of collection and transmission of 100 percent of Ticketed Itineraries is unacceptably high, then a sample design based on sampling theory, making use of a methodology other than ticket number for selection, will be needed to

address the goals of efficiency and accuracy. The sample design should ensure that there are enough sample cases for reliable information about small markets. The Department seeks comment regarding the continuation of a sampling methodology, and requests that these comments make detailed proposals on methods of revising the sampling. Proposals should suggest a probability sample based on established sampling theory, including methods of estimating the variance and taking into account the nature of the missing data. The proposed methodology must give all members of the target group a known non-zero probability of being represented in the sample taking into consideration the tremendous variations in relevant Carrier business models and practices, geographic markets, and sales distribution outlets.

b. Effect of Proposed Changes on Small Entities

The development of hub-and-spoke networks increased the demand for small- and medium-sized aircraft to feed the hubs, which, in turn, over time fostered the growth of the Carriers specializing in the operation of these aircraft. Regional Carriers have substantially changed their business model to one heavily based on the "fee for departure" service in which a larger Mainline Partner pays the regional Carrier for operating flights under a long term contract using the Mainline Partner branded livery. The Mainline Partner typically assumes all responsibility for pricing, selling, marketing and inventory management for its regional partner's flights. However, most importantly, the Mainline Partners have assumed the role of Issuing Carrier for the Ticketed Itineraries issued to passengers for travel on their regional partners. The passengers on these smaller Carriers represent a significant portion of the passengers worldwide although, historically, most have not been obligated to report passengers to the O&D Survey.

It is common now for a regional Carrier, operating as a Franchise Code-Share Partner, to acquire jet aircraft having 60 or more seats on behalf of one of its Mainline Partners and thereby acquire O&D Survey reporting status for all its flights for all its Mainline Partners. More often than not, however, the Franchise Code-Share Partner is not in a position to report passengers because the "fee for departure" arrangements leave the necessary passenger data in the hands of its Mainline Partners. Currently, the larger Mainline Partner typically prepares the O&D Survey report on behalf of the

Franchise Code-Share Partner and sends it to the Franchise Code-Share Partner, which in turn forwards it to the Department. The Department's designation of the Operating Air Carrier as the Participating Carrier requires the Mainline Partner and the Franchise Code-Share Partner to take these additional steps to get the appropriate data transmitted by the Participating Carrier, adding cost and complexity while providing no added value.

When a regional Carrier negotiates code-share arrangements with two or more Mainline Partners, the Franchise Code-Share Partner may qualify for reporting because of the acquisition of an aircraft operated on behalf of one of its Mainline Partners. Once qualified as a Participating Carrier, however, it must begin reporting all passengers for all Mainline Partners. This causes added complexity to be placed on all Mainline Partners, even if the regional Carrier does not fly 60 seat aircraft for all its Mainline Partners. Even worse, relinquishing its aircraft of more than 60 seats returns a regional Carrier to non-Participating status for all its Mainline Partners. In the past, the increase and decrease in the volume of Ticketed Itineraries being reported as a result of acquisitions and divestitures of larger or smaller aircraft have created significant problems for users of the O&D Survey data.

The responses to the ANPRM expressed the unanimous opinion that the exemption for small Carriers requires significant revision. Northwest Airlines (Docket OST-1998-4043-49) stated that smaller aircraft are serving meaningful markets. The City of Chicago (Docket OST-1998-4043-27) pointed out that the 60-seat limit is irrelevant and outmoded. Los Angeles World Airports (Docket OST-1998-4043-28) noted that some Carriers are important to an airport regardless of whether they meet current reporting criteria. The Regional Airline Association (Docket OST-1998-4043-11) in its ANPRM comments objected to the 60 seat rule stating, "It is clear that for the U.S. regional airline industry, the current data collection process is both inappropriate and inconsistent. The current structure of reporting rules and regulations offer what the Association considers to be an approach to information gathering that is out of step with the current operating environment for regional airlines." It further stated, "A vestige of a bygone era, the 60-seat distinction is ill-suited to the regional airline industry of today, but perhaps more importantly, that envisioned for the future." The entire aviation community has noted that, to

understand passenger flows, it is crucial to include in the O&D Survey passengers traveling on Carriers that operate aircraft with fewer than 60 seats.

The opinions provided in the responses to the ANPRM varied widely regarding the point at which a regional Carrier's passengers are no longer significant enough to be counted. The Regional Airline Association (Docket OST-1998-4043-11) stated that any Carrier with annual revenues of \$20 million should report its tickets. ALPA (Docket OST-1998-4043-18) recommended a \$10 million cutoff. The Port Authority of New York and New Jersey (Docket OST-1998-4043-25) would set the revenue cutoff at \$1 million so long as the Carrier did not operate any aircraft with more than ten seats. The Allied Pilots Association (Docket OST-1998-4043-16) recommended defining the threshold as any carrier operating aircraft having at least 30 seats and transporting at least 100,000 annual passengers. Delta Air Lines (Docket OST-1998-4043-21) and US Airways (Docket OST-1998-4043-7) both recommended that any passenger carried on a jet aircraft should be reported. Los Angeles World Airports (Docket OST-1998-4043-28) recommended using a revenue threshold or a given number of flights in lieu of the size of aircraft the Carrier operates, but left the calculation of the specific threshold to the Department.

Metropolitan Washington Airports Authority (Docket OST-1998-4043-38) recommended reporting by Carriers that operate aircraft with 25 or more seats or that are owned by Participating Carriers. Oakland International Airport (Docket OST-1998-4043-14) and R.W. Mann & Company (Docket OST-1998-4043-13) both recommended a proposal similar to the Metropolitan Washington Airports Authority proposal, but both used 30 seats as the cutoff, and both believed that code-share Carriers should report regardless of their Mainline Partner's position. Daniel Kasper (Docket OST-1998-4043-62), an industry analyst who filed a response, echoed the 30-seat cutoff, but recommended that operators of 30-seat aircraft would only have to report if they transported 100,000 annual passengers. Wayne County and Detroit Metropolitan Airport (Docket OST-1998-4043-23) was even more stringent, recommending that Carriers transporting 100,000 annual passengers, operating under a code-share agreement with a Mainline Partner, or operating aircraft with 15 or more seats should report. American Airlines (Docket OST-1998-4043-5), the City of Chicago (Docket OST-1998-4043-27), John Brown Company (Docket OST-1998-

4043-33), Norfolk Airport Authority (Docket OST-1998-4043-31), Northwest Airlines (Docket OST-1998-4043-49), The Port Authority of New York and New Jersey (Docket OST-1998-4043-25) (the latter in conjunction with the \$1,000,000 cutoff mentioned above) endorsed 10-seat aircraft as the criterion for reporting. The National Transportation Safety Board (Docket OST-1998-4043-48) provided the most rigid recommendation. It recommended that every U.S. certificated Air Carrier should report regardless of size, even air taxis.

The Department believes that moving the threshold of reporting from operators of 60-seat aircraft to operators of 15-seat aircraft will not be a significant reporting burden on small Carriers if the reporting responsibility is shifted to the Issuing Carrier. Since the majority of small Carriers are not Issuing Carriers, under the proposed system they would not be required to report the O&D Survey. Nonetheless, small Carriers, such as non-scheduled air taxis and other similarly small operations, represent a significantly different transportation market. The Department acknowledges that passengers in this market must be measured differently than the passengers in the global scheduled air transportation market. We do not wish to burden the truly small airline operations serving local needs. Rather, the Department wishes to reduce the ambiguity in the definition and classification of a Participating Carrier. Moving into and out of the Participating Carrier classification over time is problematic for both the Carrier concerned and the users of the O&D Survey. Therefore, we propose that (1) Carriers flying strictly intra-state service, (2) Carriers flying no aircraft with 15 or more seats, (3) non-scheduled air taxi service, and (4) non-scheduled helicopter service will continue to be exempt from reporting the O&D Survey.

c. Timeliness of Reporting

Respondents representing all constituencies indicated that the erratic publication schedule maintained by the Department was a problem. The Allied Pilots Association (Docket OST-1998-4043-16), Back Associates, Inc. (Docket OST-1998-4043-3), the City of Chicago (Docket OST-1998-4043-27), and United Air Lines (Docket OST-1998-4043-15), among others, noted the delays in the release of data. United Air Lines cited the timeliness of the data release as the most important factor the Department could address to make the data more useful. Both Carrier and non-

Carrier respondents indicated that the data should be released on a monthly schedule instead of a quarterly schedule.

The Department is aware that each Participating Carrier must verify its Issued Ticketed Itineraries that were first used for travel during a reporting month. It is our understanding that the majority of Participating Carriers will require some period of time, following the end of a month, for this verification process. However, the erratic receipt of data from Participating Carriers affects the Department's release of data to all stakeholders. For example, BLS produces the all-items CPI, an important economic indicator which includes an airfare index. BTS has begun publishing a quarterly experimental research air travel price index (ATPI) that uses O&D Survey data. When monthly O&D Survey data become available, BTS intends to forward its ATPI to BLS for possible inclusion in the CPI. Because BLS requires all index components to be submitted no later than the fifth day of the month following the reference month, we are considering requiring each Participating Carrier to submit O&D Survey data for each month no later than the 5th day of the following month so that BTS can submit its ATPI within the time constraints of the CPI production schedule. Under this option, we would permit daily, weekly, and/or monthly data submissions by Participating Carriers. We are aware that weekly reporting cycle for travel agents would cause some passengers who purchase air travel near the end of the month and fly within the month to remain unreportable on the fifth day of the month due to missing information about the sale of the Ticketed Itinerary. We seek comment on the costs and benefits of requiring Participating Carriers to submit O&D Survey data for a particular month by the 5th day of the following month. Comments advocating alternative reporting due dates should include information addressing both the alternative due date's influence on the timeliness and on the accuracy of the data.

The Department proposes that Participating Carriers will provide the name and contact information for a Designated Carrier Liaison to act on behalf of the Participating Carrier in operational matters pertaining to the company's collection and submission of the O&D Survey. In order to maintain its own data dissemination schedule, the Department will monitor the receipt of Participating Carrier data very closely, and contact the Designated Carrier Liaison promptly when problems arise. Exact deadlines for reporting will be

published in Passenger Origin-Destination Survey Directives issued by the Department.

d. Data Monitoring

Guidelines in the Paperwork Reduction Act of 1995 direct agencies to develop information resource management procedures for reviewing and substantiating the quality of information before it is disseminated. The IG (AV-1998-086) found that a lack of quality control by Carriers was responsible for chronic inaccuracies in the O&D Survey. In the responses to the ANPRM, the most common request after removal of the 60-seat Carrier exemption and reporting exemption for Foreign Air Carriers was to improve the Department's monitoring of the data that is received. The Port of Portland (Docket OST-1998-4043-19) stated this succinctly: "Enforce data quality standards by filing carriers". The Department will, therefore, initiate a rigorous process of monitoring and enforcement to maximize the quality of the data submitted to the Department.

It is too early in the planning process to discuss specific data quality monitoring. However, the Department proposes to establish mechanisms to monitor (1) the timeliness of Carrier submissions and (2) the composition of submitted Ticketed Itineraries to ascertain the reasonableness of a Carrier's reporting. The Department will adopt a basic standard of quality and take appropriate steps to enforce the quality criteria subject to an acceptable degree of imprecision. Some late reporting of itineraries will be expected, and, therefore, the degree of promptness and precision that is tolerated may be reduced or increased depending on the circumstances. Established guidelines and methods will be made publicly available and uniformly enforced. The Department will use these guidelines to determine the expected number of late reported itineraries and initiate an investigation when we detect Carriers to be outside those guidelines.

e. Certification of Accuracy

In accordance with OMB guidelines, the Department proposes to establish administrative mechanisms allowing affected stakeholders to seek and obtain correction of information disseminated in the O&D Survey. Since the public relies on accurate Carrier data, we propose to maintain a mechanism of ongoing communications with Participating Carriers through designated representatives. Therefore, each Participating Carrier will provide the name and contact information for its Designated Company Official, who will

certify the accuracy of the data submissions. The Participating Carrier will also supply the name and contact information for its Designated Carrier Liaison, who will have the responsibility for resolving day to day operational issues with the Participating Carrier's submitted data.

The Department proposes to collect and record information from Carriers from time to time that the Department deems necessary to adequately monitor the Carrier's data submissions. The requirements will be published in the Passenger Origin-Destination Survey Directives issued by the Department, although this Carrier-provided information will be kept confidential. The information retained in this manner includes, but is not limited to: (1) The Carrier's IATA Issuing Carrier numeric code, also known in the industry as the Carrier's three-digit code; (2) The Carrier's Airline Designator, also known in the industry as the Carrier's two character code; (3) The name and contact information of the Designated Company Officer who certifies the accuracy of the data; (4) The name and contact information of the Designated Carrier Liaison who resolves operational submission issues; (5) The means, method, and timing the Carrier has selected for data submission; (6) The source and accuracy statement that discloses the Participating Carrier's (a) data source, (b) data collection methodology, and (c) measures to assure data quality; and (7) The methodology the Carrier uses to convert foreign currencies into U.S. Dollars.

f. Licensed Foreign Air Carrier Participation

While foreign ownership restrictions have led the world's Carriers to share the task of transporting passengers across international boundaries, making international aviation one of the most global of industries, tremendous changes in both regulatory and business practices have dramatically reconfigured the operating and competitive structure of global aviation. Open Skies agreements, now in place between the U.S. and growing numbers of countries, are producing enormous benefits for consumers. Liberalization of air service agreements has enabled Carriers around the world to deepen their cooperative agreements with their foreign counterparts. International operations are becoming an increasingly important component of network Carrier operations. The distinctions between domestic and international networks are increasingly blurred as the interline partnerships provide seamless services

through code-sharing, marketing, and strategic alliance agreements.

As a result, policy makers, international airlines, and consumers would all benefit from the capability to better understand and map global traffic flows that would promote sound public policy and business decisions. Not surprisingly, the ANPRM responses from U.S. Air Carriers advocated that their foreign-based counterparts be included in contributing data to the O&D Survey. Similarly, comments received from the nation's airports and airport consultants were unified in requesting that Foreign Air Carriers' exemption from reporting be ended. The enthusiasm with which they endorsed Foreign Air Carrier reporting is all the more pronounced because the airports, as a group, refrained from offering opinions on ANPRM topics on which they did not feel that they had sufficient expertise or that did not directly affect their needs. The Norfolk Airport Authority (Docket OST-1998-4043-31) fully endorsed a change of policy to require Foreign Air Carriers to report. Operators of larger international gateway airports made commensurately stronger statements. The City of Chicago (Docket OST-1993-4043-27) wrote, "The City strongly supports including the O&D data of Foreign Air Carriers * * *. The lack of foreign airline O&D data is arguably the greatest gap in our knowledge of the market". When asked to list everything that would make the O&D Survey data more functional, Los Angeles World Airports (Docket OST-1998-4043-28) responded with only a single item: "collect information from all domestic and international carriers". John Brown Company (Docket OST-1998-4043-33), an airport management consultant, wrote, "given the open-skies posture of the U.S. government toward international air service, it would be appropriate and not unreasonable to require the same standards of traffic reporting by Foreign Air Carriers operating air service at U.S. airports as for U.S. Air Carriers. U.S. airports need a complete picture of their existing air traffic flows in order to identify opportunities and develop proposals for new routes".

Advocates of the collection of more international aviation data were not limited to Air Carriers and airports. The DOC (Docket OST-1998-4043-37) commented that, "to provide comprehensive, quality data to DOT and the industry, both U.S. flag and foreign flag carriers should be providing traffic data. Without the foreign flag data, DOT cannot truly assess the market". ALPA (Docket OST-1998-4043-18) wrote, "In ALPA's view, one of the significant gaps

in DOT's data collection system is that Foreign Air Carriers are not, as a general rule, required to file O&D data". Comments to the ANPRM reveal that all the users of the O&D Survey data, including unions, airports, consultants, carriers, and other government agencies, agreed that the lack of Foreign Air Carrier data is a significant flaw in the usefulness of the data and that this flaw should not be underestimated. In addition to the ANPRM comments, the IG (Office of Inspector General Audit Report Number AV-1998-086) noted in its 1998 report on the O&D Survey that, "the Department is at a disadvantage in reviewing and negotiating international air route awards to ensure U.S. carriers retain competitive parity with Foreign Air Carriers".

In the past, the Department has declined to impose the same burden of direct reporting of the O&D Survey on Foreign Air Carriers given the manual processes involved. The Department issues licenses to Foreign Air Carriers to authorize them to sell Ticketed Itineraries for travel to the U.S. as specified in 49 U.S.C. 41301, but the license does not include a responsibility to report information about the Ticketed Itineraries they issue. The Department decided to forgo knowledge about the U.S. citizens that Foreign Air Carriers transport from U.S. gateway cities when the passenger does not interline on a U.S. Air Carrier. There is a special provision for reporting O&D information imposed on Foreign Air Carriers that operate under antitrust immunity granted under 49 U.S.C. Sections 41308 and 41309, but the provision only requires a Foreign Air Carrier to report the Ticketed Itineraries it issues, thus avoiding the more complicated requirements imposed on U.S. Air Carriers to report interline tickets. The data from those reporting Foreign Air Carriers, in combination with the O&D Survey reports from U.S. Air Carriers, give the Department only limited insight into the global airline industry. Furthermore, Foreign Air Carrier data are kept highly confidential and are restricted to internal Department analysis related to the monitoring of these alliances.

Instead of burdening the Licensed Foreign Air Carriers, the Department requires that U.S. Air Carriers assume the burden of obtaining the passenger information from the Foreign Air Carrier when the U.S. Air Carrier transports an interline passenger on Ticketed Itineraries issued by a Licensed Foreign Air Carrier. For example, the Department does not require Licensed Foreign Air Carriers, such as British Airways, to report the Ticketed

Itineraries of its passengers transported from U.S. gateway airports, such as those in Washington or New York. However, we do require U.S. Air Carriers, such as US Airways, to report the Ticketed Itineraries of passengers that they bring from interior airports, such as those in Knoxville or Harrisburg, to the gateway airports where passengers connect to British Airways flights. Since the Carrier that transports the passenger on the international Flight-Stage is customarily the Issuing Carrier on tickets with connecting passengers, in this example British Airways, the current regulation burdens the U.S. Air Carriers with the task of obtaining O&D Survey information from these Foreign Air Carriers. By requiring the U.S. Air Carriers to report tickets issued by Foreign Air Carriers, the current regulation has been able to fully account for domestic passengers and international passengers that begin their journey at interior airports. Even so, passengers that begin their travel at U.S. gateway airports traveling on Foreign Air Carriers are missing from the current O&D Survey.

Similarly, when Foreign Air Carriers issue Ticketed Itineraries for travel to the U.S. to residents of other countries, the current regulation burdens the U.S. Air Carriers with the task of reporting those Ticketed Itineraries. For example, when SN Brussels issues Ticketed Itineraries on its ticket stock to passengers traveling to the U.S. on its ticket stock, it does so under its license to issue Ticketed Itineraries granted under the authority of 49 U.S.C. 41301. If a U.S. Air Carrier, such as American Airlines, participates in the itinerary, then the current regulation requires American Airlines to obtain a copy of the Ticketed Itinerary from SN Brussels and report it. If all of the transportation is on a non-reporting Foreign Air Carrier, such as Aer Lingus, then information about that passenger will go unreported in the O&D Survey.

Additional complexity in the current system is created because U.S. Air Carriers report Ticketed Itineraries directly to the O&D Survey while Foreign Air Carriers reporting Ticketed Itineraries under 49 U.S.C. Sections 41308 and 41309 participate in a similar, but different, program. When a reporting Foreign Air Carrier issues a Ticketed Itinerary that includes a U.S. Air Carrier in the itinerary, the current regulation requires the Foreign Air Carrier to report the Ticketed Itinerary to the alternative O&D Survey created for non-U.S. Carriers. It also requires the U.S. Air Carrier to report the same Ticketed Itinerary to the O&D Survey.

Because of the dual reporting system established for the Ticketed Itineraries flown on Foreign Air Carriers, the Department must, when monitoring alliance activity, weed out the duplicates before compiling combined statistics.

If a Foreign Air Carrier, such as SN Brussels in the previous example, issues a Ticketed Itinerary to be flown on a Foreign Air Carrier required to report by agreement under 49 U.S.C. Sections 41308 and 41309, such as KLM, the passenger would go unreported because KLM is only required to report the Ticketed Itineraries for which it is the Issuing Carrier. Continuing this example, if the itinerary includes a connection to a U.S. Air Carrier, such as Northwest, at the gateway, then the Ticketed Itinerary will be reported to the O&D Survey by Northwest. If, however, a U.S. Air Carrier is not in the itinerary, then the Department will not receive this itinerary in its O&D reports. The current O&D Survey does not require SN Brussels to report the Ticketed Itinerary because SN Brussels did not transport the passenger to the U.S. Similarly, the current O&D Survey does not require KLM to report the Ticketed Itinerary because KLM did not issue that itinerary. Ticketed Itineraries are not reported with specific identifiers, and thus the Department can only presume that Ticketed Itineraries issued by Foreign Air Carriers are (1) reported twice when they are supposed to be reported twice, (2) reported once when they are supposed to be reported once, and (3) not reported when they are not supposed to be reported. Since Ticketed Itineraries are reported in aggregate, without unique identifiers, it is very difficult for the Department to verify the presumption that the Carriers are properly reporting the Ticketed Itineraries. Our presumptive dropping of duplicate itineraries on the assumption that they were reported twice adds to the uncertainty surrounding the statistics reported from the current system.

Licensed Foreign Air Carriers indirectly contribute itinerary data about their passengers. While U.S. Air Carriers use the O&D Survey in planning and marketing their services to and from the U.S., Foreign Air Carriers are at a distinct disadvantage in not being able to use this information. Confidentiality rules ban the sharing of data with non-U.S. entities. If all Licensed Foreign Air Carriers contributed data to the O&D Survey, then the confidentiality rule banning dissemination of information to Foreign Air Carriers could be lifted. This would benefit foreign entities, including

Foreign Air Carriers. The anticipated further liberalization of aviation markets intensifies the need of governments and airlines for accurate traffic data as they seek to understand commercial developments and accommodate growth in international air travel. As alliances further develop and integrate, understanding their impact on non-aligned Carriers and on the industry's operating and competitive structures is increasingly more challenging. The effect of such developments as strategic alliances between U.S. and Foreign Air Carriers having antitrust immunity cannot be adequately evaluated without more complete and accurate traffic data for all Carriers. It is difficult to determine the impact of a subset of the market without an accurate picture of the whole market.

The competitive effects of these dynamic international alliances and their impact on competition, traffic flows, and aviation infrastructure cannot be effectively evaluated in isolation. Monitoring and planning both business and public policy decisions in a global network industry requires more complete data on international traffic flows between, behind, and beyond U.S. and foreign gateway airports. The global air transportation marketplace represents an important component of air transportation for U.S. citizens and the U.S. economy. Having properly imposed the burden of reporting the O&D Survey on the Issuing Carrier, we are reluctant to re-impose an undue burden on U.S. Air Carriers by (1) continuing the practice of requiring them to report the O&D Survey in the current manner for Foreign Air Carrier issued itineraries and (2) requiring to report in the new manner as Issuing Carriers for their own Ticketed Itineraries. Imposing a dual reporting burden on U.S. Air Carriers would be particularly onerous because it would require continuation of all the antiquated current reporting processes in addition to instituting the new reporting processes. This scenario would further require the Participating Carrier to examine each Ticketed Itinerary to identify the appropriate reporting process for that itinerary. Even worse, it is these itineraries, issued on the ticket stock of Foreign Air Carriers, that are responsible for most of the reporting problems that occur in the current O&D Survey system. However, by not imposing the dual reporting burden, the Department would continue to miss O&D Survey information about travelers to gateway airports as well as begin to miss O&D Survey information about passengers traveling on domestic

routes on itineraries issued by Licensed Foreign Air Carriers.

The Department is therefore considering requiring Foreign Air Carriers licensed under 49 U.S.C. Section 41301 to report O&D Survey data. There does not appear to be an alternative workaround that is more efficient than the simple requirement for all Issuing Carriers to report the tickets they issue for travel to and from, and within, the U.S. The Foreign Air Carriers required to report their issued Ticketed Itineraries as a condition of immunity with a U.S. Air Carrier partner have complied with this requirement and managed to adapt accordingly. The new system, designed specifically to interface with the common industry information technology infrastructure, should reduce the reporting burden for the currently reporting Foreign Air Carriers.

In addition, recent developments in the interline settlement processes would further assist Foreign Air Carriers in reporting the O&D Survey data. An alliance of Carrier-owned industry organizations—ATPCO, International Air Transport Association (IATA) and ARC—in October 2003 launched a comprehensive, global solution for financial settlement of interline travel to streamline inter-airline accounting. The interline accounting settlement service offers the possibility that Foreign Air Carriers can create a cost effective vehicle to provide the necessary data, and thus enable Foreign Air Carriers to minimize the cost of complying with the Department's reporting requirement. It is possible that combining the reporting processes with interline settlement processes will reduce the reporting burden to such a level that the cost would be far less than the benefits derived from having access to the information.

With full participation of the affected Carriers, the Department could provide access to the international data to all Participating Carriers and all stakeholders. As the largest aviation market, the U.S. is a key component in global aviation traffic flows. Complete O&D data to and from the U.S. would be an extremely valuable resource for global Carriers in planning their services. This is especially true as MIDT data, the current industry standard, decreases in utility as more bookings circumvent the GDSs. The Department seeks comment on the efficacy of requiring O&D Survey reports from Licensed Foreign Air Carriers in terms of costs and benefits and we seek comment on alternatives that would enable the Department to obtain the information it needs from Ticketed

Itineraries issued by Licensed Foreign Air Carriers.

g. Charter Flights

In their responses to the ANPRM, the airports noted that passengers on non-scheduled flights merit inclusion in the O&D Survey. They observe that there are extensive public charter operations that operate on such a regular basis that differentiating a regularly scheduled charter from regularly scheduled passenger service is difficult. Even if they are a relatively small component of the national air transportation system, some charter Carriers transport a significant number of passengers to certain destinations.

Respondents have requested that these categories of passengers be counted in the O&D Survey in order to supply a complete picture of domestic and international aviation.

The Department believes that including charter Carriers would represent a considerable expansion of the scope of the O&D Survey. We further believe that doing so would most certainly impose a significant burden on small entities since charter operations generally qualify as small businesses. In addition, the advancing coverage of low cost Carriers into the markets that traditionally were most attractive to charter Carriers could potentially reduce the number of passengers charter services transport, further reducing the impact of charter services on the national transportation system. In light of this, we do not propose to expand the scope of the O&D Survey to include charter services, but we invite further comment on this issue.

h. Reporting by Flight-Stage

Several respondents to the ANPRM commented on inconsistencies that are allowed to exist in the O&D Survey because of funnel flight and starburst flight situations. American Airlines (Docket OST-1998-4043-5) noted that the root of the inconsistency is the generally accepted, albeit little known, practice of reporting single flight segments with multiple Flight-Stages as if they were a single flight segment with one Flight-Stage. For example, a passenger traveling from Washington Dulles (IAD) to Los Angeles International (LAX) might travel on a non-stop flight, represented as IAD-LAX. However, another passenger might travel from Washington to Los Angeles on a direct one-stop by way of St. Louis under a single flight number and a single flight coupon. Since the passenger in the second example does not deplane in St. Louis, both example

itineraries will be reported as IAD-LAX in the O&D Survey.

The Department believes that checking the congruency of the O&D Survey with the T-100/T-100(f) is the best method of verifying the accuracy of both sets of data. Since the Ticketed Itineraries that describe nonstop travel are indistinguishable from Ticketed Itineraries that describe one-stop or two-stop travel, checking the O&D Survey against the statistics in the T-100/T-100(f) is very difficult. For example, passengers can be routed from Washington Dulles to Los Angeles International by way of any of a dozen or more airports. Each Ticketed Itinerary will describe that one-stop travel as IAD-LAX to the O&D Survey but as the actual route in the T-100. In this same way, one-stop and two-stop travel is available in practically all of the airports in the U.S. and in foreign countries. The Department must collect O&D Survey data on a stage-by-stage basis (wheels up to wheels down) rather than the current coupon-by-coupon basis (passenger enplanement to passenger deplanement) in order to attain the desired congruency with the T-100/T-100(f).

This change in reporting requirements will have minor impact on those Carriers that store information about the intermediate stops that exist in the passengers' Ticketed Itineraries. Carriers that do not store information about the intermediate stops that their customers are making will have to either retain that information from the passengers' flight reservations or re-acquire the information from a source of flight schedule data such as that provided by the Official Airline Guide (OAG). In its ANPRM comments, the OAG (Docket OST-1998-4043-43) offered its services in determining the identity of Franchise Code-share Partner Carriers and we believe that their services or those of other organizations could be similarly utilized to determine information about intermediate stops.

To obtain the highest level of accuracy when knowledge of hidden intermediate stops must be re-acquired, that process should take place in a time frame commensurate with the creation of the Ticketed Itinerary. Flight schedules change over time, and the shortest possible time lag between the creation date of the Ticketed Itinerary and the time when knowledge of intermediate stopping is re-acquired will provide the fewest possible instances of flights not found in the schedule data.

The missing Flight-Stage information has significant effect on the quality and reliability of the information required and disseminated by the Department.

Therefore, we propose to collect data on a Flight-Stage basis rather than the current Flight-Coupon Stage basis. We seek comments from the industry and the public regarding how the Flight-Stage Origin Airport and Flight-Stage Destination Airport should be determined.

i. Data Retention

The Department's policy on data quality recognizes that no data system is free of data errors. The Department must have the means of redressing a problem found in the data quality. The data submitted under the provisions of the proposed O&D Survey and the T-100/T-100(f) will be subject to regulations under 14 CFR Part 249—Preservation of Air Carrier Records. The Department's procedure concerning the requests for correction of information gives stakeholders the right to request correction of information disseminated by the Department.

5. Transition Period

The Department proposes to establish a transition period, also known as concurrent processing, between initialization of the proposed O&D Survey and discontinuation of the current O&D Survey. During the transition period, the Department will begin collecting data under the rules of the new O&D Survey. The transition period will consist of a test phase for initial testing, sometimes called unit testing, and a test phase for large volume testing, sometimes called system testing. The current survey must continue to be produced during both phases of the transition to the new system.

There are two primary objectives for the transition period. The first is to ensure that the data being reported under the new system are accurate, complete, and comparable across Carriers using different internal accounting systems. The second objective is to ensure, to the extent possible, the relative comparability between data submitted under the current O&D Survey and data submitted under the proposed O&D Survey. Many stakeholders rely on the Department's aviation traffic data to discern broad trends in services, fares, and capacity. The modernization of aviation data must therefore ensure that the ability to use the data to perform such critical time series analyses is preserved both in terms of the databases maintained by the Department as well as in the traffic data products it disseminates. Time series analyses are required for critical government and business decisions, which are predicated on identifying and

understanding trend changes. We believe we can preserve time-series continuity by disseminating the same data in both formats, helping the users assess the full impact of the change in the O&D Survey and, thereby, mitigating the need for a long transition period collecting data under dual systems. Because continued integrity in data collected in the current system is crucial to the testing of the new system, reduced attentiveness to reporting accuracy on the part of the current Participating Carriers may lengthen the transition period.

The need for concurrent processing is self-evident. Statistics must continue in the current format while the new statistical system is being tested and validated. During the test phase of the transition period, the Department will begin accumulating data from all Participating Carriers and correlate that data with data from the enhanced T-100/T-100(f). Meanwhile, data continuity will be preserved with continued O&D Survey submissions under the current rule. The Department will be accepting data from a variety of systems and we anticipate that it will take some time to establish communications and data validity checks appropriate for each Carrier.

In addition to testing the quality of the data received from each Carrier, the Department will use the time in the test phase to accumulate data that will be necessary for the commencement of the large volume testing phase. Since Ticketed Itineraries are purchased in advance of travel date, data must necessarily be collected over the length of time each Carrier allows for advance purchase. For example, Carriers with a four-month advance purchase availability, or booking window, would provide full test data for the four months to accumulate a full set of passenger data for the Department to test. Carriers with an 11-month booking window, however, would send the appropriate data for 11 months. The Department cannot begin conducting meaningful overall comparisons between the data from the current O&D Survey and the proposed system until it has accumulated data over the length of the advance booking windows.

Once the Department is satisfied that 100 percent of the data from each Participating Carrier has been collected and processed, the second phase of the transition can begin. During this full-volume testing phase, the Department will evaluate the new stream of data over time to ensure that the methodology and technology are robust, after which the old system can be shut down.

Users of O&D Survey data will require a period in which they can understand the impact of the change in data and data processes by comparing the results of the new O&D Survey with the existing O&D Survey. This continuity is equally important for Participating Carriers since Carriers are users as well as suppliers of data. The Department is aware of the advantages of a long full-volume testing phase, but we are also aware that these advantages come at the cost of running two data collection systems in parallel. We acknowledge that requiring the Carriers to supply data for two systems simultaneously will require extraordinary efforts on their part. Recognizing the burden to file data under both reporting systems, the Department wishes to minimize the length of the second transition phase. However, we acknowledge that data suppliers have many constraints and data users have many data testing needs of which we are unaware. Therefore, the Department seeks comment regarding the proposed length of the second transition phase.

J. T-100/T-100(f) Considerations

The T-100/T-100(f), consisting of Form 41, Schedule T-100—U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-flight Market and Schedule T-100(f)—Foreign Air Carrier Traffic Data by Nonstop Segment and On-flight Market, contains monthly segment and market traffic data (Part 217). The proposed changes to the O&D Survey will provide the Department with information about the numbers of passengers scheduled to use the air transportation system by flight and by day, but the proposed NPRM does not provide any capability, except when aggregated to the month of travel, to cross check the scheduled passengers with the actual passengers carried on the aircraft. The Department is considering modifying the T-100/T-100(f) to enable us to validate the data that will be collected under the O&D Survey to ensure the data's accuracy.

1. Background

The T-100/T-100(f) collects summarized flight stage data and on-flight market data. The Reporting Carriers collect these traffic statistics for each revenue Flight-Stage as actually performed and compile them for reporting to the Department. Since the statistics are collected by counting the people who board an aircraft, nothing can be known about other flights the passenger may have taken prior to boarding that aircraft and nothing can be known about flights the passenger may be taking as part of the same

itinerary subsequent to disembarking from that aircraft. Significantly, nothing can be known about what the passenger paid for the transportation on the current aircraft. The Carriers collect this information on each Flight-Stage departure each day, and at the end of the month, they summarize it by (1) equipment type, (2) class of service, and (3) airport pair, all without regard to individual flight number for the month.

2. T-100/T-100(f) Changes To Be Considered

The O&D Survey, in contrast to the T-100/T-100(f) report of actual passengers boarded, collects copies of the passenger's scheduled itinerary. O&D Survey passenger reports are copied and reported after the passenger's initial departure on that Ticketed Itinerary. Since the bulk of the passenger's itinerary has not yet been flown at the time of initial departure, the O&D Survey collects information about itineraries as they are scheduled to be performed, not as they are actually performed. As has been previously described in this rulemaking, two significant features of the O&D Survey are (1) the information about the passenger's connecting flights that enable users to obtain a sense of the passenger's true origin and true destination and (2) the information about the fare that the passenger paid that enable users to assign a value to air transportation. The contrasting differences, between the narrow source of information about passengers that are actually transported and the robust source of information about passengers that are scheduled to be transported, make the T-100/T-100(f) and the O&D Survey ideal companion data products that the Department makes available to the industry and the public.

Making the changes to the O&D Survey proposed in this rulemaking without making commensurate changes in the T-100/T-100(f) would leave the two data collection systems focused on two different levels of aggregation and would severely limit the advantages now enjoyed by having companion data products. The current O&D Survey is validated by knowledge of the established relationships between passengers scheduled to fly between a set of airport pairs and passengers actually on board flights between those airport pairs. The proposed revisions allow the users of the O&D Survey to have knowledge of passengers scheduled to fly between airports by time-of-day and day-of-week, which is a level of detail that the T-100/T-100(f) does not possess. Without commensurate changes in the T-100/T-

100(f), the desired match between the O&D Survey and the T-100/T-100(f) data will be limited to highly aggregated monthly comparisons. The Department is concerned about its inability to validate the receipt of flight date and flight number elements into the O&D Survey as proposed in this rulemaking. For example, one of the most important new features of the O&D Survey is the ability to disseminate data by One-way Trips. The Department's ability to validate the data that goes into deriving the One-way Trips is dependent on getting commensurate robust T-100/T-100(f) information by flight and by date.

In addition to the need to keep the data congruent for validation purposes, knowing the on-board count of passengers by flight and by date on the T-100/T-100(f) would be helpful for the Department in planning airport capacity expansion. The usefulness of knowing the passengers flying between airports for an entire month is limited to long range planning functions. For example, the FAA would use the T-100/T-100(f) in long-range planning where trends measured to the nearest month are useful. The data would be more useful if it included details that could help with facility planning by time-of-day and by day-of-week.

The Department has provided information about the costs and benefits of collecting and disseminating the T-100/T-100(f) data by flight and by day (See section L(3)). Preserving data validity and accuracy by flight and by day by coordinating the O&D Survey with the T-100/T-100(f) to the highest degree practicable will benefit the Department and the public. To this end, the Department is considering the collection of T-100/T-100(f) data by Master Flight Number and by flight date. We seek comments on the efficacy of this possible course of action.

K. Data Dissemination

The Department proposes to continue to disseminate O&D Survey products from the data collected under this rulemaking to serve the needs of various stakeholders in the aviation community. If the significant enhancements proposed in this rulemaking were adopted, these products would be substantially richer in content, more timely, and more accurate than the products disseminated under the current system. While it would be premature to identify the precise nature and format of such products, they would certainly not be less detailed than the data products disseminated under the current system, including dissemination of data by itinerary, within the constraints of Vision 100

regarding flight-specific data. We have spent considerable effort to understand the data needs of various user groups and recognize that different users have diverse requirements in terms of the level of data granularity most suitable to their needs. The Department therefore seeks detailed comments and suggestions on aviation data products, based on our proposed changes, that would satisfy the various needs of different types of users.

We recognize that, in order to be able to comment effectively, interested parties require further information on key methods that will be applied to the data, particularly those which will be used to determine a passenger's True O&D using the industry standard One-way Trip methodology. Among these important methods are: (1) Dissemination of data by month according to the scheduled flight date, (2) grouping of flights by One-Way Trip instead of by Directional Passenger trip, and (3) reporting the fare obtained by the Carrier(s) using an industry standard proration methodology rather than relying on the current practice of reporting the total fare amount collected with the total itinerary. The processes by which data are collected and disseminated affect the accuracy of those data. Since such methods define the utility of the fundamental data elements, we outline our proposals in each of these areas in detail. We seek comment on our proposed methodology, the resulting aviation data products, and the composition of these disseminated products.

1. Dissemination of Data by Month

The Department has heretofore disseminated all data about travel in the quarter in which it was reported. Although the Department proposes to continue to collect Ticketed Itinerary data on a ticket basis in the month it is first used for travel, we propose to disseminate the data on the basis of the month in which travel is scheduled to take place. This dissemination is made possible because the proposed rule expands the data collected for each Ticketed Itinerary. At this time, we are considering disseminating data by month in at least two formats: (1) The Ticketed Itinerary (similar to the DB1B Ticket file) and (2) the One-way trip (similar to the DB1B Market file) aggregations, subject to Vision 100 constraints on the dissemination of flight-specific data. To create a market file, the Department proposes to separate the Ticketed Itinerary into One-way Trips, allocate the itinerary fare to the One-way Trips, and store the One-way Trips for dissemination at the

appropriate time. The Scheduled Flight Date of the first Flight-Stage in a One-way Trip will serve as the flight date for that One-way Trip. We seek comment about the construction and dissemination of these data products.

2. Proposed Construction of One-Way Trips

As explained in the proposed data elements discussion (Section I.2.a.—O&D Survey Redesign: Discussion of the Proposed O&D Survey) for the One-way trip format, each Ticketed Itinerary will be divided into a series of one or more One-way Trips according to the guidelines published in the final rule. We anticipate basing these guidelines on industry consensus and seek comment about methods of constructing One-way Trips.

The Department proposes to use four hours in an airport as the maximum amount of time to consider that airport as a connecting airport in a domestic U.S. airport to U.S. airport itinerary, or between a U.S. airport and an airport in either Canada or Mexico. The Department proposes to use 24 hours in an airport as the maximum amount of time to consider that airport as a connecting airport in a Ticketed Itinerary for international travel.

3. Proposed Proration Method

The current O&D Survey is published on a Ticketed Itinerary basis. The amount collected is summed for the itinerary. In the proposed One-way trip format, the Department will divide the Ticketed Itinerary into One-way Trips. To perform meaningful analysis, the fare amount must be allocated to the One-way Trips in an equitable manner. The industry term for the process of allocating the fare to the One-way Trips is proration.

Four proration techniques are widely used in the industry: (1) Straight rate prorate, (2) international prorate factors, (3) mileage, and (4) square root of the miles. Each has advantages and disadvantages. Straight rate prorate methodology compares, for each itinerary, the Carrier's unrestricted fares, for each local Flight-Coupon Stage, that are in effect when the Ticketed Itinerary is issued to the total fare collected. A ratio is established between all the Flight-Coupon Stages using the unrestricted local fares and the resulting ratios are applied to the fare that was actually collected for the itinerary being processed. In international prorate factors, instead of looking up the fares to establish a ratio, the ratios are already established and they are referenced and applied. In mileage prorate, the ratio is obtained by using the number of miles

distant between airports. In the square root of the miles methodology, the ratio used for dividing the fares is established by using the square root of the number of miles distant between cities.

Unlike a Carrier that can choose a proration method that is most advantageous to its own situation and needs, the Department is constrained by its requirement to be able to apply one technique with equanimity for all Carriers across all conceivable itineraries. Further, the Department is constrained by a requirement that its processes be repeatable (i.e., a Ticketed Itinerary processed through the system today must provide the same result as it will if processed again several months later). Since straight rate prorate and international prorate factors require inputs from outside systems that change over time, the Department would have to keep copies of all possible permutations of those inputs by day in order to meet the repeatable standard. This would clearly be costly, and in light of other available proration methods, excludes these methods from further consideration.

The mileage and square root of the miles methodologies have a distinct advantage, because the miles between airports change very rarely. In the previous decade, only the opening of a new airport in Denver and the relocation of the terminal in Pittsburgh have had an effect on the number of miles between airports in the U.S. The Department considers this to be an acceptable level of variance inherent in these two proration techniques. Of the two, the Department prefers the square root of the miles methodology over a mileage proration methodology. When there are two Flight-Stages in a trip, and the Flight-Stages are of equal distance, both techniques will allocate half the money to each leg. When there are two Flight-Stages of a trip, and one stage length is significantly longer than the other, mileage allocates the short stage length a miniscule amount of the fare while square root of the miles allocates a bit more and tends to be more consistent with prorate agreements between Carriers.

For example, in a hypothetical 850-mile trip with two Flight-Stages that are 425 miles distant, both techniques will give each 425-mile stage one half of the fare amount. In another hypothetical 850-mile trip with one flight stage of 729 miles and one of 121 miles, the mileage prorate gives 85.8 percent of the fare amount to the longer leg and 14.2 percent to the shorter stage. The square root of the miles on that same itinerary gives the longer stage 71 percent of the fare amount while the shorter stage gets

29 percent. The square root of the miles prorate calculation mimics typical Carrier revenue allocations more closely than does the mileage prorate.

The Department seeks comment on the best practices in the application of proration methodology in the scheduled air transportation industry. Respondents that advocate a methodology other than the one proposed by the Department, the square root of miles, must consider in their recommendation the Department's constraints: (1) The methodology must treat all carriers with equanimity and (2) the methodology must be repeatable.

4. Proposed Changes to Confidentiality

One of the most critical elements of the Department's proposed changes to the O&D Survey involves addressing data confidentiality. The current O&D Survey data confidentiality rules (14 CFR Sec 19-7(d)) exist to preclude international data from being disclosed since Foreign Air Carriers were excluded from reporting. Domestic data in the current O&D Survey are released in full after a certain period of time elapses.

In its response to the ANPRM, the Allied Pilots Association (Docket OST-1998-4043-16) pointed out that the time lags under the current O&D Survey reduce the usefulness of the data. There was a divergence of opinion on how long the data should remain confidential, but most advocated a short confidentiality period for all data. No respondent registered strong disapproval of a short confidentiality period. Short confidentiality periods were endorsed by Airports Council International—North America (Docket OST-1998-4043-6), American Airlines (Docket OST-1998-4043-5), Continental Airlines (Docket OST-1998-4043-26), and Metropolitan Washington Airports Authority (Docket OST-1998-4043-38). The Air Line Pilots Association (Docket OST-1998-4043-18) said the data should be released no later than 6 months after the report date. Respondents that went on record to say that the confidentiality period should not be greater than six months are Delta Air Lines (Docket OST-1998-4043-21), Oakland International Airport (Docket OST-1998-4043-14), BACK Associates, Inc. (Docket OST-1998-4043-3), John Brown and Company (Docket OST-1998-4043-33), Los Angeles World Airports (Docket OST-1998-4043-28), Port Authority of New York and New Jersey (Docket OST-1998-4043-25), Port of Portland (Docket OST-1998-4043-19), and Wayne County and

Detroit Metropolitan Airport (Docket OST-1998-4043-23).

Any changes to the present reporting system must satisfy the statutory requirements of Section 805 of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176; 117 Stat. 2490). Section 805 mandates that, if the Secretary requires Carriers to provide flight-specific information, the Department will not: (1) Make public the flight-specific fare information until at least nine months after the flight date and (2) issue a rule requiring public dissemination of flight-specific fare information without giving due consideration to and addressing the Carriers' confidentiality concerns.

The Department recognizes that Carriers will view flight-specific fare information as "sensitive," in that a competitor could potentially exploit this information in the marketplace. The Department also recognizes that, when combined with other data elements, the combined data elements could raise certain competitive confidentiality concerns. The Department believes there exists a wide range of opinion about data elements that should be withheld from public dissemination and the appropriate holding period. The Department's initial position is that, while it may be appropriate to withhold some of the new data elements from public dissemination for a time, all data should eventually be released into the public domain. We seek comment regarding the timing of the release of flight-specific fare information.

The Department is cognizant of the sensitive nature of any data element that could be used to identify any specific individual passenger. No data requested in this rulemaking will include any personal information on a specific passenger that would enable the identification of a specific individual. We have declined to propose collection of any of the elements that were suggested in ANPRM comments as point of sale identifiers (these are Passenger Citizenship, Phone Number, and Zip Code/Postal Code.) Furthermore, if the Department were to collect the any of these elements, it would never release any data that could be used to identify an individual passenger. The Department will only use such data for statistical purposes. These passenger data will be protected under the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), which appears as Title V of the E-Government Act of 2002. We invite comment from the industry and public on issues of confidentiality of passenger information.

The expanded amount of information that the Department proposes to collect is required to fulfill the Department's statutory mandates. However, the O&D Survey information to be disseminated to the public has not yet been fully determined. We anticipate releasing data that are of immediate economic value, but do not disclose competitive positions, as soon as the data are received and processed for dissemination, subject to the constraints mandated by law. The Department seeks comment on a proposal to release aggregated data on a monthly basis in the shortest possible time needed to process the data. We are also requesting public comments on whether certain, and if so which, data elements should be withheld from public dissemination and the appropriate holding period. We invite comment from the industry regarding public dissemination of flight-specific fare information according to the provisions of Vision 100—Century of Aviation Reauthorization Act.

L. Rulemaking Analyses and Notices

In order to increase efficiency and effectiveness; improve the integrity, quality, and utility of the information available; and reduce information collection costs to the Carriers; the Department proposes to modernize its data collection products. The legal authority for the proposed rule is provided by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98-443), which requires the Department, under the authority of the Secretary (49 U.S.C. 329(b)(1)), to collect and disseminate information on civil aeronautics and aviation transportation in the U.S., other than that collected and disseminated by the National Transportation Safety Board. The Department must, at minimum, collect information on the origin and destination of passengers and information on the number of passengers traveling by air between any two points in air transportation. Additionally, the Department must be responsive to the needs of the public and disseminate information to make it easier to adapt the air transportation system to the present and future needs of commerce of the U.S. (49 U.S.C. 40101(a)(7)). In meeting this responsibility, the Department collects data submitted under 14 CFR Part 217 (Reporting Traffic Statistics by Foreign Air Carriers in Civilian Scheduled, Charter, and Nonscheduled Services), 14 CFR Part 241 (Uniform System of Accounts and Reports for Large

Certificated Air Carriers) and 14 CFR Part 298 (Exemptions for Air Taxi and Commuter Air Carriers).

The purpose of the proposed rule is to improve the accuracy and utility of reported traffic data while reducing the burden on the Carriers. For the O&D Survey, this objective is achieved by replacing 14 CFR Part 241 Section 19-7 with Section 26, which modifies the set of existing data elements, revises reporting time frames, and redefines the set of Carriers that report the O&D Survey in accordance with industry standards and practice. We are considering changes to the T-100/T-100(f) to enhance congruency between the O&D Survey and the T-100. The changes we are considering would amend 14 CFR Part 241 Section 25, thus modifying the set of existing data elements reported on the T-100 and amend 14 CFR Part 217 Section 5, thus modifying the set of existing data elements reported on the T-100(f).

The proposed modernization of the Department's aviation data will bring the data gathering process into alignment with current airline industry accounting practices. It will provide more accurate, more timely, and more complete data for all stakeholders. Furthermore, it is the least intrusive informational alternative sufficient to accomplish the statutory objective of gathering accurate information about air travel. The proposed rule has been evaluated under the following Acts, Executive Orders, and Departmental Policies. We seek comment from interested parties about the rulemaking analyses contained in this section.

1. Affected Carriers

The Carriers that would, under the proposed changes to the O&D Survey, be required to report the O&D Survey are those defined in Section I.3. (O&D Survey Redesign: Reporting Requirements) as Participating Carriers. These Participating Carriers are (1) U.S. Air Carriers that issue tickets for travel on scheduled interstate passenger services to or from, or within, the U.S. and operate aircraft with 15 seats or more for scheduled service and (2) Foreign Air Carriers that operate under 49 U.S.C. Sections 41308 and 41309 and are required, under the grant of antitrust immunity, to report itineraries involving a U.S. point. The group of Participating Carriers consists of Currently Participating Carriers and Newly Participating Carriers. Because the proposed rule changes the criteria

defining which Carriers shall report the O&D Survey, there will be 38 Participating Carriers (25 U.S. Air Carriers, versus the 34 U.S. Air Carriers that submitted the O&D Survey in Third Quarter 2003, and 13 Foreign Air Carriers) under the proposed rule, compared to 47 Carriers under the current rule.

Currently Participating Carriers are those U.S. Air Carriers and Foreign Air Carriers that report the O&D Survey under the current rule and would continue to report the O&D Survey under the proposed rule. Newly Participating Carriers are (1) those U.S. Air Carriers that do not currently report the O&D Survey but would begin to report under the proposed rule and (2) those Foreign Air Carriers that would report the O&D Survey if they operate under antitrust immunity pursuant to 49 U.S.C. Sections 41308 and 41309 for alliance(s) with U.S. Air Carrier(s). In addition, under the proposed rule, 13 U.S. Air Carriers that currently report the O&D Survey would no longer be required to report. These carriers are identified as Formerly Participating Carriers.

The Department is considering modifying the data elements reported by U.S. Air Carriers on the T-100 and by Foreign Air Carriers on the T-100(f). The additional data elements being considered would, in combination with the proposed changes to the O&D Survey, enhance the validity and reliability of the Department's aviation data and benefit all stakeholders. We have included the regulatory impact of the potential changes to the T-100/T-100(f) in this section, although we note that these changes have not been specifically proposed within this NPRM.

The Department is also considering requiring Foreign Air Carriers that: (1) Are licensed to hold out service to the U.S. under 49 U.S.C. Section 41301; (2) do not have antitrust immunity for an alliance with a U.S. Air Carrier; and (3) operate aircraft with 15 seats or more for scheduled service to or from, or within, the U.S. to report all itineraries involving a U.S. point to the O&D Survey. At this time, we have not included these Foreign Air Carriers in the Regulatory Analyses contained in Section L. We seek comment on the costs and benefits of including in, or excluding from, the O&D Survey data from these Foreign Air Carriers.

TABLE 1.—CARRIERS AFFECTED BY PROPOSED CHANGES TO THE O&D SURVEY

	Continue to report (currently participating carriers)	Begin to report (newly participating carriers)	No longer required to report (formerly participating carriers)
U.S. Air Carriers	21	4	13
Foreign Air Carriers	13	0	0
Total Carriers	34	4	13

The Carriers that would, under the changes we are considering to the T-100/T-100(f), be required to report the T-100/T-100(f) are those defined in Section J.1. (T-100/T-100(f):—Background) as Reporting Carriers. Because the proposed rule does not alter the definition of Reporting Carrier, no Carriers would be added as Reporting

Carriers based solely on the possible changes to the T-100/T-100(f). There were 282 Reporting Carriers in Third Quarter 2003. However, 52 of those Carriers are all-cargo Carriers. Because the additional data elements being considered for the T-100/T-100(f) are flight-specific and would be used, in part, to match the O&D Survey to the T-

100/T-100(f), all-cargo Carriers would not have to report these elements. The changes that we are considering making to the T-100/T-100(f) would, therefore, affect the remaining 230 Reporting Carriers (121 U.S. Air Carriers and 109 Foreign Air Carriers) that are not all-cargo Carriers.

TABLE 2.—CARRIERS THAT WOULD BE AFFECTED BY CHANGES BEING CONSIDERED FOR T-100/T-100(F)

	Continue to report (currently reporting carriers)	Begin to report (newly reporting carriers)	No longer required to report (formerly reporting carriers)
U.S. Air Carriers	121	0	0
Foreign Air Carriers	109	0	0
Total Carriers	230	0	0

2. *The Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, codified at 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

The proposed changes to the O&D Survey and the changes we are considering making to the T-100 would not result in expenditures by State, local, or tribal governments because no such government operates a Carrier subject to the proposed regulation. While the proposed changes to the O&D Survey and the changes we are considering making to the T-100(f) will affect Foreign Air Carriers, some of which are operated (in whole or in part) by foreign governments, the Unfunded Mandates Reform Act of 1995 does not apply to foreign governments.

3. *Regulatory Evaluation*

a. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, Regulatory Planning and Review (58 FR 51735; September 30, 1993) defines a significant regulatory action as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Regulatory actions are also considered significant if they are likely to create a serious inconsistency or interfere with the actions taken or planned by another agency or if they materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients of such programs.

The proposed changes to the O&D Survey are estimated to collectively cost U.S. Air Carriers approximately \$1.3 million in the first year, including initial costs and annual reporting costs, and approximately \$281,000 each year thereafter. If these changes are not

made, the collective reporting costs to U.S. Air Carriers are estimated to be approximately \$509,000 each year. When Foreign Air Carriers that operate under 49 U.S.C. Sections 41308 and 41309 and are required, under grant of antitrust immunity, to report itineraries involving a U.S. point are included, the proposed changes to the O&D Survey are estimated to collectively cost the world airline industry approximately \$1.9 million in the first year, including initial costs and annual reporting costs, and approximately \$427,000 each year thereafter. If these changes are not made, the collective reporting costs to the world airline industry are estimated to be approximately \$704,000. Thus, if we make no changes to the current O&D Survey, we will continue to collect data under that rule. The collective annual costs to U.S. carriers will continue to be approximately \$509,000 per year and the collective annual costs to the world airline industry will continue to be approximately \$704,000. Table 3 compares the annual costs of the proposed changes to the O&D Survey to the annual costs of continuing the current O&D Survey collection. These costs are further detailed in Tables 8 and 9.

TABLE 3.—COLLECTIVE COSTS FOR U.S. AIR CARRIERS AND WORLD AIRLINE INDUSTRY PROPOSED CHANGES VERSUS CURRENT RULE O&D SURVEY

	First year collective costs (including initial costs)	Subsequent year collective costs
Proposed O&D:		
U.S. Air Carriers	\$1,273,110	\$280,800
World Airline Industry	1,915,336	426,816
Current O&D:		
U.S. Air Carriers	509,184	509,184
World Airline Industry	703,872	703,872

The changes that we are considering making to the T-100/T-100(f) are estimated to collectively cost U.S. Air Carriers approximately \$1 million in the first year, including initial costs and annual reporting costs, and approximately \$204,000 each year thereafter. If these changes are not made, the collective reporting costs to U.S. Air Carriers are estimated to be approximately \$159,000 each year. When Foreign Air Carriers are included, the changes that we are considering

making to the T-100/T-100(f) are estimated to collectively cost the world airline industry approximately \$1.9 million in the first year, including initial costs and annual reporting costs, and approximately \$387,000 each year thereafter. If these changes are not made, the collective reporting costs to the world airline industry are estimated to be approximately \$301,000. Thus, if we do not make the changes to the T-100/T-100(f) that we are considering, we will continue to collect data under

the existing rule. The collective annual costs to U.S. carriers will continue to be approximately \$159,000 per year and the collective annual costs to the world airline industry will continue to be approximately \$301,000. Table 4 compares the annual costs of the changes to the T-100/T-100(f) that we are considering making to the annual costs of continuing the current T-100/T-100(f) collection. These costs are further detailed in Tables 10 and 11.

TABLE 4.—COLLECTIVE COSTS FOR U.S. AIR CARRIERS AND WORLD AIRLINE INDUSTRY CONSIDERED CHANGES VERSUS CURRENT RULE T-100/T-100(F)

	First year collective costs (including initial costs)	Subsequent year collective costs
Proposed:		
U.S. Air Carriers	\$1,002,460	\$203,860
World Airline Industry	1,905,503	387,503
Current:		
U.S. Air Carriers	158,559	158,559
World Airline Industry	301,392	301,392

Because the proposed changes to the O&D Survey and the changes we are considering making to the T-100/T-100(f) will not collectively cost members of the private sector more than \$100 million in the first year of effectiveness under the proposed rule, the Department finds that the changes would not, collectively or separately, place a significant burden on the worldwide airline industry. The Department also finds that the benefits of the proposed changes outweigh the potential costs. Therefore, the proposed rule should not be considered an economically significant regulatory action under Executive Order 12866. However, regulatory actions that raise novel legal or policy issues can be considered significant. Because the proposed changes to the O&D Survey, as well as the changes we are considering for the T-100/T-100(f), change the collection procedures of influential

aviation data, this NPRM is considered a significant regulatory action under Executive Order 12866 and was reviewed by the Office of Management and Budget.

Net Present Value Analysis. The current rule is expected to cost approximately \$1 million each year. The cost of the current O&D Survey is estimated by multiplying the average annual reporting burden of 960 hours per reporting Carrier by an estimated hourly wage of \$15.60. The total burden, for the 47 Carriers that report the O&D Survey under the current rule, is \$703,872. The cost of the current T-100/T-100(f) is estimated by multiplying the average annual reporting burden of 84 hours per reporting Carrier by an estimated hourly wage of \$15.60. The total burden for the 230 Carriers that report the T-100/T-100(f) under the current rule is \$301,392.

As shown in Tables 8, 9, 10, and 11, the proposed changes to the O&D Survey and the changes we are considering making to the T-100/T-100(f) are expected to cost the affected Carriers approximately \$3.82 million in the first year and \$814,320 in each subsequent year. That is, while the proposed changes to the O&D Survey and the changes we are considering making to the T-100/T-100(f) will require a one-time investment of about \$3.82 million, annual reporting costs for the initial and subsequent years would decrease, collectively by about \$71,000 per year and individually by about 240 hours per Carrier.

Table 5, below, shows the present value costs, using a 7 percent discount rate, under (1) the current rule, (2) the proposed rule, and (3) the proposed rule if Carriers engage in one year of concurrent processing. As discussed in Section I.5. (O&D Survey Redesign:

Transition Period), a transition period may be required. During that time, both Formerly Participating Carriers and Currently Participating Carriers would

report under the current rule, while Currently Participating Carriers and Newly Participating Carriers would also report under the proposed rule. For the

purposes of present value cost analyses, we estimate a concurrent test period of one year.

TABLE 5.—ESTIMATED PRESENT VALUE COSTS
[Including changes being considered for the T-100/T-100(f).]

Elapsed time	Current rule	Proposed rule	Proposed rule (with 1 year concurrent processing)
5 Years:			
Total Present Value Cost	\$4,121,781	\$6,148,705	\$7,088,204
(incremental cost over current rules)		+ 2,026,924	+2,966,423
10 Years:			
Total Present Value Cost	7,060,544	8,529,275	9,468,774
(incremental cost over current rules)		+ 1,468,731	+ 2,408,230
15 Years:			
Total Present Value Cost	9,155,858	10,226,588	11,116,087
(incremental cost over current rules)		+ 1,070,730	+ 1,960,229
20 Years:			
Total Present Value Cost	10,649,781	11,436,749	12,376,249
(incremental cost over current rules)		+ 786,968	+ 1,726,468

The initial reporting burden associated with the proposed changes to the O&D Survey and the changes considered for the T-100/T-100(f) results in higher present value costs. However, the benefits to Participating Carriers and Reporting Carriers, as well as to the Department, Federal agencies, airports, consultants, academics, State and local transportation planners, other State and local agencies, consumers, and other stakeholders, are significant and immediately available (See Sections L.3.d.2. and L.3.e.2.). Because these benefits are less readily quantifiable, Table 6 contains the present value benefits, using a 7% discount rate, under three possible scenarios, for the proposed rule.

The first scenario assumes a total annual benefit, as a result of the proposed and considered changes, of \$250,000 per year. If the Participating Carriers were assumed to be the sole beneficiaries, each would, under this very conservative scenario, receive annual benefits of about \$6,600 a year. We believe that information about 100 percent of Ticketed Itineraries issued for travel to or from, or within, the U.S. by

U.S. Air Carriers operating aircraft with 15 seats or more is likely worth much more than approximately \$7,000 per year. In fact, we are certain that the cost to purchase this degree of information, for a 12-month period and from a GDS or other source not based on the O&D Survey, would be considerably more expensive. Again, if we assume the only beneficiaries to be the Participating Carriers, the second scenario would attribute annual benefits to those 38 Participating Carriers of about \$13,200 per year. Based on our knowledge of non-Departmental data sources, we find this estimated benefit to be conservative.

We find the third scenario, total annual benefits of \$1,000,000 for all stakeholders, to be more realistic. This estimate is the equivalent of about \$27,000 of annual benefits per stakeholder if only the 38 Participating Carriers are considered. Furthermore, submission of 100 percent of Ticketed Itineraries by Participating Carriers significantly reduces the likelihood that the Department will need to request supplemental data about markets not represented in the O&D Survey.

Participating Carriers will be able to apply resources previously dedicated to supplemental data request to other internal priorities. Assigning an estimated total annual benefit of \$1,000,000 per year only to Participating Carriers, however, ignores the benefits to the Department's regular analyses of competition in the aviation industry and its EAS and Small Community Air Service Development Program. In addition, we have not enumerated the annual benefit, to the FAA, DOJ, DOS, DOC, DHS, BLS, and other Federal agencies and programs, of having 100 percent of Ticketed Itineraries issued by Participating Carriers.

Therefore, we base our assessment of the costs and benefits of the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) on the moderate estimate of \$1,000,000 of total annual benefits for all stakeholders. We seek comment about the estimated benefits, for individual stakeholders as well as collectively, used in this regulatory evaluation.

TABLE 6.—ESTIMATED PRESENT VALUE BENEFITS UNDER PROPOSED O&D SURVEY
[Including changes being considered for T-100/T-100(f).]

Time period	Estimated total annual benefits for all stakeholders		
	Very conservative \$250,000 per year (\$)	Conservative \$500,000 per year (\$)	Moderate \$1,000,000 per year (\$)
5 Years Total Present Value Benefits	1,025,049	2,050,099	4,100,197
10 Years Total Present Value Benefits	1,755,895	3,511,791	7,023,582
15 Years Total Present Value Benefits	2,276,979	4,553,957	9,107,914
20 Years Total Present Value Benefits	2,648,504	5,297,007	10,594,014

As shown in Table 7, the net present value of the proposed rule is positive in the majority of estimated scenarios. For example, the proposed rule alone yields a positive net present value within five years for two of the three benefit

estimates and under all benefit estimates within 10 years. Using the moderate estimate of \$1,000,000 total annual benefits for all stakeholders, the net present value of the proposed changes to the O&D Survey and changes

being considered for the T-100/T-100(f) is positive within five years—even when including one year of concurrent processing.

TABLE 7.—NET PRESENT VALUE PROPOSED CHANGES TO THE O&D SURVEY AND ESTIMATED BENEFITS
[Including changes being considered for T-100/T-100(f).]

Elapsed time	Total Net Present Value					
	Very conservative \$250,000 total annual benefits		Conservative—\$500,000 total annual benefits		Moderate—\$1,000,000 total annual benefits	
	Proposed rule (\$)	Proposed rule + 1 year concurrent (\$)	Proposed rule (\$)	Proposed rule + 1 year concurrent (\$)	Proposed rule (\$)	Proposed rule + 1 year concurrent (\$)
5 Years	- 1,001,874	- 1,941,373	23,175	- 916,324	2,073,274	1,133,775
10 Years	287,174	- 652,325	2,043,070	1,103,571	5,554,861	4,615,361
15 Years	1,206,248	266,749	3,484,227	2,543,728	8,037,184	7,097,685
20 Years	1,861,535	922,036	4,510,039	3,570,540	9,807,046	8,867,547

It is our conclusion that the benefits of the proposed rule will significantly outweigh the costs. We also conclude that, because the present value costs for the proposed rule clearly do not exceed \$100 million, for total or incremental costs and even when including one year of concurrent processing, the proposed rule should not be considered an economically significant regulatory action under Executive Order 12866.

b. Vision 100—Century of Aviation Reauthorization Act

Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108-176) recognizes the need for the U.S. to increase its investment in research and development to revitalize the aviation industry as well as to improve aviation information collection. Section 805(a) states that, if the Secretary requires Carriers to provide flight-specific information, the Department will not: (1) Make public the flight-specific fare information until at least nine months after the flight date and (2) issue a rule requiring public dissemination of flight-specific fare information without giving due consideration to and addressing the Carriers' confidentiality concerns. Moreover, Section 805(b)—Effective Date stipulates that the amendment to 49 U.S.C. Section 329(b)(1), stated in Section 805(a), shall become effective on the date of the issuance of a final rule to modernize the O&D Survey. The final rule, pursuant to the ANPRM (RIN 2105-AC71; 63 FR 28128, July 15, 1998), must propose change that “reduces the reporting burden for air carriers through electronic filing of the survey data collected under Section 329(b)(1) of Title 49, U.S.C.” The calculations for burden reduction are

shown in Sections L.3.d.1. (Regulatory Analysis—O&D Survey: Regulatory Assessment—Costs) and L.3.e.1. (Regulatory Analysis—T-100/T-100(f): Regulatory Assessment—Costs), below.

The proposed changes to the O&D Survey support electronic filing and reduce manual activity and paperwork. The Issuing Carrier possesses, within its internal systems, the data elements required by the proposed rule. By designating the Issuing Carrier as the Participating Carrier, the proposed rule eliminates the need for the Participating Carrier to manually examine, and obtain information from other carriers about Ticketed Itineraries that were not issued by the Participating Carrier.

We find that the proposed changes to the O&D Survey and the changes considered for the T-100/T-100(f) meet the requirements of Vision 100, specifically Section 805(b), in that the changes “reduce the reporting burden for air carriers through electronic filing of the survey data collected under Section 329(b)(1) of Title 49, U.S.C.” There are three tests of “reduction of reporting burden for air carriers through electronic filing of the survey data”: (1) Net present costs, (2) net present value, and (3) change in annual reporting burden. We base our conclusion on the third test—the change in annual reporting burden for affected carriers. We seek comment about our definition of “reduction of reporting burden for air carriers through electronic filing of the survey data” and our conclusion that the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) meet the requirement of Vision 100, Section 805(b).

i. Annual Collective Industry Reporting Burden. We believe that the proposed rule reduces the collective reporting burden for the airline industry, for both U.S. Air Carriers and Foreign Air Carriers, even if we include the reporting burden associated with the T-100/T-100(f) changes we are considering. Under the current rule, 47 Carriers (U.S. Air Carriers and Foreign Air Carriers) report the O&D Survey and 230 Carriers report the T-100/T-100(f). Collectively, the industry faces a total annual reporting burden under the current rule of 64,440 hours. Under the proposed changes to the O&D Survey, 38 Carriers would report the O&D Survey. Under the changes to the T-100/T-100(f) that we are considering, 230 Carriers would report the T-100/T-100(f). Under both the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f), the industry would face a total annual reporting burden of 52,200 hours. The proposed rule, including the changes being considered for the T-100/T-100(f) decreases the industry's collective annual reporting burden by 12,240 hours, or about 18 percent.

The collective annual reporting burden for affected U.S. Air Carriers alone also decreases. Under the current rule, the total annual reporting burden for 34 Carriers reporting the O&D Survey and 121 Carriers reporting the T-100 is 42,804 hours. Under the proposed rule, including the changes being considered for the T-100/T-100(f), the total annual reporting burden for the 25 Carriers reporting the O&D Survey and the 121 Carriers reporting the T-100 would 31,068 hours. This is a collective decrease of 11,736 hours, or about 27 percent.

ii. *Annual Individual Carrier Reporting Burden.* The proposed changes to the O&D Survey result in substantial decreases for U.S. Air Carriers and Foreign Air Carriers that will continue to report, or cease to report, the O&D Survey. First, the total number of Participating Carriers is reduced from 47 to 38. Second, by designating the Issuing Carrier as the Participating Carrier, the proposed rule reduces the manual processing and intervention inherent in the current rule, thereby simplifying electronic filing.

For informational purposes, we have calculated the annual reporting burden for the changes being considered for the T-100/T-100(f). While these changes would, if adopted, increase the annual reporting burden for each U.S. Air Carrier and each Foreign Air Carrier that will report only the T-100/T-100(f) from 84 hours to 108 hours, they would maximize congruence with the proposed O&D Survey.

The average annual reporting burden of each U.S. Air Carrier or Foreign Air Carrier that currently reports both the O&D Survey and the T-100/T-100(f) will decrease by 216 hours, or about 20 percent, (from 1,044 hours under the current rule to 828 hours under the proposed rule, even when the changes being considered for the T-100/T-100(f) are included. Similarly, under the proposed changes to the O&D Survey and the changes being considered for the T-100, the average annual reporting burden of each of the 13 U.S. Air Carriers that will cease to report the O&D Survey, but continue to report the T-100, will decrease from 1,044 hours to 108 hours, or about 89 percent. Excluding the changes being considered for the T-100, these 13 U.S. Air Carriers would see their annual reporting burden decrease by 91 percent.

c. Departmental Regulatory Policies and Procedures

The Department's Regulatory Policies and Procedures (initially issued February 26, 1979, 44 FR 11034; restated May 22, 1980, DOT Order 2100.5) establish objectives to be pursued in reviewing existing regulations and in issuing new regulations. The objectives include the identification of a regulation as a (1) significant regulation, (2) emergency regulation, or (3) non-significant regulation. One key issue in the determination of a significant rulemaking is the extent to which the affected information is influential. Influential information will have or does have a clear and substantial impact on important public policies or

important private sector decisions. The aviation data collected by the O&D Survey and the T-100/T-100(f) are critical for policy makers, Carriers, airports, and other stakeholders (See Section D—O&D Survey Data Usage and Section J—T-100/T-100(f)). Because the proposed changes to the O&D Survey, as well as the changes we are considering for the T-100/T-100(f), change the collection procedures of influential aviation data, this NPRM is considered a significant regulatory action under the Department's Regulatory Policies and Procedures.

d. Regulatory Analysis—O&D Survey

The proposed rule defines a Participating Carrier for the O&D Survey as (1) a U.S. Air Carrier that issues Ticketed Itineraries for travel on scheduled interstate passenger services to or from, or within, the U.S. and operates aircraft with 15 seats or more for scheduled service and (2) a Foreign Air Carrier that has an alliance with a U.S. Air Carrier (pursuant to 49 U.S.C. 41308 and 41309) and is required to report itineraries involving a U.S. point. Under the proposed rule, the total number of Participating Carriers would decrease by about 19 percent, from 47 to 38. The specific costs and benefits of the proposed changes to the O&D Survey are discussed in the following sections.

i. *Regulatory Assessment—Costs.* For Currently Participating Carriers, we estimated (1) the initial costs of revising the reporting systems to include the proposed new data items and enable monthly reporting of the full universe of issued tickets and (2) the annual costs of monthly submissions of the proposed O&D Survey for 100 percent of Ticketed Itineraries for travel to or from, or within, the U.S. For Newly Participating Carriers, we estimated (1) the initial costs of obtaining systems to include all data elements and enable monthly reporting of the full universe of issued tickets containing a U.S. point and (2) the annual costs of monthly submissions of the proposed O&D Survey for 100 percent of Ticketed Itineraries for travel to or from, or within, the U.S. The initial and annual reporting costs for Formerly Participating Carriers are, of course, zero.

We estimate the total initial reporting costs for the O&D Survey for all Participating Carriers to be approximately \$1.49 million, of which approximately \$993,000 would be expended by Participating U.S. Air Carriers. We estimate the annual reporting costs for the proposed O&D Survey for all Participating Carriers to

be approximately \$427,000, of which approximately \$281,000 would be expended by Participating U.S. Air Carriers.

We recognize that the initial and annual reporting costs of individual Participating Carriers are likely to differ and, for some Participating Carriers, may be smaller than our estimates. Nevertheless, we have applied a single cost estimate in our regulatory assessment. We recognize that some Participating Carriers may choose to utilize third-party providers, for the initial systems development and/or for monthly data submission, but we do not include estimates of third-party provider costs in this regulatory assessment. However, we are aware that third-party providers already serve the airline industry with systems that collect, bundle, process, and transfer data between Carriers and between Carriers and the Department. Thus, third-party providers may choose to customize or adjust existing data systems, already used by Participating Carriers, to meet the submission requirements of the proposed rule. We assume Participating Carriers would select this option only if its costs were lower; as such, it is possible that Participating Carriers that decide to use third parties would incur lower costs than those we have estimated. We seek comment about the costs and benefits of the use of third-party providers under the proposed O&D Survey.

Initial Reporting Burden. Currently Participating Carriers would incur an initial reporting burden, based on the systems changes required to expand one and add seven ticketed itinerary-level data elements and to expand three and add six Flight Stage-level data elements (See Section I.2.—O&D Survey: Discussion of the Proposed O&D Survey). The proposed data elements are available within the Currently Participating Carriers' internal systems and, therefore, we anticipate that Currently Participating Carriers will be able to access the data elements.

We anticipate that the Currently Participating Carriers will create new automated processes to produce the proposed O&D Survey rather than simply modify the current processes. This is because the proposed procedures will no longer require continual information updates from sources outside the Participating Carrier's control, such as ticketing information from Issuing Carriers, and because the proposed procedures are simpler. In its response to the ANPRM, United Air Lines (Docket OST-1998-4043-15) estimated that "there would be a moderate one time development effort

to create and implement the software which would create a TCN-like file each day containing internal [carrier] * * * sales and non-automated agency sales". We agree, and estimate a "moderate effort" to be the equivalent of two and one-half work months⁸ of internal development and testing and one and one-half work months⁹ of external testing and coordination with the Department, for a total of four work months, or 694 staff-hours. We do not estimate the costs of materials or other resources.

Newly Participating Carriers will incur an initial reporting burden based on the O&D Survey data collection and reporting requirements. As with Currently Participating Carriers, Newly Participating Carriers are expected to have the majority of this data present within their internal sales-based systems and TCN records. Furthermore, in 1997, as part of the Rural Airfare Study (Federal Aviation Administration Reauthorization Act of 1996, Section 1213; Pub. L. 104-264), the Department began to collect 100 percent of Ticketed Itineraries for domestic passengers from all certificated and commuter carriers providing scheduled passenger service to communities in the continental U.S. (Docket OST-1997-2767; Order 97-7-27, July 28, 1997). We note that two of the four Newly Participating Carriers were affected by this order and, therefore, are familiar with data submission requirements that are similar to those requested in the proposed rule.

In its response to the ANPRM, United Air Lines (Docket OST-1998-4043-15) stated that a non-CRS participating Carrier could create similar files from its own revenue accounting-type data, "which should not be a major difficulty. Indeed, it should be no more difficult than complying with the present O&D Sampling requirements." We also note that, when conducting its Rural Airfare Study, the Department solicited comments about the costs of compliance—that is, the cost to submit 100 percent of domestic continental U.S. Ticketed Itineraries. No comments about the costs of complying with this data request were received (Collectively, Docket OST-97-2767).

We agree that Newly Participating Carriers should not find the task of obtaining systems to report the proposed O&D Survey more onerous than obtaining systems for the current O&D Survey. However, we recognize

⁸ One work month = 173.3 staff hours = ((40 hours per week * 52 weeks) divided by 12 months).

⁹ One work month = 173.3 staff hours = ((40 hours per week * 52 weeks) divided by 12 months).

that Newly Participating Carriers will face some development and testing challenges that Currently Participating Carriers will not. We therefore estimate the equivalent of three work months¹⁰ of internal development and testing and two work months of external testing and coordination with the Department, for a total of five work months, or 867 staff-hours. We do not estimate the costs of materials or other resources.

Under the Service Contract Act of 1965 (as amended), the U.S. Department of Labor sets the minimum hourly rate, excluding benefits, for Federal Contracts. In 2004, DOL estimated an hourly rate of \$27.62 per hour for the positions of Computer Programmer IV and Computer Systems Analyst III.¹¹ We recognize that the carriers' hourly costs are likely to be higher, particularly for skilled employees with specialized knowledge of aviation data and reporting. Thus, we estimate an industry hourly cost for a computer programmer/analyst of \$55.00 per hour.

Given these assumptions, we estimate the initial reporting costs for the proposed O&D Survey to be \$38,170, or 694 hours, per Currently Participating Carrier. For Newly Participating Carriers, we estimate the initial reporting costs to be \$47,685, or 867 hours, per Newly Participating Carrier. These estimated costs are based on staff hours only and do not include estimates for materials or other resources. We seek comment about the methods used to determine these initial reporting costs under the proposed rule.

Annual Reporting Burden. The proposed changes to the O&D Survey would require Participating Carriers to report additional data elements for each reported Ticketed Itinerary. The proposed rule would also require Participating Carriers to report 100 percent of all Ticketed Itineraries for travel involving a U.S. point, compared to the 10 percent sample required by the current rule, and to report those itineraries monthly rather than quarterly. However, even though the reporting frequency and total volume of reported data for a Participating Carrier would increase under the proposed rule, we believe that the total annual

¹⁰ One work month = 173.3 staff hours = ((40 hours per week * 52 weeks) divided by 12 months).

¹¹ Source: http://www.procurement.irs.treas.gov/tirno04r00005/amend04/wage_determination.txt. Although these rates are for West Virginia, they are the most recent wages established by the government and are comparable, in the past, to rates assigned to other states and districts. We believe that they represent an accurate estimate of wages for this set of positions, effective in 2004. Furthermore, we do adjust the wages for this employment category to reflect the specialized requirements of the airline industry.

reporting burden for individual Carriers will decrease.

For example, in 1997, as part of the Rural Airfare Study (Federal Aviation Administration Reauthorization Act of 1996, Section 1213; Pub. L. 104-264), the Department estimated the average annual cost to carriers to comply with data submissions of the Rural Airfare Study¹² at approximately 113 hours per carrier (Docket OST-1997-2767-1; Order 97-7027, July 28, 1997). We recognize that the costs of submitting 100 percent of Ticketed Itineraries and incorporating the proposed additional data items would be higher than the costs of submitting monthly Rural Airfare study itineraries. However, we also believe that costs to Participating Carriers under the proposed rule would be lower than those costs under the current rule.

We estimate that the total annual reporting burden for individual Participating Carriers would decrease from 960 hours (current rule) to 720 hours (proposed rule), a total decrease of 240 hours per year per Participating Carrier compared to our 2003 OMB estimate. While this estimation seems counter-intuitive, we believe that such savings are possible. We attribute the 240 hour per year reduction in annual reporting burden for an individual Participating Carrier to (1) the designation of Issuing Carrier, rather than Operating Carrier, as Participating Carrier (192 hours) and (2) the more efficient process by which Issuing Carriers will report 100 percent of Ticketed Itineraries in monthly, rather than quarterly, submissions (48 hours).

As discussed in Section C.1. (Need for Data Modernization: Background), under the current rule, the level of effort required by an Operating Air Carrier to identify whether it is the first Participating Carrier in the itinerary is complex and time-consuming. If the first Participating Carrier is not the Issuing Carrier and did not receive that sale information, then the Participating Carrier is required to employ staff to locate that lifted flight coupon. This is an intensely manual process, and it is a significant burden on limited human and financial resources of the Operating Carrier. Employees with the skills needed to extract information from visual examination of a lifted flight coupon have become increasingly scarce.

On any given day, tens of thousands of passengers fly on commuter carriers and foreign air carriers operating under

¹² Federal Aviation Administration Reauthorization Act of 1996, Section 1213 (Pub. L. 104-264).

code-share agreements. As a result of code-share ticketing procedures, the identity of the Operating Air Carrier is often hidden from an outside observer. When the Issuing Carrier does not provide the itinerary details to the Operating Air Carrier, via a TCN record or other means, then it is difficult for the Operating Air Carrier to determine whether any of the other Carriers whose Airline Designator appears on the ticket as the Marketing Carrier is scheduled to operate the flight. The industry has evolved into Code-Share agreements between Franchise Code-Share Partners and Mainline Partners, wherein the Mainline Partner holds the itinerary information yet the current rule holds the Franchise Code-Share Partner responsible for reporting the Ticketed Itinerary. The current rule, in effect, requires a Mainline Partner to prepare multiple O&D Survey reports because it must prepare one for itself and one for each Franchise Code-Share Partner.

We believe that the proposed designation of the Issuing Carrier as the Participating Carrier will result in significantly less manual intervention, matching, and processing than is required under the current rule. Participating Carriers will report those Ticketed Itineraries that they themselves issued and for which they have full information present in their internal systems. Removing the need for Mainline Partners to prepare O&D Survey reports for their Franchise Code-Share Partners is the reason why data can be gathered from 13 fewer Carriers without loss of information from missing Ticketed Itineraries. We therefore estimate that each Currently Participating Carrier will see a reduction in its annual reporting burden of 192 hours per year. Under the proposed reporting frequency, this equates to a reduction of 16 hours per month. Similarly, we estimate a Newly Participating Carrier's annual reporting burden to be equal to that of a Currently Participating Carrier.

We further anticipate that the costs of incorporating the proposed additional data elements are included in the initial reporting costs associated with the configuration of the reporting system. In addition, under the current rule, Participating Carriers are required to submit a 10 percent sample of Ticketed

Itineraries using specific sampling methods (49 U.S.C. Part 241 Section 19-7, Appendix A). We believe that the burden to a Carrier of extracting the prescribed 10 percent sample, particularly for Carriers that do not use ticket numbers, is greater than that of generating a dataset containing the full universe of tickets. We therefore expect that the incremental costs of reporting 100 percent of Ticketed Itineraries, rather than a specified 10 percent sample of Ticketed Itineraries, will be extremely small and that the total costs of electronically submitting 12 monthly reports should be very similar to the total costs of electronically submitting 4 quarterly reports.

Identifying the specific cost savings or cost increases associated with each of these issues is complex. However, we note that changes within the industry itself, as well as changes in Carriers' internal data processing systems, often yield considerable savings in the annual reporting burden. In its 2000 submission to OMB (65 FR 19961; April 13, 2000), the Department estimated a 200-hour per year per carrier, or 17 percent, reduction in annual reporting burden, from 1,152 hours to 952 hours. This estimated burden reduction was based on conversations with several large U.S. Air Carriers.

As part of our outreach activities, we spoke with the majority of U.S. Air Carriers about their current internal sales, accounting, and reservations systems and about their system requirements. These discussions were based, in part, on the comments we received in response to the ANPRM. As a result of these conversations, we estimate that these proposed changes—more data elements reported more frequently for all Ticketed Itineraries—to the O&D Survey, when combined with the processing changes inherent in the new reporting systems, are unlikely to result in cost increases and are more likely to yield relatively small savings. We estimate these savings to be 48 hours per year, or 4 hours per month, per Participating Carrier.

In its most recent submission to OMB (68 FR 49543; August 13, 2003), the Department estimated an average annual hourly burden of 960 hours per Participating Carrier. This is an increase of 8 hours per year over the estimate

submitted to OMB in 2000 and was based on the changed mix of reporting carriers (several smaller Carriers ceased reporting, thus increasing the average reporting burden for all Carriers). We make no adjustments to the average burden based on the mix of Participating Carriers because, although four small carriers are Newly Participating Carriers under the proposed rule, four of the Formerly Participating Carriers are also small Carriers. We define a small Carrier as a entity employing 1,500 or fewer employees (Air Passenger Carriers, Scheduled; NAICS Code 481111; SAIC Code 4512), as specified by the Small Business Administration's Table of Small Business Size Standards.

We therefore anticipate that the annual reporting burden for Participating Carriers, under the proposed rule, of preparing and submitting monthly O&D Survey data sets containing the proposed data elements and 100 percent of Ticketed Itineraries would not exceed 720 hours on an annual basis for each Participating Carrier. The resulting annual reporting cost per Participating Carrier would be approximately \$11,232 (based on an estimated industry salary rate of about \$15.60 per hour¹³). These estimated costs are based on staff hours only and do not include estimates for materials or other resources. We seek comment about the methods used to determine these annual reporting costs under the proposed rule.

Reporting Burdens for Participating Carriers. Under the proposed O&D Survey, we estimate a total initial reporting burden for all 38 Participating Carriers of \$1,488,520, or 27,064 hours. We estimate a total annual reporting burden for all 38 Participating Carriers of \$426,016, or 27,360 hours. Tables 8 and 9 (below) break out the reporting costs for Participating U.S. Air Carriers and Participating Foreign Air Carriers.

¹³The average hourly wage for the industry was estimated to be \$10.40 in 1997 (See 62 FR 6718, February 13, 1997). While wages have, in general, increased over the past seven years, many employees in the airline industry have experienced wage reductions and concessions. We therefore estimate the average hourly wage for the airline industry today to be \$15.60 (a 50% increase over the 1997 average hourly wage).

TABLE 8.—ESTIMATED REPORTING COSTS FOR PROPOSED O&D SURVEY U.S. AIR CARRIERS

	Initial reporting costs			Annual reporting costs		
	Hours per carrier	Total hours	Total cost	Hours per carrier	Total hours	Total cost
21 Currently Participating U.S. Air Carriers	694	14,574	\$801,570	720	15,120	\$235,872
4 Newly Participating U.S Air Carriers	867	3,468	190,740	720	2,880	44,928
25 Participating U.S. Air Carriers .....	.....	18,042	992,310	720	18,000	280,800

TABLE 9.—ESTIMATED REPORTING COSTS FOR PROPOSED O&D SURVEY FOREIGN AIR CARRIERS

	Initial reporting costs			Annual reporting costs		
	Hours per carrier	Total hours	Total cost	Hours per carrier	Total hours	Total cost
13 Currently Participating Foreign Air Carriers	694	9,022	\$496,210	720	9,360	\$146,016
0 Newly Participating Foreign Air Carriers	867	0	0	720	0	0
13 Participating Foreign Air Carriers .....	.....	9,022	\$496,210	720	9,260	146,016

ii. *Regulatory Assessment—Benefits.* The proposed rule (1) Expands the number of data elements reported on the O&D Survey, (2) expands the number of annual data submissions of the O&D Survey from four (quarterly) to twelve (monthly), and (3) expands the number of O&D Survey records reported by an individual carrier from a ten percent sample to the full universe of Ticketed Itineraries involving a U.S. point. Our initial regulatory assessment indicates that the benefits of the expanded information that would be collected under the proposed rule would accrue to the Department, other Federal government agencies and offices, Carriers, airports, and other stakeholders. These benefits substantially outweigh the additional costs associated with the initial reporting burden of reconfiguring existing, or obtaining new, systems to report the proposed O&D Survey.

The first benefit is associated with a reduction in annual hourly reporting burden. Under the proposed rule, a Currently Participating Carrier will see a 240-hour per year reduction in its annual hourly reporting burden, from 960 hours to 720 hours (See Section L.3.d.1.). The second benefit is the reduction in the set of Participating Carriers. Because the proposed rule designates the Carrier that issued the Ticketed Itinerary as the Participating Carrier, nine, or approximately 19 percent, fewer Carriers will submit the O&D Survey under the proposed rule. That is, under the proposed rule, fewer Participating Carriers with reduced annual burdens would provide more detailed information than is available

under the current rule. Other benefits are likely as well.

The change in reporting time frame will benefit reporting carriers by providing key industry data in a more timely fashion. We are proposing that data be disseminated as discussed in Section K.—Data Dissemination. Furthermore, data will be available by month of travel, rather than quarter of first travel, enabling a more fine-grained assessment of travel demand.

As discussed in Sections D.1. and D.2., a number of agencies within the Department, other Federal agencies, and other stakeholders rely on timely and accurate aviation data when making a variety of policy and business decisions. Monthly data releases will enhance both the usefulness and quality of the O&D Survey. That is, users will be able to assess travel at the monthly level, facilitating more precise analyses. Monthly data further clarify the changes in traffic flows due to seasonality, Carrier route changes, and preferred Carrier. O&D Survey data used in international negotiations would be more timely (*i.e.*, at most three months old) and aid the U.S.' position in these sensitive negotiations.

Monthly O&D submissions will enable the Department to respond more quickly to errors, late submissions, and other data quality concerns. In addition, because of the changes that are being considered for the T-100/T-100(f), monthly O&D submissions could be validated against monthly T-100/T-100(f) submissions. Carriers utilize these data to plan their businesses, accurately forecast potential new services, and, for new entrants, devise more accurate business plans based on real industry

demand data. Moving to monthly O&D Survey reporting and dissemination enhances the air carriers' access to this critical information. Furthermore, in their responses to the ANPRM, a number of Carriers recommended more timely reporting and more frequent availability of the data.

Carriers rely not only on timely data but also on detailed information to create more efficient and competitive markets, as well as to estimate the impact of new services at alternative airports. We believe that the proposed new data elements will provide valuable additional data for Carriers as they evaluate market entry and exit. Other stakeholders, discussed in Section D.3., also rely on these data.

The Department has been reporting Directional Passenger trips in the O&D Survey as the best substitute for True O&D since the inception of the O&D Survey. The additional data elements will enable the department to report True O&D according to the One-way Trip methodology widely used in the industry. This provides a much closer approximation to the True O&D than did the Directional Passenger trip methodology.

Flight arrival and departure times will provide a more accurate and useful view of passenger air travel. Similarly, the proposed change from a Directional Passenger to a One-way Passenger (See Section K.2.—Data Dissemination: Proposed Construction of One-way Trips) will enable the FAA and TSA to more effectively plan airport staffing requirements. The identification of passengers as traveling through an airport versus deplaning and remaining will support airport facility planning.

State and local transportation planners could also use this information for planning purposes.

Periodically, the Department has requested special data submissions from Carriers because national economic interests are at stake, but the O&D Survey and T-100/T-100(f) do not provide the requisite information. The 2003 SARS outbreak was one such instance. The war in Iraq is another example of a time when the Department has requested more detailed data. Responses to special requests for data, such as the previous examples, are costly in terms of time and other resources. The more robust data gathered by the O&D Survey and the T-100 under the proposed rule would largely eliminate the need for such requests.

The increase in the volume of data to be reported under the proposed rule will result in substantial benefits to Carriers as well as other stakeholders. Carriers currently must generate samples meeting the specific requirements of 14 CFR Section 19-7, Appendix A. The complex sampling methodology introduces the likelihood of sample errors. Furthermore, Carriers themselves have chosen more simplistic reporting processes when available. For example, although the Department permitted alternative sampling methodologies beginning in April 1986, such as sampling at least one percent of Ticketed Itineraries in major domestic markets, all Carriers reporting the O&D Survey have decided that the simplicity of using a single reporting selection criterion outweighs any savings that might accrue from sending the smaller volume of data. Similarly, we expect the process of submitting 100 percent of Ticketed Itineraries will be simpler and more efficient than the creation of more complex sampling techniques, such as stratified sampling or oversampling, intended to capture more representative samples of all markets, despite the larger volume of data.

The proposed changes will also reduce the burden of reporting for Participating Carriers by bringing the responsibility to report a Ticketed Itinerary into alignment with standard global Carrier accounting practices. These practices are based on the presumption that the Issuing Carrier has all the necessary information to report a Ticketed Itinerary; therefore, the Participating Carriers will generally be self-sufficient and able to report the itinerary.

Many Carriers can appear as Operating Carriers on a Ticketed Itinerary, but only one Carrier is the Issuing Carrier. When there are multiple

Operating Carriers in an itinerary, the second and subsequent Operating Carriers cannot know with certainty whether the first Operating Carrier reported the itinerary. There is a considerable burden placed on Operating Carriers in the current methodology to determine whether or not they have a responsibility to report any given multiple-Carrier itinerary. The proposed change in Participating Carrier dramatically lowers the burden to report by shifting the reporting responsibility to the Carrier that issued the Ticketed Itinerary and away from the Carrier that transported the passenger. This change will reduce the burden of reporting for Participating Carriers because it eliminates ambiguity.

Currently, if Carriers operate no aircraft with more than 60 seats, they are exempt from reporting. Since 1993, at least one carrier has gone from non-reporting (operating no aircraft with more than 60 seats) to reporting (operating some aircraft with more than 60 seats) to non-reporting (ceasing operation of all aircraft with more than 60 seats). As Carriers reconfigure existing equipment or increase their use of smaller aircraft, the threshold of 60 seats excludes Ticketed Itineraries that provide critical information about passenger air travel and fares. For example, the commencement of operations by Independence Air in June 2004 caused a profound adjustment of fares in small, medium and large markets in the Eastern half of the U.S. However, because Independence Air does not currently operate aircraft with more than 60 seats, it does not have to report O&D Survey data, thereby resulting in an incomplete picture of the effects of this Carrier's start of operations. When a major realignment of fares can result from the actions of a Carrier that qualifies for the small aircraft size exemption, then the small aircraft size exemption must be reevaluated.

When passengers fly their entire itineraries on smaller Carriers that are not required to report the O&D Survey, their travel will not be included under the existing system. Yet, their participation in the air transportation system is significant. By requiring all U.S. Air Carriers issuing tickets for travel to or from, or within, the U.S. operating aircraft with 15 or more seats to report O&D Survey data, the resulting passenger traffic database will contain the majority of Ticketed Itineraries issued by U.S. Air Carriers. The resulting data will capture the increasing role played by regional jets and regional Carriers in the domestic air transportation system.

EAS and the Small Community Air Service Development Program are directed towards smaller markets and require evaluation of service and fares. The Department's statutory responsibility to adapt the air transportation system to the present and future needs of commerce is much more extensive than the needs of the EAS program. Because these markets are inadequately represented in the current O&D Survey, the Department's mandate requires a disproportionately high amount of time and interest in studying markets with lower than average traffic. By requiring Participating Carriers to submit 100 percent of Ticketed Itineraries, the Department will have more accurate and reliable data for small markets impacted by Federal programs. The Department will also be able to compare data for small markets served by EAS or the Small Community Air Service Development Program with similar small markets that are not direct beneficiaries of these programs.

We seek to capture the complex interrelationships between Operating Carrier, Marketing Carrier, and Issuing Carrier. The reduced ambiguity obtained by requiring the Issuing Carrier to report the Ticketed Itinerary should eliminate the possibility that an itinerary will not be reported. In addition, the Issuing Carrier will have all of the necessary data present in its internal systems, maximizing the efficiency and accuracy of data reporting. The increasing role played by code-share agreements will be represented in the O&D Survey.

The benefits to all Carriers and all other stakeholders accrue from the first dissemination of data. Participating Carriers will have access to aggregated monthly data (See Section K—Data Dissemination) for the full universe of Ticketed Itineraries issued by Participating Carriers. Other stakeholders would also have access to more timely and more complete data.

The overall annual reporting burden for the 34 currently Participating Carriers decreases by 8,160 hours and \$127,296. Although we are asking four U.S. Air Carriers to begin reporting the O&D Survey, the proposed rule will no longer require 13 U.S. carriers to report. The annual savings for those 13 carriers are estimated to be 12,480 hours and \$194,688. These savings are 433 percent greater than the total estimated annual reporting cost for the four newly Participating U.S. Air Carriers.

Although the initial reporting burden for the 38 Participating Carriers is approximately \$1.49 million, the number of Participating Carriers will decrease. Under the current rule, 47 Participating Carriers have a collective

annual reporting burden of 45,120 hours. The 38 Participating Carriers would, under the proposed rule, have a collective annual reporting burden of 27,360 hours. The proposed rule, therefore, decreases the annual reporting burden by approximately 39%. That is, collectively, the 38 Participating Carriers would expend 17,760 hours per year less under the proposed rule. In the first year, these Participating Carriers face a one-time initial reporting burden of 27,260 hours.

We seek comment about these, and other, benefits that would accrue to any or all stakeholders as a result of the proposed rule.

e. Regulatory Analysis—T-100/T-100(f)

We are considering changes to the set of data elements reported under the T-100/T-100(f). These changes would not affect the definition of Reporting Carrier in 14 CFR Part 217 Section 217.3 and 14 CFR Part 241 Section 19-1. However, because the data elements being considered are flight-specific and are associated with scheduled passenger air transportation, all-cargo Carriers would not be affected by the proposed rule. Should we adopt the changes to the T-100/T-100(f) discussed in this NPRM, the remaining 230 Currently Reporting Carriers would be affected. Accordingly, although we are only considering, and not proposing, the additional data items for the T-100/T-100(f), we include estimates of the cost to Reporting Carriers (U.S. Air Carriers and Foreign Air Carriers) of including the data elements in their T-100/T-100(f) submissions.

i. *Regulatory Assessment—Costs.* For the 230 Currently Reporting Carriers, we estimated (1) the initial costs of revising the reporting systems to include the new data items being considered and (2) the annual costs of submitting the additional data elements that are being considered. The changes being considered do not change the reporting requirements and do not expand the set of Reporting Carriers; therefore, no estimates are made for Newly Reporting Carriers.

We estimate the total initial reporting costs for the changes being considered for the T-100/T-100(f) for all Currently Reporting Carriers to be approximately \$1.52 million, of which approximately \$799,000 would be expended by Currently Reporting U.S. Air Carriers. We estimate the annual reporting costs for the changes being considered for the T-100/T-100(f) for all Currently Reporting Carriers to be approximately \$387,504, of which approximately \$203,861 would be expended by Currently Reporting U.S. Air Carriers.

The incremental cost of the changes being considered for the T-100/T-100(f) is approximately \$86,000 for all Currently Reporting Carriers.

We recognize that the initial and annual reporting costs of individual Reporting Carriers are likely to differ and, for some Reporting Carriers, may be smaller than our estimates. Nevertheless, we have applied a single cost estimate in our regulatory assessment. In the past, the Department has provided to Reporting Carriers software to enable reporting of the T-100/T-100(f). Because the Department has not yet determined whether the modifications necessary under the proposed rule would be made to Department-provided T-100/T-100(f) reporting software, we do not assume that modified software would be made available to Reporting Carriers.

We recognize that some Reporting Carriers may choose to utilize third-party providers, for the initial system reconfiguration or for monthly data submission but we do not include estimates of third-party provider costs in this regulatory assessment. We are aware that third-party providers already serve the airline industry with systems that collect, bundle, process, and transfer data between Carriers and between Carriers and the Department. Thus, third-party providers may choose to customize or adjust existing data systems, already used by Reporting Carriers, to meet T-100/T-100(f) submission requirements if the changes being considered are adopted. We assume Reporting Carriers would select this option only if its costs were lower; as such, it is possible that Reporting Carriers that decide to use third parties would incur lower costs than those we have estimated. We seek comment about the costs and benefits of the use of third-party providers for submission of the T-100/T-100(f) should the changes we are considering be adopted.

Initial Reporting Burden. Currently Reporting Carriers will incur an initial reporting burden, based on the system changes that would be required to add the two data elements we are considering adding to the current T-100/T-100(f). However, should we adopt the changes being considered, Currently Reporting Carriers are expected to have these data elements within their internal systems and, therefore, we anticipate that Reporting Carriers would be able to access the data elements.

We anticipate that, if the changes we are considering are adopted, the Currently Reporting Carriers would create supplemental automated processes to produce the expanded T-

100/T-100(f) to access the additional data elements. The Department had previously (Docket OST-1996-1049-2) estimated that the addition of two capacity data items, available seats and available payload capacity, would not be an unreasonable burden because the data elements were not difficult to calculate or determine and were readily available to all air carriers through computer access. We believe the data elements that we are considering, Master Flight Number and flight date, should also be readily available to Carriers.

The cost to link the sources of Master Flight Number and flight date to Currently Reporting Carriers' existing T-100/T-100(f) reporting systems will be based on a number of factors, including the current level of integration of individual Carriers' systems. We believe that this cost would be significantly less than the cost estimated for the one-time changes to the O&D Survey reporting systems. We therefore estimate that Reporting Carriers would require, should the changes we are considering be adopted, the equivalent of two work weeks¹⁴ of internal development and testing and one work week of external testing and coordination with the Department, for a total of three work weeks, or 120 staff hours, to incorporate the changes into their systems.

Under the Service Contract Act of 1965 (as amended), the U.S. Department of Labor establishes the minimum hourly rate, excluding benefits, for Federal Contracts. In 2004, DOL estimated an hourly rate of \$27.62 per hour for the positions of Computer Programmer IV and Computer Systems Analyst III.¹⁵ We recognize that the carriers' hourly costs are likely to be higher, particularly for skilled employees with specialized knowledge of aviation data and reporting. Thus, we estimate an industry hourly cost for a computer programmer/analyst of \$55.00 per hour.

Given these assumptions, we estimate that, should the changes we are considering making to the T-100/T-100(f) be adopted, the initial reporting cost for the revised T-100/T-100(f) would be \$6,600, or 120 hours, per

¹⁴ One work week = 40 hours.

¹⁵ Source: http://www.procurement.irs.treas.gov/tirno04r00005/amend04/wage_determination.txt. Although these rates are for West Virginia, they are the most recent wages established by the government and are comparable, in the past, to rates assigned to other states and districts. We believe that they represent an accurate estimate of wages for this set of positions, effective in 2004. Furthermore, we do adjust the wages for this employment category to reflect the specialized requirements of the airline industry.

Currently Reporting Carrier. This estimated cost is based on staff hours only, and does not include estimates for materials or other resources. We seek comment about the methods used to determine the initial reporting cost under the changes being considered for the T-100/T-100(f).

Annual Reporting Burden. The current structure of the T-100/T-100(f) Market file groups traffic data by carrier, entity, Origin, Destination, and service class. The current structure of the T-100/T-100(f) Segment file further groups traffic data by aircraft type. The total number of records reported for each file type is dependent upon the extent to which traffic data can be grouped during the reporting period.

Hypothetically, in a given 31-day month, a Carrier operates one daily flight with one service class between a particular Origin Airport and Destination Airport. Under the current T-100/T-100(f) it would report one Market record summarizing the traffic data for that Carrier, entity, Origin, Destination, and service class for the entire month. It would report the number of Segment records corresponding to the different numbers of aircraft types used to service that route in that month. If the Carrier used only one aircraft type, it would report one Segment record. If it used two different aircraft types, it would report two Segment records, and so forth, for a maximum of 31 Segment records.

In the final rule adopting the T-100/T-100(f) reporting system (53 FR 46294, November 16, 1988; Referenced in Docket OST-96-1049-13), the Department estimated that the reporting burden for the entire T-100/T-100(f) system would vary between one hour and 20 hours per month per Reporting

Carrier, with an average of seven hours per monthly response. Therefore, submitting Segment records and Market records, grouped as described above, takes an average of seven hours per month, or 84 hours per year, per Reporting Carrier.

The changes that we are considering making to the T-100/T-100(f) would group Market records and Segment records by Master Flight Number and flight date, expanding the total number of records reported. As in the previous example, for a 31-day month, a hypothetical Carrier operates one daily flight, with a single Master Flight Number, with one service class, between a particular Origin Airport and Destination Airport. For that month, because there are 31 flight dates for that Master Flight Number, the Carrier would report 31 Market records (grouped by carrier, entity, Origin, Destination, service class, Master Flight Number, and flight date). It would report 31 Segment records (grouped by carrier, entity, Origin, Destination, service class, aircraft type, Master Flight Number, and flight date).

The estimated increase in annual reporting costs, for Currently Reporting Carriers, associated with the changes we are considering making to the T-100/T-100(f) is based on the increased costs to identify, store, and transmit records that are specific by Master Flight Number and flight date. We anticipate that these costs would be reduced through efficient reporting systems. We incorporate that assumption into our estimates of the initial reporting costs that Currently Reporting Carriers would incur if the changes we are considering are adopted. We therefore estimate that the monthly reporting would increase by 2 hours per month, or 24 hours per

year, for a total of 9 hours per month, or 108 hours per year.

Given these assumptions, we estimate the annual reporting cost for the T-100/T-100(f) would increase by \$375, or 24 hours, per Currently Reporting Carrier if the changes we are considering are adopted. This estimated cost is based on staff hours only and does not include estimates for materials or other resources. We therefore anticipate that the annual reporting burden for Reporting Carriers, should the changes we are considering be adopted, of preparing and submitting monthly T-100/T-100(f) data sets containing the additional data elements would average 108 hours, or approximately \$1,685 (based on an estimated industry salary rate of about \$15.60 per hour¹⁶), per Currently Reporting Carrier. These estimated costs are based on staff hours only and do not include estimates for materials or other resources. We seek comment about the methods used to determine these annual reporting costs given the changes we are considering making to the T-100/T-100(f).

Reporting Burden for Reporting Carriers. We are considering the addition of two data elements to the T-100/T-100(f). Should those changes be adopted, we estimate a total initial reporting burden for the 230 Currently Reporting Carriers of \$1,518,000, or 27,600 hours. We further estimate that adoption of the changes being considered would result in an annual reporting burden for all 230 Reporting Carriers of 24,840 hours, or \$387,504. This is an increase of 5,520 hours, or approximately \$86,000. In Tables 10 and 11, below, we break out the initial reporting costs and annual reporting costs for U.S. Air Carriers and Foreign Air Carriers.

TABLE 10.—ESTIMATED REPORTING COSTS FOR CHANGES BEING CONSIDERED FOR THE T-100 [U.S. Air Carriers]

	Initial reporting costs			Annual reporting costs		
	Hours per carrier	Total hours	Total cost	Hours per carrier	Total hours	Total cost
121 Currently Reporting U.S. Air Carriers	120	14,520	\$798,600	108	13,068	\$203,860

¹⁶ The average hourly wage for the industry was estimated to be \$10.40 in 1997 (See 62 FR 6718, February 13, 1997). While wages have, in general,

increased over the past seven years, many employees in the airline industry have experienced wage reductions and concessions. We therefore

estimate the average hourly wage for the airline industry today to be \$15.60 (a 50% increase over the 1997 average hourly wage).

TABLE 11.—ESTIMATED REPORTING COSTS FOR CHANGES BEING CONSIDERED FOR THE T-100(F)
[Foreign Air Carriers]

	Initial reporting costs			Annual reporting costs		
	Hours per carrier	Total hours	Total cost	Hours per carrier	Total hours	Total cost
109 Currently Reporting Foreign Air Carriers	120	13,080	\$719,400	108	11,772	\$183,643

iii. *Regulatory Assessment—Benefits.* We recognize that, by considering the collection of T-100/T-100(f) data by Master Flight Number and flight date, we would increase the total number of records to be submitted by Current Reporting Carriers. However, the addition of Master Flight Number and flight date would enable the T-100/T-100(f) to continue to be used to verify the O&D Survey. The proposed data elements will improve the quality and use of traffic data in decision making by enabling a maximum congruence between the T-100/T-100(f) and the O&D Survey. As such, it supports the benefits associated with the proposed changes to the O&D Survey (Section L.3.d.2). The changes being considered for the T-100/T-100(f) would, through data specific to Master Flight Number and flight date, provide additional information for airport and air traffic control planning. Stakeholders would have information about aircraft size, number of passengers, and flow of passengers and aircraft by time of day.

4. *Regulatory Flexibility Act of 1980, Small Business Regulatory Enforcement Fairness Act of 1996, Executive Order 13272*

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354; 94 Stat. 1164; codified at 5 U.S.C. 601) requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize the impact on small entities, and make their analyses available for public comment. It does not, however, seek preferential treatment for small entities, require agencies to adopt regulations that impose the least burden on small entities, or mandate exemptions for small entities.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 amended the Regulatory Flexibility Act of 1980. The Department has established a Guidance Manual on SBREFA.

Executive Order 13272 (67 FR 52462, August 16, 2002) requires each agency to establish written procedures and policies to promote compliance with the Regulatory Flexibility Act and to ensure

that potential impacts of draft rules on small entities will be properly considered. The Department has established Policies and Procedures for Implementing Executive Order 13272. We define a small Carrier as an entity employing 1,500 or fewer employees (Air Passenger Carriers, Scheduled; NAICS Code 481111; SAIC Code 4512), as specified by the Small Business Administration's Table of Small Business Size Standards.

a. *Affected Businesses*

The changes we are considering making to the T-100/T-100(f) would affect all Air Carriers that are required to report the T-100/T-100(f) under the current rule. The definition of Reporting Carrier is not affected by the possible changes. Previous changes to the T-100/T-100(f) were expected to affect approximately 100 small entities, and were certified as not having a significant economic impact on a substantial number of small entities (Docket OST-1998-4043; 67 FR 49217, July 30, 2002). Therefore, we believe that, if the changes we are considering making to the T-100/T-100(f) are adopted, there will likely be no significant economic impact on a substantial number of small entities.

The proposed changes to the O&D Survey would affect all Carriers operating aircraft with 15 or more seats and issuing tickets for travel on scheduled interstate passenger services to or from, or within, the U.S. Four small entities would cease to report the O&D Survey, while four different small entities would begin to report the O&D Survey. Small entities represent 9.5 percent of Participating Carriers under the proposed rule, and 100 percent of Newly Participating Carriers under the proposed rule. Our proposed rules do contain direct reporting, recordkeeping, or other compliance requirements that would affect small entities. However, the Department cannot exempt all small carriers from reporting the passengers they carry without jeopardizing the completeness and accuracy of the traffic statistics. Small entities are integrated into the fabric of the global aviation industry. Many passengers carried by

large U.S. Air Carriers begin their journeys on small Carriers. Exemption of that category of Ticketed Itineraries from reporting affects the integrity of the statistical data and would affect some markets disproportionately, thereby introducing bias into the data. The Department believes that the best way to minimize the negative effects of regulation on small entities is to correct the Department's reliance on Directional Passengers, change the reporting responsibility to the Issuing Carrier, and obtain information about 100 percent of Ticketed Itineraries.

Small entities benefit from cost-effective access to better information that is critical to making sound business decisions. Small entities are more dependent on the Department's data than are larger competitors which can afford alternative data sources. However, all Carriers must be confident that the statistical and financial data disseminated by the Department measure the industry accurately. The Department must use the correct metrics to reflect the global airline industry and must disseminate industry statistics in ways that are useful and understandable for all stakeholders. The proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) will increase the efficiency of all Carriers. More complete data reduce the need for supplemental reports and specialized data processing, which are a greater burden to smaller Carriers. Our new rules would also benefit most Carriers because, within confidentiality constraints, all Carriers will have access to data that accurately and completely reflect the state of the airline industry, including traffic and operating data. More timely data submission (by carriers) and data dissemination (by the Department) will enhance the usefulness of the collected data. Furthermore, small entities will benefit from complete (e.g., 100 percent) data for the markets they themselves serve.

Section 213(a) of SBREFA requires the Department to assist small entities in understanding the proposed rule so that they can better evaluate its effects of them and participate in the rulemaking process. We encourage small entities to

contact Richard Pittaway at the address listed under **FOR FURTHER INFORMATION CONTACT** with any questions about the proposed rule, its provisions, or options for compliance.

b. Initial Regulatory Flexibility Statement

We do not anticipate that the changes we are considering making to the T-100/T-100(f) will have a significant economic impact on a substantial number of small businesses. Although we anticipate that the proposed changes to the O&D Survey, and therefore the proposed rule, may have a significant economic impact on the four small entities that will become Newly Participating Carriers, we believe that the benefits gained by all small entities, including these four Carriers, offset the additional costs. Because four small entities will become Participating Carriers while four other small entities will no longer be required to report the O&D Survey, we believe that the net impact of the proposed rule is relatively small. Accordingly, I certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Interested persons may address our conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

c. O&D Survey

Inherent in the RFA is a desire to remove barriers to competition. New entrant competitors are the lifeblood of the airline industry, bringing innovations and new business concepts to the marketplace. Within the aviation sector, small entities are disadvantaged relative to larger entities. Large carriers have the resources and longevity to research and develop markets using costly information independent of the statistical data disseminated by the Federal government.

Small and new entrant Carriers depend on the Department's traffic data to a greater degree in planning their businesses than do larger and incumbent Carriers. Inaccurate and incomplete data disseminated by the Department disproportionately hinders small and new entrant Carriers. The Regional Airline Association (Docket OST-1998-4043-11), an association of small and medium-sized Carriers, stated in its ANPRM comments that "it is clear that for the U.S. regional airline industry, the current data collection process is both inappropriate and inconsistent. The current structure of reporting rules and regulations offer what the Association considers to be an approach to information gathering that

is out of step with the current operating environment for regional airlines."

Smaller airports are also disadvantaged under the current reporting requirements. These airports are often predominantly served by smaller, non-reporting Franchise Code-Share Partners; trips taken on non-reporting Carriers are missing from the O&D Survey data. Small airports that are served from only one hub are more vulnerable to circuitry factors inappropriately identifying a break in the direction of travel. Even if every part of a Ticketed Itinerary were reported correctly, small airports would still be disadvantaged because the 10 percent sample is less accurate and reliable for the small number of passengers traveling there. Without accurate and complete scheduled passenger traffic data, smaller airports are less able to schedule services, assess facilities demand, and identify growth opportunities.

As shown in Table 1, 38 U.S. Air Carriers will be affected by the proposed changes to the O&D Survey. Of the 13 formerly Participating Carriers (*i.e.*, those Carriers that would no longer submit the O&D Survey under the proposed rule), four are considered small business entities under the Small Business Administration's Table of Small Business Size Standards. The remaining nine have more than 1,500 employees and/or are subsidiaries of parent companies where the total employees are more than 1,500 employees.

All four of the newly Participating Carriers are considered small business entities under the Small Business Administration's Table of Small Business Size Standards. Because four small entities will no longer be required to report, and four different small entities will become Participating Carriers, there is a net addition of zero small business entities as Participating Carriers for the O&D Survey.

We anticipate that the proposed changes to the O&D Survey may have a significant economic impact on the small businesses affected. Small entities represent 100 percent of the newly Participating Carriers and 9.5 percent of Participating Carriers under the proposed rule. We believe that the annual reporting burden will be less for smaller entities because they generate, process, store, and submit fewer Ticketed Itineraries than larger entities. However, we recognize that the initial reporting burden will be proportionately greater for both the currently participating small entities and newly participating small entities.

The Department believes that the most significant reporting burden on small Carriers will be removed by shifting the reporting responsibility to the Issuing Carrier. The vast majority of small carriers, under the proposed system, would not be required to report the O&D Survey at all. Nonetheless, Carriers that issue Ticketed Itineraries on their own ticket stock remain a concern under SBREFA.

The Department recognizes that the markets served by Air Taxis and other similarly small operations represent a significantly different transportation market. The Department acknowledges that passengers in this market must be measured differently than the passengers in the global air transportation market. We do not wish to burden these truly small carriers serving local needs and have therefore not proposed to require them to report data. The Department wishes to reduce the ambiguity in a Carrier's classification as a Participating Carrier. Moving into and out of the Participating Carrier classification from time to time is problematic for both the Carrier concerned and for the community of users of the O&D Survey. This ambiguity in the current system has had a disproportionately negative impact on smaller entities since they are more likely to be affected by the current reporting threshold. Therefore, we propose that (1) carriers only flying planes within a single state, (2) carriers flying no aircraft with 15 or more seats, (3) non-scheduled air taxi services, and (4) non-scheduled helicopter carriers will continue to be exempt from reporting the O&D Survey.

Because small Carriers provide service to smaller markets, they will benefit from the additional traffic data that will be available under the proposed rule. EAS and the Small Community Air Service Development Program are directed towards smaller markets and require evaluation of service and fares. Under EAS, the Department determines the minimum level of service required at each eligible community by specifying a hub through which the community is linked to the global air transportation system, and specifying a minimum service level in terms of flights and available seats. Where necessary, the Department pays a subsidy to a Carrier to ensure that the specified level of service is provided. More detailed data will assist the Department in its allocation of funds to these programs and to eligible Carriers participating in them.

d. T-100/T-100(f)

As shown in Table 2, 121 U.S. Air Carriers would be affected by the changes we are considering making to the T-100. Because the proposed rule makes no change in the criteria for Reporting Carrier, we conclude that the number of small entities that would be impacted if the changes we are considering making are adopted is not affected by the content of those potential changes. Eighty-nine of the 121 U.S. Air Carriers that would be affected if the changes were adopted are small entities under the Small Business Administration's Table of Small Business Size Standards. Nine of the 121 entities are subsidiaries of larger airlines and the total employee base is greater than 1,500. Twenty-nine of the 121 entities have 1,500 or more employees. Of the remaining 89, 24 have been confirmed as having fewer than 1,500 employees and 59 are presumed to have fewer than 1,500 employees based on the total number of aircraft operated by the individual Carrier. Sources include internal departmental counts of Carriers' employees, the Regional Airline Association (<http://www.raa.org/members/AirlineDirectory.htm>) and Reference USA (<http://www.referenceusa.com>).

As with the proposed O&D Survey, we believe that the annual reporting burden associated with the changes we are considering making for the T-100/T-100(f) will be less for smaller entities because they operate fewer flights and, therefore, generate, process, store, and submit fewer records than larger entities. The estimated initial reporting burden, assuming adoption of the changes being considered, would be approximately 120 hours, or \$6,600 per carrier. However, we note that BTS has, in the past, provided T-100 reporting software to Carriers upon request. Small entities that have, in the past, relied upon BTS software to reduce or even eliminate the initial reporting burden associated with past changes to the T-100/T-100(f) may be able to continue to do so.

Furthermore, we note that when approximately 100 small entities first began to report the T-100, in place of Form 298-C, Schedule T-1, we found that change would not have a significant economic impact on a substantial number of small entities (67 FR 49217, July 30, 2002). Therefore, we conclude

that the changes we are considering making to the T-100/T-100(f) would not, if adopted, have a significant economic impact on the small businesses affected.

5. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (Pub. L. 104-113; 5 CFR 1320.0; 44 U.S.C. 3501 *et seq.*) requires each Federal agency to (1) Establish a process, independent of program responsibility, to evaluate proposed collections of information; (2) manage information resources to reduce information collection burdens on the public; and (3) ensure that the public has timely and equitable access to information products and services. Its purposes include (1) The minimization of the paperwork burden resulting from the collection of information by or for the Federal government; (2) ensuring the greatest possible public benefit from and maximization of the utility of information created, collected, maintained, used, shared and disseminated for or by the Federal government; (3) improving the quality and use of Federal information to strengthen decision making, accountability, and openness in government and society; (4) minimization of the cost to the Federal government of the creation, collection, maintenance, use, dissemination, and disposition of information; and (5) providing for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology.

The proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) contain collection-of-information requirements subject to the Paperwork Reduction Act. Under the Paperwork Reduction Act, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The reporting and recordkeeping requirement associated with this proposed rule is being sent to OMB for approval in accordance with the Paperwork Reduction Act, under OMB NO: 2139-0001 (for the O&D Survey) and OMB NO. 2138-0040 (for the T-100/T-100(f)).

The proposed changes to the O&D Survey are estimated to reduce the

annual reporting for U.S. Air Carriers from 960 hours per year (240 hours per submission, with data reported quarterly) to 720 hours per year (60 hours per submission, with data reported monthly). In addition, by designating the Issuing Carrier as the Participating Carrier, the proposed changes to the O&D Survey are estimated to reduce the number of Participating U.S. Air Carriers by nine (13 U.S. Air Carriers would cease to report while four U.S. Air Carriers would begin to report). In sum, under the proposed changes to the O&D Survey, the collective annual reporting burden for U.S. Air Carriers is estimated at 18,000 hours. When Foreign Air Carriers that operate under 49 U.S.C. 41308 and 41309 and are required, under grant of antitrust immunity, to report itineraries involving a U.S. point are included, the proposed changes to the O&D Survey are estimated to result in a collective annual reporting burden for the world airline industry of 27,360 hours. These data are detailed in Tables 8 and 9. If these changes are not made, the collective annual reporting burden for U.S. Air Carriers is estimated to be 32,640 hours and the collective annual reporting burden for the world airline industry is estimated to be 45,120.

The changes that we are considering making to the T-100/T-100(f) are estimated to increase the annual reporting burden for Reporting Carriers by 2 hours per month, or a total of 24 hours per year. If we were to make the changes to the T-100/T-100(f) that we are considering, the collective annual reporting burden for U.S. Air Carriers would be 13,068 hours and the collective annual reporting burden for the world airline industry would be 24,840. These data are detailed in Tables 10 and 11. If we do not make the changes we are considering, the collective annual reporting burden under the T-100/T-100(f) would be 10,164 hours for U.S. Air Carriers and 19,320 for the world airline industry.

Table 12, below, compares the collective annual reporting burden for the proposed O&D Survey changes to the collective annual reporting burden under the current rule. Table 13, below, compares the collective annual reporting burden for the changes we are considering making to the T-100/T-100(f) to the collective annual reporting burden under the current rule.

TABLE 12.—COLLECTIVE ANNUAL REPORTING BURDEN FOR U.S. AIR CARRIERS AND WORLD AIRLINE INDUSTRY
PROPOSED CHANGES VERSUS CURRENT RULE O&D SURVEY

	Proposed changes to O&D survey collective annual reporting burden (hours)	Current O&D survey collective annual reporting burden (hours)
U.S. Air Carriers	18,000	32,640
World Airline Industry	27,360	45,120

TABLE 13.—COLLECTIVE ANNUAL REPORTING BURDEN FOR U.S. AIR CARRIERS AND WORLD AIRLINE INDUSTRY
CONSIDERED CHANGES VERSUS CURRENT RULE T-100/T-100(F)

	Proposed changes to O&D survey collective annual reporting burden (hours)	Current O&D survey collective annual reporting burden (hours)
U.S. Air Carriers	13,068	10,164
World Airline Industry	24,840	19,320

a. O&D Survey

Agency: Office of the Secretary.
Title: Passenger Origin-Destination Survey Report.
Type of Request: Revision of a currently approved collection.
Affected Public: Businesses.
OMB Clearance Number (Current): 2139-0001 (expires 12/31/06).
OMB Clearance Number (Proposed): To be determined.
Requested Expiration Date of Approval: Three years from the date of approval.
Proposed Use of Information: Electronic Dissemination to Transportation Planners and Analysts.
Frequency: Monthly.
Summary of the Collection of Information: We are proposing that Issuing Carriers operating aircraft with at least 15 seats report 100 percent of the ticketed itineraries that they issue involving at least one Origin and/or Destination in the U.S. and to do so monthly. Data from the O&D Survey are used by the Department to fulfill its aviation mission.
Description of the Need for the Information and Proposed Use of the Information: To capture the proliferation of code-sharing and increased use of regional carriers, we will collect information on the Issuing Carrier, Marketing Carrier, and Operating Carrier as well as flight-specific data and information about passenger catchment areas.
Description of the Likely Respondents: Respondents are U.S. Air Carriers issuing tickets for service to, from, or within the U.S. and operating aircraft with 15 or more seats and Foreign Air Carriers that operate service involving a U.S. Point under 49 U.S.C. Sections 41308 and 41309.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: We estimate the total annual burden to 25 U.S. Air Carriers and 13 Foreign Air Carriers resulting from the proposed rule to be 27,260 hours and \$426,816. For Carriers reporting under the current rule, the proposed rule results in a net decrease of 240 hours per year per Carrier.
 b. T-100/T-100(f)
Agency: Office of the Secretary.
Title: Passenger Report of Traffic and Capacity Statistics—The T-100/T-100(f) System.
Type of Request: Revision of a currently approved collection.
Affected Public: Businesses.
OMB Clearance Number (Current): 2138-0040 (expires 7/31/05).
OMB Clearance Number (Proposed): To be determined.
Requested Expiration Date of Approval: Three years from the date of approval.
Proposed Use of Information: Electronic Dissemination to Transportation Planners and Analysts.
Frequency: Monthly.
Summary of the Collection of Information: We are considering requiring Carriers subject to T-100/T-100(f) reporting submit expanded T-100/T-100(f) reports containing two additional data elements. Data from the T-100/T-100(f) are used by the Department to fulfill its aviation mission.
Description of the Need for the Information and Proposed Use of the Information: The T-100/T-100(f) provides information about the movement of aircraft and passengers through the national air space system. The additional data elements will allow

a more detailed view of this traffic and enable the continuation of validating the enhanced O&D Survey with the T-100/T-100(f) reports.
Description of the Likely Respondents: Respondents are those U.S. Air Carriers subject to reporting under 14 CFR Part 241 and Foreign Air Carriers subject to reporting under 14 CFR Part 217.
Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: We estimate that, should the changes we are considering to the T-100/T-100(f) be adopted, the total annual burden would increase by 5,520 hours and \$86,112.
 6. *The National Environmental Protection Act of 1969*
 The Department has analyzed the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) for the purpose of the National Environmental Protection Act (Pub. L. 91-190 as amended; 42 U.S.C. 4321-4347). The proposed amendments will not have any impact on the quality of the human environment.
 7. *Executive Order 13132*
 Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), requires Federal agencies to adhere to the fundamental federalism principles set out in Section 2 as well as to adhere to the criteria specified in Section 3.
 The proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) have been analyzed in accordance with the principles and criteria contained in Executive Order 13132. We have determined that the proposed rule will have no substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment or to warrant consultations with State and local governments.

8. Executive Order 12630

Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1998; 3 CFR 1988 Comp., p.554), specifies that Federal Agencies should be sensitive to, anticipate, and account for, the obligations imposed the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions, among other purposes.

The proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) would not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

9. Executive Order 12988

Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996), seeks to improve legislative and regulatory drafting to enact legislation and promulgate regulations that do not unduly burden the Federal Court System, among other purposes.

The proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) meet applicable standards in Sections 3(a) and Section 3(b)(2), of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Executive Order 13045

We have analyzed the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19883, April 23, 1997). The proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) do not concern an environmental risk to health or risk to safety that may disproportionately affect children.

11. Executive Order 13175

The proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and

will not preempt tribal law. Therefore, they are exempt from the consultation requirements of Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (65 FR 67249, November 9, 2000). If tribal implications are identified during the comment period, we will undertake appropriate consultations with the affected Indian tribal officials.

12. Executive Order 13211

We analyzed the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) are not classified as a "significant energy action" under that order and would not have a significant adverse effect on the supply, distribution, or use of energy.

13. OMB Circular No. A-76 (Revised)

We have analyzed the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) under Circular No. A-76 (revised), Performance of Commercial Activities. It is the policy of the Federal government to ensure that the American people receive maximum value for their tax dollars by subjecting certain activities of the government to competition. We find that the activity of collection of data under the proposed changes to the O&D Survey and the changes being considered for the T-100/T-100(f) may be deemed a commercial activity.

14. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2105-AC71 contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

M. Glossary

1. Air Carrier. Any citizen of the United States who undertakes, whether directly or indirectly or by lease or any other arrangement to engage in air transportation.

2. Airline Designator. The two character airline identifier as listed in the IATA Airline Coding Directory.

3. ARC. Airlines Reporting Corporation (ARC) is a clearinghouse

owned collectively by Carriers to collect ticket information and funds from individual travel agencies and distribute the information and funds to the appropriate Carriers.

4. ARNK. Arrival unknown.

5. Carrier. A U.S. Air Carrier or Foreign Air Carrier.

6. City Code. The IATA location identifier assigned to a city associated with multiple airports.

7. Currently Participating Carrier. An Air Carrier or Foreign Air Carrier that is required to report the O&D Survey under the current rule and would be required to report the O&D Survey proposed in this rulemaking.

8. Currently Reporting Carrier. An Air Carrier or Foreign Air Carrier that is required to report the T-100/T-100(f) under the current rule and would be required to report the T-100/T-100(f) under the rule proposed in this rulemaking.

9. Designated Carrier Liaison. An individual authorized to act on behalf of the Participating Carrier in operational matters pertaining to the Carrier's collection of data and subsequent submission of the data to the Department.

10. Directional Passenger. A passenger's continuous trip in the same direction regardless of the number of days the journey takes, but subject to certain circuitry rules designed to approximate the passenger's True O&D.

11. Fare Category. A summary category of fare basis codes.

12. Franchise Code-Share. A code-share relationship wherein one Carrier markets air travel as a wet-lease on another Carrier's flights whether or not a wet-lease agreement per se actually exists, and wherein one of the Carrier's partners will never appear as the Marketing Carrier for the other.

13. Franchise Code-Share Partner. In a Franchise Code-Share, the Carrier that is reported in the O&D Survey as the Operating Carrier but not as the Marketing Carrier.

14. Flight-Coupon Stage. The portion of a Ticketed Itinerary that lies between two sequential points of a Ticketed Itinerary. A passenger's Flight-Coupon Stage may involve multiple takeoffs and landings. A Flight-Coupon Stage may be on any scheduled transportation held out and ticketed by the Issuing Carrier.

15. Flight-Stage. The operation of an aircraft from takeoff to landing. Technical stops are disregarded.

16. Flight-Stage Origin Airport. The airport identifier of the airport from which a Flight-Stage departs. For intermodal ticketed ground stations, such as a bus station or a train station,

that station should be treated as an airport.

17. Flight-Stage Destination Airport. The airport identifier of the airport in which a Flight-Stage arrives. For intermodal ticketed ground stations, such as a bus station or a train station, that station should be treated as an airport.

18. Foreign Air Carrier. An airline that is not a U.S. Air Carrier.

19. Formerly Participating Carrier. An Air Carrier or Foreign Air Carrier that is required to report the O&D Survey under the current rule but would not be required to report the O&D Survey under the rule proposed in this rulemaking.

20. Formerly Reporting Carrier. An Air Carrier or Foreign Air Carrier that is required to report the T-100/T-100(f) under the current rule but would not be required to report the T-100/T-100(f) under the rule proposed in this rulemaking.

21. Issuing Carrier. The Air Carrier or Foreign Air Carrier that is responsible for the ticket stock on which the Ticketed Itinerary is issued and that is responsible for collecting the remuneration for the fare and the taxes and fees. Also known as plating carrier.

22. Issuing Carrier Identifier. The IATA assigned code that identifies the Carrier that issued a Ticketed Itinerary.

23. Licensed Foreign Air Carrier. A Foreign Air Carrier with a permit issued under the requirement described in 49 U.S.C. 41301.

24. Mainline Partner. In a Franchise Code-Share, the Mainline Partner is the Carrier that appears as the marketing carrier.

25. Marketing Carrier. The Carrier that appears as the Carrier for a Flight-Coupon Stage on a Ticketed Itinerary, whether or not it actually operates the flight.

26. MIDT. The Marketing Information Data Tape is information, sold by a GDS, about air travel reservations made through travel agents.

27. Newly Participating Carrier. An Air Carrier or Foreign Air Carrier that is not required to report the O&D Survey under the current rule but would be required to report the O&D Survey under the rule proposed in this rulemaking.

28. Newly Reporting Carrier. An Air Carrier or Foreign Air Carrier that is not required to report the T-100/T-100(f) under the current rule but would be required to report the T-100/T-100(f) under the rule proposed in this rulemaking.

29. One-way Trip. A collection of information about a journey of one or more Flight-Stages of a Ticketed

Itinerary, which are associated with one another using a standard methodology that is designed to approximate the passenger's True O&D.

30. One-way Trip Origin. The first airport of a One-way Trip.

31. One-way Trip Destination. The final airport of a One-way Trip.

32. Operating Carrier. The Carrier whose aircraft and flight crew are used to perform a Flight-Coupon Stage.

33. Participating Carrier. An Air Carrier or Foreign Air Carrier that is required to report the O&D Survey.

34. Passenger, Nonrevenue. A person traveling free or under token charges, except those expressly named in the definition of Revenue Passenger; a person traveling at a fare or discount available only to employees or authorized persons of air carriers or their agents or only for travel on the business of the carriers; and an infant who does not occupy a seat. The definition includes, but is not limited to following examples of passengers when traveling free or pursuant to token charges:

a. Directors, officers, employees, and others authorized by the air carrier operating the aircraft;

b. Directors, officers, employees, and others authorized by the air carrier or another carrier traveling pursuant to a pass interchange agreement;

c. Travel agents being transported for the purpose of familiarizing themselves with the carrier's services;

d. Witnesses and attorneys attending any legal investigation in which such carrier is involved;

e. Persons injured in aircraft accidents, and physicians, nurses, and others attending such persons;

f. Any persons transported with the object of providing relief in cases of general epidemic, natural disaster, or other catastrophe;

g. Any law enforcement official, including any person who has the duty of guarding government officials who are traveling on official business or traveling to or from such duty;

h. Guests of an air carrier on an inaugural flight or delivery flights of newly-acquired or renovated aircraft;

i. Security guards who have been assigned the duty to guard such aircraft against unlawful seizure, sabotage, or other unlawful interference;

j. Safety inspectors of the National Transportation Safety Board or the FAA in their official duties or traveling to or from such duty;

k. Postal employees on duty in charge of the mails or traveling to or from such duty;

l. Technical representatives of companies that have been engaged in

the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purpose of in-flight observation and subject to applicable FAA regulations;

m. Persons engaged in promoting air transportation;

n. Air marshals and other Transportation Security officials acting in their official capacities and while traveling to and from their official duties; and

o. Other authorized persons, when such transportation is undertaken for promotional purpose.

35. Passenger, Revenue. A passenger for whose transportation an air carrier receives commercial remuneration. This includes, but is not limited to, the following examples:

a. Passengers traveling under publicly available tickets including promotional offers (for example two-for-one) or loyalty programs (for example, redemption of frequent flyer points);

b. Passengers traveling on vouchers or tickets issued as compensation for denied boarding or in response to consumer complaints or claims;

c. Passengers traveling at corporate discounts;

d. Passengers traveling on preferential fares (Government, seamen, military, youth, student, etc.);

e. Passengers traveling on barter tickets; and

f. Infants traveling on confirmed-space tickets.

36. Reporting event. The event that signals the Participating Carrier to report a Ticketed Itinerary.

37. Reporting Carrier. An Air Carrier or Foreign Air Carrier that is required to report the T-100/T-100(f).

38. TCN. The Transmission Control Number record is a record used to share information about a Ticketed Itinerary between a GDS and multiple Carriers or between one Carrier and multiple Carriers.

39. Ticketed Itinerary. The collection of information from an Air Travel Ticket, issued by an Air Carrier or Foreign Air Carrier to a Revenue Passenger. The collection of information about a journey shall be unique for the Issuing Carrier for the Date of Issue.

40. True O&D. A passenger's view of a purposeful trip of one or more Flight-Stages, one or more of which include travel by scheduled air transportation, measured from the beginning of the trip (origin) until the end of the trip (destination), where the individual intends to conduct business or engage in leisure activity.

41. United States. The States of the United States, the District of Columbia,

and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

List of Subjects

14 CFR Part 241

Air carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

14 CFR Part 249

Air carriers, Reporting and recordkeeping requirements, Truth in lending, Uniform System of Accounts.

N. Proposed Rule

Accordingly, the Department proposes to amend 14 CFR chapter II as follows:

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR AIR CARRIERS

1. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

2. Sections 26–1 through 26–5 and an undesignated center heading are added to read as follows:

Passenger Origin—Destination Survey

Section 26–1 Applicability

(a) Participating Carriers shall provide data for the Passenger Origin-Destination Survey (O&D Survey). Participating Carriers shall prepare information from Ticketed Itineraries for submission as described in Appendix A to this section and as described in the Passenger Origin-Destination Survey Directives issued by the Department of Transportation.

(b) Participating Carriers with special operating characteristics may request a waiver and propose an alternative O&D Survey collection and reporting procedure to the Department. Such departures from the prescribed O&D Survey practices shall not be authorized unless approved in writing by the Department.

(c) A Participating Carrier in the O&D Survey shall include:

(1) All Air Carriers issuing Ticketed Itineraries for interstate or international scheduled passenger services and that operate aircraft with 15 or more seats, and

(2) Foreign air carriers licensed to hold out service to the U.S. under 49 U.S.C. 41301 and that have been granted antitrust immunity for an alliance with a U.S. Air Carrier partner under 49 U.S.C. 41308 and 41309 and operate aircraft with 15 or more seats when

issuing Ticketed Itineraries that include an airport within the U.S.

(d) Carriers that qualify as a Participating Carrier after the effective date of this regulation will be required to:

(1) File O&D Survey data for testing purposes no more than 30 days after qualifying as a Participating Carrier and

(2) File O&D Survey data as of the first day of the month that begins more than 60 days and no more than 91 days after the month the carrier qualifies as a Participating Carrier.

Section 26–2 Submission of Reports to the O&D Survey

(a) Each Participating Carrier shall submit to the Department, in the manner specified in the Passenger Origin-Destination Survey Directives, information about Ticketed Itineraries it issues. The information about Ticketed Itineraries to be reported is found in Appendix A of this section.

Section 26–3 Certification and Authentication

(a) *Certification.* (1) Each Participating Carrier shall designate an elective officer, an executive or a director or such other person as may be authorized by the carrier to serve as the Designated Company Official. The Participating Carrier shall disclose the individual's name, title and such contact information as the Department specifies in the Passenger Origin-Destination Survey Directives.

(2) The Participating Carrier's Designated Company Official shall:

(a) Certify the authenticity and accuracy of the Participating Carrier's submission of O&D Survey data to the Department,

(b) Maintain the accuracy of the Participating Carrier's information on file with the Department,

(c) Provide the Department with a source and accuracy statement, and

(d) Authorize a Designated Carrier Liaison to act on behalf of the Participating Carrier in operational matters pertaining to the company's collection and submission of the O&D Survey.

(3) The certification of the reports, embodied in Schedule A thereof, shall read as follows: I, the undersigned (Title of certifying official) of the (Full name of the Participating Carrier) do certify that reports and supporting documents which are submitted for the O&D Survey are prepared under my direction: that I carefully examined them and that they correctly reflect the accounts and records of the company, and to the best of my knowledge and belief are a complete and accurate statement of the

Ticketed Itineraries to be reported in the periods reported; that the various items herein reported were determined in accordance with the standard accounting practices of the company; and that the data contained herein are reported on a basis consistent with that of the preceding report except as specifically noted in explanations that preceded the submission of the Ticketed Itineraries.

(b) *Source and Accuracy Statement.* The Participating Carrier's Source and Accuracy Statement shall disclose the Participating Carrier's data source, data collection methodology, and measures to assure data quality.

(c) *Designated Company Official.* A Participating Carrier's Designated Company Official may authorize an agent to prepare and to file the O&D Survey information on behalf of the Participating Carrier. Such an arrangement does not alter the obligation of the Participating Carrier to deliver the information properly, deliver the information promptly, and certify the completeness and accuracy of the information.

(d) *Designated Carrier Liaison.* The Participating Carrier's Designated Carrier Liaison will serve as the point of contact between the Department and the Participating Carrier for the resolution of reporting issues.

Section 26–4 Retention and Accessibility of Data

Each Participating Carrier shall maintain its prescribed operating statistics in a manner and at such locations as will permit ready accessibility for examination by representatives of the Department. The record retention requirements are prescribed in part 249 of this chapter.

Section 26–5 Confidentiality of Data.

Data covering the operations of Air Carriers and Foreign Air Carriers will not be available to the public when the data would cause damaging competitive impact on the Air Carriers or Foreign Air Carriers and when adverse effects upon the public interest would result from disclosure of the data.

3. Appendix A to section 26 is added to read as follows:

Appendix A to Section 26—Instructions to Participating Carriers for Collecting and Reporting Passenger Origin-Destination Survey Statistics

I. Participating Carriers shall provide data for the O&D Survey. The authority for these instructions is found in 14 CFR part 241, section 26, and in the CAB Sunset Act of 1984 (Pub. L. 94–443).

(a) Submission of reportable itineraries.

(1) All Ticketed Itineraries issued by the Participating Carrier shall be submitted to the Department as described in the Passenger Origin-Destination Survey Directives issued by the Department of Transportation.

(2) The source of information for the O&D Survey data shall be the information recorded about a Ticketed Itinerary issued to a Revenue Passenger by a Participating Carrier. The Participating Carrier shall record the information about the complete routing of the Ticketed Itinerary by Flight-Stage the first time the Participating Carrier receives evidence that the passenger has used the Ticketed Itinerary for transportation. Evidence that the passenger has used the Ticketed Itinerary for transportation shall include notification from the Participating Carrier's own accounting function or flight boarding control function that the passenger has been transported or notification from another Air Carrier or Foreign Air Carrier that the Ticketed Itinerary has been used for transportation.

(b) Information about Ticketed Itineraries to be reported.

(1) The data to be recorded and reported from Participating Carriers shall include the following data elements for each Ticketed Itinerary:

a. *Issuing Carrier Identifier*: The Issuing Carrier's assigned IATA recognized three-character identification code.

b. *Ticketed Itinerary Identifier*: The alphanumeric identifier for the Ticketed Itinerary.

c. *Date of Issue*: The local date on which the Ticketed Itinerary was issued.

d. *Fare Amount*: The monetary amount the Issuing Carrier receives from the ticket purchaser, excluding government imposed taxes and fees, and including the carrier-imposed fees and surcharges, such as fuel surcharges, for the carriage of a passenger and allowable free baggage on the passenger's complete itinerary, denominated in U.S. dollars, and accurate to two decimal places, rounded.

e. *Ticketing Entity Outlet Type*: The location type code for the distribution channel that issued the Ticketed Itinerary. The Department's codes for use in this data element will be listed in the Passenger Origin-Destination Survey Directives issued by the Department and will be consistent with standard industry practice.

f. *Customer Loyalty Program Identifier*: The Carrier or alliance customer loyalty program identifying code under which the passenger accrues benefits. The Department's codes for use in this data element will be listed in the Passenger Origin-Destination Survey Directives issued by the Department.

g. *Customer Loyalty Program Award Indicator*: The one character identifying code to indicate that customer loyalty program credits were expended in obtaining the Ticketed Itinerary.

h. *Number of Passengers*: The count of passengers traveling on the Ticketed Itinerary.

i. *Itinerary Copy Date*: 02-14-05 the date that the Participating Carrier copied O&D Survey information from the Ticketed Itinerary.

(2) The data to be recorded and reported, as many times as necessary, from

Participating Carriers shall include the following data elements repeated for each tax or fee imposed by local, state, and national government authorities in all countries that are applicable to the Ticketed Itinerary:

a. *Government-imposed tax/fee identifier*: The identification code of each government-imposed tax and government-imposed fee. The Department's codes for use in this data element will be listed in the Passenger Origin-Destination Survey Directives issued by the Department.

b. *Government-imposed tax/fee amount*: This field will contain the value of the tax or fee specified by the identifier that precedes it, denominated in U.S. dollars and accurate to two decimal places, rounded.

(3) The data to be recorded and reported, as many times as necessary, from Participating Carriers shall include the following data elements for each Flight-Stage in the order that they appear in the Ticketed Itinerary:

a. *Flight-Stage Sequence Number*: The two character ordinal sequence number beginning with 01 that uniquely identifies the Flight-Stage of a Ticketed Itinerary.

b. *Flight-Stage Origin Airport*: The IATA location identifier of the airport from which a Flight-Stage departs. For intermodal ticketed ground stations, such as a bus station or a train station, that station should be treated as an airport.

c. *Flight-Stage Destination Airport*: The IATA location identifier of the airport in which a Flight-Stage arrives. For intermodal ticketed ground stations, such as a bus station or a train station, that station should be treated as an airport.

d. *Marketing Carrier Code*: The IATA Airline Designator of the Air Carrier or Foreign Air Carrier marketing the Flight-Stage.

e. *Operating Carrier Code*: The IATA Airline Designator of the Air Carrier or Foreign Air Carrier operating the equipment used on the Flight-Stage.

f. *Scheduled Flight Date*: The date on which the Flight-Stage is scheduled to depart.

g. *Master Flight Number*: The scheduled Carrier Code and true flight number under which the flight inventory is managed.

h. *Scheduled Departure Time*: The local time the flight is scheduled to depart from the Flight-Stage Origin Airport.

i. *Scheduled Arrival Time*: The local time the flight is scheduled to arrive at the Flight-Stage Destination Airport.

j. *Scheduled Arrival Date*: The local date on which the flight is scheduled to arrive at the Flight-Stage Destination Airport.

k. *Fare Basis Code/Ticket Designator*: The carrier-assigned alphanumeric code identifying the fare by class, qualification, and restriction associated with the Flight-Stage.

l. *Ticketing Class of Service*: a one-character code indicating the service cabin within the aircraft in which the passenger is scheduled to be seated under the fare rules stated for each Flight-Stage of the Ticketed Itinerary.

(c) Means of reporting.

(1) Participating Carriers shall report data in an electronic Report Transmission

according to the instructions in the Passenger Origin-Destination Survey Directives issued by the Department of Transportation.

(d) Corrections to reported information.

(1) When Participating Carriers discover that data have been incorrectly reported or improperly reported, the Participating Carrier shall immediately notify the Department of Transportation according to the instructions found in the Passenger Origin-Destination Survey Directives issued by the Department. The Participating Carrier shall correct the problem and resend the complete record of information about the incorrectly or improperly reported Ticketed Itineraries according to the procedures found in the Passenger Origin-Destination Survey Directives.

II. Glossary

Airline Designator means an airline's IATA identifier for the purpose of marketing flights and listing them in standard publications such as the OAG.

Air Travel Ticket means one or more paper or electronic documents or other evidence of contract issued by an Air Carrier or Foreign Air Carrier to record information about a passenger's complete itinerary of travel when air travel comprises at least one part of the journey.

Customer Loyalty Program Identifier means the identifying code of the Carrier or alliance customer loyalty program under which the passenger accrues benefits.

Date of Issue means the date an Air Carrier or Foreign Air Carrier issued the Ticketed Itinerary to a passenger.

Designated Carrier Liaison means the individual that will serve as the point of contact between the Department and the Participating Carrier for the resolution of operational submission issues.

Designated Company Official means an elective officer, an executive or a director or such other person as may be authorized by the carrier to certify the accuracy of information supplied to the Department and to specify a Designated Carrier Liaison.

Fare Amount means the monetary amount the Issuing Carrier receives from the ticket purchaser, excluding government-imposed taxes and fees, and including the Carrier-imposed fees and surcharges, such as fuel surcharges, for the carriage of a passenger and allowable free baggage on the passenger's complete itinerary denominated in U.S. dollars and accurate to two decimal places, rounded.

Fare Basis Code/Ticket Designator means the alphanumeric code identifying the fare by class, qualification, and restriction associated with the Flight-Stage.

Fare Category means a summary category of fare basis codes.

Flight-Coupon Stage means the portion of an itinerary that lies between two sequential points of a Ticketed Itinerary. A passenger's Flight-Coupon Stage may involve multiple takeoffs and landings. A Flight-Coupon Stage may be on any scheduled transportation held out and ticketed by the Issuing Carrier.

Flight-Stage Destination Airport means the airport identifier of the airport in which a Flight-Stage arrives. For intermodal ticketed ground stations, such as a bus station or a

train station, that station should be treated as an airport.

Flight-Stage Origin Airport means the airport identifier of the airport from which a Flight-Stage departs. For intermodal ticketed ground stations, such as a bus station or a train station, that station should be treated as an airport.

Flight-Stage Sequence Number means the two character ordinal sequence number beginning with 01, followed by 02 etc. that uniquely identifies each Flight-Stage of a Ticketed Itinerary in the sequence to be traveled by the passenger. *Government-Imposed Tax/Fee Amount* means the monetary amount of the tax or fee associated with the corresponding Government-Imposed Tax/Fee Identifier, denominated in U.S. Dollars and accurate to two decimal places, rounded.

Government-Imposed Tax/Fee Identifier means the identification code of a tax or fee.

Issuing Carrier means the plating Air Carrier or Foreign Air Carrier that is responsible for the ticket stock on which the itinerary is issued. Also, the Air Carrier or Foreign Air Carrier that is responsible for collecting the remuneration for the fare and the taxes and fees from the purchaser of a Ticketed Itinerary.

Issuing Carrier Identifier means the IATA recognized identification code on file at the Department that uniquely identifies the carrier that issued the Ticketed Itinerary.

Itinerary Copy Date means the date that the Participating Carrier copied O&D Survey information from the Ticketed Itinerary.

Marketing Carrier Code means the IATA Airline Designator of the Air Carrier or Foreign Air Carrier that appears on a Ticketed Itinerary as if it will operate the Flight-Stage, whether or not it actually operates the Flight-Stage.

Marketing Flight Number means the number assigned by the Marketing Carrier to the Flight-Stage that appears in the Ticketed Itinerary.

Master Flight Number means the scheduled Carrier Code and true flight number under which the flight inventory is managed.

Number of Passengers means the count of passengers traveling on a Ticketed Itinerary.

One-way Trip means a journey taken by a Passenger, described on Ticketed Itinerary, from the One-way Trip Origin to the One-way Trip Destination.

One-way Trip Origin means the first airport of a One-way Trip.

One-way Trip Destination means the final airport of a One-way Trip.

Operating Carrier Code means the carrier code of the Air Carrier or Foreign Air Carrier operating the equipment used on the Flight-Stage.

Participating Carrier means an Air Carrier or Foreign Air Carrier that is required to report the O&D Survey.

Report Transmission means a regularly scheduled electronic transmission of information about a collection of Ticketed Itineraries including the transmission identification information specified in the Passenger Origin-Destination Survey Directives issued by the Department.

Scheduled Arrival Time means the local time at which the Flight-Stage is scheduled to arrive at the Flight-Stage Destination Airport.

Scheduled Departure Time means the local time at which the Flight-Stage is scheduled to depart from the Flight-Stage Origin Airport.

Scheduled Flight Date means the local date on which the Flight-Stage is scheduled to depart.

Source and Accuracy Statement means a disclosure of the Participating Carrier's data source, data collection methodology, and measures taken to assure the quality of the data submitted to the Department.

Ticketed Itinerary means the collection of information from an Air Travel Ticket, issued by an Air Carrier or Foreign Air Carrier to a Revenue Passenger.

Ticketed Itinerary Identifier means the primary identifier of a Ticketed Itinerary. The Ticketed Itinerary Identifier must be unique for the Air Carrier or Foreign Air Carrier for the Date of Issue. The Ticketed Itinerary Identifier may a combination of alphanumeric characters and blanks.

Ticketing Class of Service means a one-character code indicating the service cabin

within the aircraft in which the passenger is scheduled to be seated for each Flight-Stage of the Ticketed Itinerary.

Ticketing Entity Outlet Type means the identifier of the distribution channel through which the Ticketed Itinerary was issued.

PART 249—PRESERVATION OF AIR CARRIER RECORDS

4. The authority citation for part 249 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 413, 417.

§ 249.20 [Amended]

5. Amend the table in § 249.20 by adding a new entry 11 to read as follows:

§ 249.20 Preservation of records by certificated air carriers.

* * * * *

SCHEDULE OF RECORDS

Category of records	Retention period
* * * * *	
11. All books, records, and other source and summary documentation that support the carrier's T-100 reports filed under Rural Service Improvement Act of 2002 (Pub. L. 107-206).	7 years
* * * * *	

Issued in Washington, DC on: January 31, 2005.

Norman Y. Mineta,
Secretary.

[FR Doc. 05-2861 Filed 2-16-05; 8:45 am]

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Federal Register

**Thursday,
February 17, 2005**

Part III

Department of Commerce

Bureau of the Census

15 CFR Part 30

**Foreign Trade Regulations: Mandatory
Automated Export System Filing for All
Shipments Requiring Shipper's Export
Declaration Information; Proposed Rule**

DEPARTMENT OF COMMERCE**Bureau of the Census****15 CFR Part 30**

[Docket Number 031009254-4355-02]

RIN 0607-AA38

Foreign Trade Regulations: Mandatory Automated Export System Filing for All Shipments Requiring Shipper's Export Declaration Information**AGENCY:** Bureau of the Census, Commerce Department.**ACTION:** Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Census Bureau (Census Bureau) proposes to amend the Foreign Trade Statistics Regulations (FTSR) to implement provisions in the Foreign Relations Authorization Act. Specifically, the Census Bureau proposes to require mandatory filing of export information through the Automated Export System (AES) or through the AES*Direct* for all shipments where a Shipper's Export Declaration (SED) is currently required. In addition to requiring mandatory AES filing, the proposed rule makes other changes to the FTSR. These additional changes are discussed in detail in the

SUPPLEMENTARY INFORMATION section.**DATES:** Submit written comments on or before April 18, 2005.

ADDRESSES: Please direct all written comments on this proposed rule to the Director, U.S. Census Bureau, Room 2049, Federal Building 3, Washington, DC 20233. You may also submit comments, identified by RIN number 0607-AA38, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Please follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, U.S. Census Bureau, Room 2104, Federal Building 3, Washington, DC 20233-6700, by phone (301) 763-2255, by fax (301) 457-2645, or by e-mail: c.harvey.monk.jr@census.gov.

SUPPLEMENTARY INFORMATION:**Background***Reporting Requirements*

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The paper SED and the AES are the primary media used for collecting export trade data, and the

information contained therein is used by the Census Bureau for statistical purposes only. Information reported in the AES is referred to as Electronic Export Information (EEI). The SED and the EEI also are used for export control purposes under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users. Information collected through the SED or AES is exempt from public disclosure unless the Secretary of Commerce determines that such exemption would be contrary to the national interest under the provisions of Title 13, U.S.C., Chapter 9, Section 301(g).

Under current regulations, export information is compiled from both paper and electronic transactions filed by the exporting community with the Bureau of Customs and Border Protection (CBP, formerly the U.S. Customs Service) and the Census Bureau. The AES is an electronic method for filing the paper SED information directly with CBP and the Census Bureau. The AES*Direct* is the Census Bureau's free Internet-based system for filing SED information with the AES. Future references to the AES also shall apply to the AES*Direct* unless otherwise specified.

A paper SED or the equivalent EEI is currently required, with certain exceptions, for exports of goods from the United States, including Foreign Trade Zones (FTZs) located therein, Puerto Rico, and the U.S. Virgin Islands to foreign countries; for exports between the United States and Puerto Rico; and for exports to the U.S. Virgin Islands from the United States or Puerto Rico. The SED or the EEI also is required for all exports requiring a license from the Bureau of Industry and Security (BIS), a license or license exception from the Department of State, or other government agency, regardless of value, unless exempted from the requirement for a SED or EEI by the licensing government agency.

Electronic Filing

Electronic filing strengthens the U.S. Government's ability to prevent the export of certain items by unauthorized parties to unauthorized destinations and end users, because AES aids in targeting and identifying suspicious shipments prior to export and affords the government the ability to significantly improve the quality, timeliness, and coverage of export statistics. Since July 1995, the AES has served as an information gateway for the Census Bureau and CBP to improve the reporting of export trade information,

customer service, compliance with and enforcement of export laws, and provide paperless reports of export information.

On November 29, 1999, the President signed into law the Proliferation Prevention Enhancement Act of 1999, which authorized the Secretary of Commerce to require the mandatory filing of items on the Commerce Control List (CCL) and the U.S. Munitions List (USML). Regulations implementing this requirement were effective October 2003 (see 68 FR 42533-42543). On September 30, 2002, the President signed into law the Foreign Relations Authorization Act, Public Law 107-228. This law authorizes the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Homeland Security, to publish regulations in the **Federal Register** mandating that all persons who are required to file export information via the SED under Chapter 9 of Title 13, U.S.C. file such information through the AES.

The Foreign Relations Authorization Act further authorizes the Secretary of Commerce to issue regulations regarding imposition of penalties, both civil and criminal, for the delayed filing, failure to file, and false filing of export information and/or using the AES to further any illegal activity. The Act provides for administrative proceedings for imposition of a civil penalty for violation(s) of Public Law 107-228. Finally, the Act authorizes the Secretary of Commerce to designate employees of the Office of Export Enforcement of the Department of Commerce to perform the enforcement functions in Title 13, U.S.C., Chapter 9, and delegate to customs officials in the U.S. Department of Homeland Security authority to enforce these same provisions.

On October 22, 2003, the Census Bureau published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** (68 FR 60301) announcing the Census Bureau's intent to propose a rule mandating electronic filing through the AES of all information on export shipments where a SED is required and allowing the public to comment on this subject. The Census Bureau received and responded to two (2) non-substantive comments to the ANPR. One commenter expressed continued support for postdeparture filing with mandatory AES filing. The second commenter was concerned about the ability to file complete export information prior to exportation under the mandatory filing system. Specifically, the commenter was concerned that accurate quantity data would not be available in the time frames required by the revised regulations. The Census Bureau did not

change the proposed rule in response to these comments since post-departure filing remains an option under the proposed rule to allow approved exporters the option to file export information within ten working days from the date of exportation.

Program Requirements

To comply with the requirements of Public Law 107-228, the Census Bureau proposes amending in its entirety the FTSR to specify the requirements for the mandatory reporting of all export information through the AES when a SED is required. All future references to the SED shall be referred to as AES.

The Census Bureau proposes amending the FTSR to include the following changes:

- Rename the FTSR to "Part 30—Foreign Trade Regulations" (FTR) to more accurately reflect the scope of the revised regulations implementing full mandatory AES filing, such as the inclusion of Department of State requirements and the advanced filing requirement implemented by CBP.

- Remove requirements for filing a paper SED (Option 1), Form 7525-V, from Title 15, Code of Federal Regulations (CFR), part 30, so that AES will be the only mode for filing information currently required by the SED.

- Remove requirements for filing the intransit SED, Form 7513, from 15 CFR part 30. Responsibility for Form 7513 was transferred to the U.S. Department of the Army, U.S. Army Corps of Engineers.

- In § 30.2, list types of export transactions outside the scope of 15 CFR part 30 and thus the FTR. The list of out-of-scope transactions included in § 30.2 is not all-inclusive, but includes those types of shipments about which the Census Bureau receives frequent inquiries on how to report export information. These types of shipments are to be excluded from EEI filing.

- In § 30.2(a)(2), include language specifying the four optional means for filing EEI of which two methods require the development of AES software using the Automated Export System Trade Interface Requirements (AESTIR).

- In § 30.3, include language specifying that in "routed" transactions, the U.S. principal party in interest (USPPI) will compile and transmit export information on behalf of the foreign principal party in interest (FPPI) when authorized by the FPPI. This language is consistent with the language of § 758.3 of the Export Administration Regulations and permits the USPPI to act as an agent of the FPPI upon the written authorization by the FPPI.

- In § 30.5, revise the postdeparture (formerly Option 4) approval procedures. Certification and approval requirements for postdeparture filing of EEI were strengthened to address U.S. national security concerns and interests. Applications submitted by USPPIs for postdeparture filing will be subjected to closer scrutiny by the Census Bureau and other federal government partnership agencies participating in the AES postdeparture filing review process. Under the proposed revised postdeparture filing requirements: (1) authorized agents may no longer apply for postdeparture filing status on behalf of individual USPPIs. Only USPPIs may apply; (2) USPPIs must demonstrate the ability to meet AES predeparture filing requirements by filing EEI to the AES before applying for approval for postdeparture filing; (3) USPPIs must meet a minimum number of shipments requirement before being authorized to file postdeparture; and (4) partnership agencies of the U.S. Government shall determine whether or not a USPPI poses a significant threat to U.S. national security before granting the applicant postdeparture filing status.

- In § 30.4, specify the time and place-of-filing requirements for presenting proof of filing citations, postdeparture filing citations, and/or exemption legends. Specific time and place-of-filing requirements are included in the FTR in accordance with provisions of Section 341(a) of Public Law 107-210, the Trade Act of 2002. With the exception of State Department USML shipments under the control of the International Traffic in Arms Regulations and shipments approved for postdeparture filing, EEI with the appropriate proof of filing citations and/or exemption legends is required to be transmitted to the exporting carrier within specified time frames depending on the mode of transportation used. For example, transmissions for vessel cargo shall be provided to the exporting carrier no later than 24 hours prior to departure of the vessel from the U.S. port where cargo is laden. Time and place-of-filing requirements for other modes of transportation also are presented in § 30.4 of the proposed FTR. Currently, export information, with appropriate proof of filing citations and/or exemption legends, is only required to be presented to the exporting carrier prior to exportation.

- In § 30.4(b)(1) and § 30.4(b)(3) specify how to file EEI and acquire an ITN when AES, AESDirect or the participant's AES is unavailable for filing.

- In § 30.6, add language specifying the specific procedure for reporting the

value of goods to the AES when inland freight and insurance charges are not known at the time of exportation. When goods are sold at a point other than the port of export, freight, insurance, and other charges required to move the goods from their U.S. point of origin to the carrier at the port of export must be added to the selling price (or cost, if not sold) of the goods. Where the actual amount of freight, insurance, and other domestic charges are not available, an estimate of the domestic cost must be made and added to the cost or selling price of the goods to obtain the value to be reported to the AES.

- In § 30.6, add requirements for transmitting a Routed Transaction Indicator and a Vehicle Identification Qualifier to the list of data elements required to be reported to the AES. Both the Routed Transaction Indicator and the Vehicle Identification Qualifier indicate the conditions of other data elements reported to the AES. The Routed Transaction Indicator gives an indication of whether or not the EEI reported represents a routed export transaction. The Vehicle Identification Qualifier, when reported, identifies the type of used vehicle exported.

- Remove requirements for the Date of Arrival and the Waiver of Prior Notice Indicator from the list of data elements required to be reported to the AES. These data elements were previously required to overcome disparities in reporting requirements for certain export shipments sent between the United States and Puerto Rico. With mandatory AES reporting, the Date of Arrival and Waiver of Prior Notice Indicator are no longer required, since shipments sent between the United States and Puerto Rico will no longer be reported differently than other export shipments.

- Reference in subpart B export control and export licensing issues relevant to 15 CFR part 30. This subpart proposes to add references to export control and licensing requirements of the Department of State and other Federal agencies in addition to expanding those of the Department of Commerce's BIS. General guidelines for obtaining export control and licensing information also are presented for use by preparers and filers of EEI. The purpose of this subpart is to consolidate references to export control issues. No new requirements are introduced.

- In § 30.29, revise the language that describes the proper manner for reporting cost of repairs and/or alterations to goods, and the reporting of the value of replacement parts exported. The previous version of the FTSR did not specifically describe the manner in

which these export transactions would be reported. Goods previously imported for repair and alteration only, and reexported, shall only include the value for parts and labor. Goods exported as replacement parts shall only include the value of the replacement part. No new requirements are specified in § 30.29.

- Reference in subpart E carrier and manifest issues pertaining to provisions relevant to 15 CFR part 30. Carrier and manifest issues are consolidated in subpart E. Requirements for SEDs being attached to the manifest are replaced with requirements for proof of filing citations and/or exemption legends to be shown on the bill of lading, air waybill, or other commercial loading documents attached to the manifest. Specific requirements for annotating the bill of lading, air waybill, or other commercial loading documents are included in § 30.7, subpart A of part 30.

- Reference in subpart F reporting requirements for import shipments relevant to 15 CFR part 30, including requirements for the electronic filing of statistical data for shipments imported into FTZs. Currently, requirements for electronically reporting FTZ admissions are included in the Census Bureau's "Automated Foreign Trade Zone Reporting Program" manual. Added to subpart F are instructions to import filers on where to obtain information on reporting import data. Requirements for information on imports of goods into Guam are excluded from the FTR since Guam collects its own information on goods entering and leaving the area.

- Create a new subpart H to cover FTR penalty provisions formerly addressed in § 30.95 of the FTSR. New penalty provisions referenced in subpart H of this part describe the increase in penalties imposed for violations from \$100 to \$1,000 per each day of delinquency, to a maximum from \$1,000 to \$10,000 per violation. In addition, the penalty provisions provide for situations when the filer knowingly fails to file, files false and/or misleading information and other violations of the FTR where a civil penalty shall not exceed \$10,000 per violation and a criminal penalty shall not exceed \$10,000 or imprisonment for not more than five (5) years, or both, per violation. Finally, subpart H provides for the enforcement of these penalty provisions by the Bureau of Industry and Security's Office of Export Enforcement (OEE) and the Department of Homeland Security's CBP, Immigration and Customs Enforcement (ICE).

- Make other non-substantive revisions including revisions to language incorporated from the current

FTSR, to clarify the intent of the regulations.

The Departments of State and Homeland Security concur with the provisions contained in this notice of proposed rulemaking.

Rulemaking Requirements

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have a significant impact on a substantial number of small entities. This action would require that USPPIs or authorized agents in the United States file export information through the AES for all shipments where a SED is required under the current FTSR.

The SBA's table of size standards indicates that businesses that are the USPPI or authorized agent and file export information are considered small businesses if they employ less than 500 people. Based on year 2001 data, the Census Bureau estimates that there are 91,000 USPPIs that are considered small entities under the Small Business Act. Over 90 percent of USPPIs use an authorized agent to file export documentation. An estimate of the number of authorized agents is not known.

The Census Bureau anticipates that the new requirement would not significantly affect the small businesses that must now file through the AES. It is unlikely that the regulations requiring mandatory use of the AES to file export information would affect a substantial number of small entities because more than 90 percent of USPPIs that are considered small entities use an authorized agent to file export documentation. Also, while this regulation would likely affect a substantial number of agents that are small entities it is not likely that the effect will be significant. The majority of agents require use of a computer to perform required tasks. These agents are unlikely to be significantly affected by this new requirement, as they currently possess the technology and equipment to submit the information through the AES. The Census Bureau has provided a free Internet-based system, *AESDirect*, especially for small businesses to submit their export information electronically. It would not be necessary for small businesses to purchase software for this task. For these reasons, if this proposed rule is adopted, this rule would not have a significant economic impact on a substantial number of small entities.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. This rule contains a collection-of-information subject to the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and that has been approved under OMB control number 0607-0152. The estimated burden hours for filing the SED information through AES and related documents (*e.g.*, the Letter of Intent (LOI) and *AESDirect*) are 752,000. In addition, this rule contains a collection of information that has been approved under OMB control numbers: OMB No. 1651-0022 (Entry Summary—CBP-7501), OMB No. 1651-0027 (Record of Vessel, Foreign Repair, or Equipment—CBP-226), and OMB No. 1651-0029 (Application for Foreign Trade Zone Admission and Status Designation—CBP-214). The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Census Bureau proposes to revise 15 CFR part 30 to read as follows:

PART 30—FOREIGN TRADE STATISTICS

Subpart A—General Requirements

Sec.

30.1 Purpose and definitions.

30.2 General requirements for filing Electronic Export Information.

30.3 Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.

- 30.4 Electronic Export Information filing procedures, deadlines, and certification statements.
- 30.5 Electronic Export Information filing application and certification processes and standards.
- 30.6 Electronic Export Information data elements.
- 30.7 Annotating the bill of lading, air waybill, and other commercial loading documents with the proper proof of filing citations, approved postdeparture filing citations, downtime filing citation, and exemption legends.
- 30.8 Time and place for presenting proof of filing citations, postdeparture filing citations, downtime filing citation, and exemption legends.
- 30.9 Transmitting and correcting Automated Export System information.
- 30.10 Authority to require production of documents and retaining electronic data.
- 30.11–30.14 [Reserved]

Subpart B—Export Control and Licensing Requirements

- 30.15 Introduction.
- 30.16 Export Administration Regulations.
- 30.17 Customs and Border Protection Regulations.
- 30.18 Department of State regulations.
- 30.19 Other federal agency regulations.
- 30.20–30.24 [Reserved]

Subpart C—Special Provisions and Specific-Type Transactions

- 30.25 Values for certain types of transactions.
- 30.26 Reporting of vessels, aircraft, cargo vans, and other carriers and containers.
- 30.27 Return of exported cargo to the United States prior to reaching its final destination.
- 30.28 “Split shipments” by air.
- 30.29 Reporting of repairs and replacements.
- 30.30–30.34 [Reserved]

Subpart D—Exemptions from the Requirements for the Filing of Electronic Export Information

- 30.35 Procedure for shipments exempt from filing requirements.
- 30.36 Exemption for shipments destined to Canada.
- 30.37 Miscellaneous exemptions.
- 30.38 Exemption from the requirements for reporting complete commodity information.
- 30.39 Special exemptions for shipments to the U.S. armed services.
- 30.40 Special exemptions for certain shipments to U.S. Government agencies and employees.
- 30.41–30.44 [Reserved]

Subpart E—General Carrier and Manifest Requirements

- 30.45 General statement of requirement for the filing of carrier manifests with proof of filing citations for the electronic submission of export information or exemption legends when Automated Export System filing is not required.
- 30.46 Requirements for the filing of export information by pipeline carriers.

- 30.47 Clearance or departure of carriers under bond on incomplete manifests.
- 30.48–30.49 [Reserved]

Subpart F—Import Requirements

- 30.50 General requirements for filing import entries.
- 30.51 Statistical information required for import entries.
- 30.52 Foreign Trade Zones.
- 30.53 Import of goods returned for repair.
- 30.54 Special provisions for imports from Canada.
- 30.55 Confidential information, import entries, and withdrawals.
- 30.56–30.59 [Reserved]

Subpart G—General Administrative Provisions

- 30.60 Confidentiality of Electronic Export Information.
- 30.61 Statistical classification schedules.
- 30.62 Emergency exceptions.
- 30.63 Office of Management and Budget control numbers assigned pursuant to the Paperwork Reduction Act.
- 30.64–30.69 [Reserved]

Subpart H—Penalties

- 30.70 Violation of the Clean Diamond Trade Act.
- 30.71 False or fraudulent reporting on or misuse of the Automated Export System.
- 30.72 Civil penalty procedures.
- 30.73 Enforcement.
- 30.74–30.99 [Reserved]

Appendix A To Part 30—Format for the Letter of Intent, Automated Export System

Appendix B To Part 30—Sample for Power of Attorney and Written Authorization

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization plan No. 5 of 1990 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended; Pub. L. 107–228, September 30, 2002.

Subpart A—General Requirements

§ 30.1 Purpose and definitions.

(a) This part sets forth the Foreign Trade Regulations (FTR) as required under provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. These regulations are revised pursuant to provisions of the Foreign Relations Authorization Act, Public Law 107–228. This Act authorizes the Secretary of Commerce, with the concurrence of the Secretary of State and the Secretary of Homeland Security, to publish regulations mandating that all persons who are required to file export information under Chapter 9 of Title 13, U.S.C., file such information through the Automated Export System (AES) for all shipments where a Shipper's Export Declaration (SED) was previously required. The law further authorizes the Secretary of Commerce to

issue regulations regarding imposition of civil and criminal penalties for violations of the provisions of these regulations.

(b) Electronic filing through the AES strengthens the U.S. Government's ability to prevent the export of certain items by unauthorized parties to unauthorized destinations and end users because AES aids in targeting, identifying, and when necessary confiscating suspicious or illegal shipments prior to exportation.

(c) *Definitions used with Electronic Export Information.* As used in this part, the following definitions apply:

AES Applicant. The USPPI or authorized agent who applies to the Census Bureau for authorization to report information electronically to the AES, or through *AESDirect* or its related applications.

AESDirect. A free Internet application supported by the Census Bureau that allows USPPIs or their agents to transmit EEI to the AES via the Internet, at <http://www.aesdirect.gov>.

AES Downtime Filing Citation. A statement used in place of a proof of filing citation when the AES or the AES participant's computer system experiences a major failure. The downtime filing citation must appear on the bill of lading, air waybill, or other commercial loading documentation.

Air Waybill. The shipping document used for the transportation of air freight: Includes conditions, limitations of liability, shipping instructions, description of commodity, and applicable transportation charges. It is generally similar to a straight non-negotiable bill of lading and is used for similar purposes.

Alongside. A phrase referring to the side of a ship. Goods to be delivered “alongside” are to be placed on the dock within reach of a transport ship's tackle so that they can be loaded aboard the ship.

Annotation. An explanatory note (e.g., proof of filing citation, postdeparture filing citation, AES downtime filing citation, or exemption legend) placed on the bill of lading, air waybill, or other loading document.

Authorized Agent. An individual or legal entity domiciled in or otherwise under the jurisdiction of the United States that has obtained power of attorney or written authorization from a USPPI or FPPI to act on its behalf, and for purposes of this part, to complete and file the EEI.

Automated Broker Interface (ABI). A CBP system through which an importer or licensed customs broker can electronically file entry and entry

summary data on goods imported into the United States.

Automated Export System (AES). The electronic system, including *AESDirect*, for collecting Shipper's Export Declaration information (or any successor document) from persons exporting goods from the United States, Puerto Rico, or the U.S. Virgin Islands; between Puerto Rico and the United States; and to the U.S. Virgin Islands from the United States or Puerto Rico.

Automated Export System Trade Interface Requirements (AESTIR). The document that describes the operational requirements of the AES. The AESTIR presents record formats and other reference materials used in the AES.

Automated Foreign Trade Zone Reporting Program (AFTZRP). The electronic reporting program used to transmit statistical data on goods admitted into a FTZ directly to the Census Bureau.

Bill of Lading (BL). A document that establishes the terms of a contract between a shipper and a transportation company under which freight is to be moved between specified points for a specified charge. Usually prepared by the authorized agent on forms issued by the carrier, it serves as a document of title, a contract of carriage, and a receipt for goods.

Bond. An instrument used by CBP as a security to ensure the performance of specific acts, such as the payment of duties and taxes or the provision of manifest information.

Bonded Warehouse. An approved private warehouse used for the storage of goods until duties or taxes are paid and the goods are properly released by CBP. Bonds must be posted by the warehouse proprietor and by the importer to indemnify the government if the goods are released improperly.

Booking. A reservation made with a carrier for a shipment on a specific voyage or flight.

Buyer. The entity who has entered into the export transaction to purchase the commodities for delivery to the ultimate consignee.

Cargo. Goods being transported.

Carnet. An international customs document permitting the holder to carry or send goods temporarily into certain foreign countries without paying duties or posting bonds.

Carrier. An individual or legal entity in the business of transporting passengers or goods. Airlines, trucking companies, railroad companies, shipping lines, pipeline companies, non-vessel operating common carriers, and slot charterers are all examples of carriers.

Civil Penalty. A monetary penalty imposed on a USPPI or authorized agent for failing to file export information, filing false or misleading information, filing information late, and/or using the AES to further any illegal activity.

Commerce Control List (CCL). A list of all items—commodities, software, and technical data—that are subject to BIS export controls. It incorporates not only the national security controlled items agreed to by the Coordinating Committee on Multilateral Export Controls, but also items controlled for foreign policy and other reasons.

Commodity. Articles exchanged in trade, and commonly used to refer to raw materials and bulk-produced agriculture products.

Compliance Alert. A notice sent to the filer by the AES when the shipment was not reported in accordance with this part (e.g., late filing). The filer is required to review filing practices and take steps to conform with export reporting requirements.

Consignee. The person or entity named in a freight contract to whom goods have been consigned and that has the legal right to claim the goods at the destination.

Consignment. Delivery of goods from an exporter (the consignor) to an agent (consignee) under agreement that the agent sells the goods for the account of the exporter. The consignor retains title to the goods until sold. The consignee sells the goods for commission and remits the net proceeds to the consignor.

Container. A uniform, sealed, reusable metal "box" in which goods are shipped by vessel, truck, or rail.

Controlling Agency. The agency responsible for the license determination on specified goods exported from the United States.

Country of Origin. The country where the goods were mined, grown, or manufactured or where each foreign material used or incorporated in a good underwent a change in tariff classification under the applicable rule of origin for the good. The country of origin for U.S. imports shall be reported in terms of the International Standards Organization (ISO) codes designated in the Schedule C, Classification of Country and Territory Designations.

Country of Ultimate Destination. The country where the goods are to be consumed, further processed, or manufactured, as known to the shipper at the time of exportation.

Criminal Penalty. For the purpose of this part, a penalty imposed for knowingly failing to file export information, filing false or misleading information, filing information late, and/or using the AES to further illegal

activity. The criminal penalty includes fines, imprisonment, and/or forfeiture.

Customs Broker. An individual or entity licensed to enter and clear imported goods through CBP for another individual or entity.

Destination. The foreign place to which a shipment is consigned.

Distributor. An agent who sells directly for a supplier and maintains an inventory of the supplier's products.

Domestic Exports. Commodities that are grown, produced, or manufactured in the United States, and commodities of foreign origin that have been changed in the United States, including changes made in a U.S. FTZ, from the form in which they were imported, or that have been enhanced in value by further manufacture in the United States.

Domicile. A place of permanent residence or business.

Drayage. The charge made for hauling freight, carts, drays or trucks.

Dun & Bradstreet Number (DUNS). The DUNS Number is a unique 9-digit identification sequence that provides identifiers to single business entities while linking corporate family structures together.

Dunnage. Materials placed around cargo to prevent shifting or damage while in transit.

Duty. A charge imposed on the import of goods. Duties are generally based on the value of the goods (ad valorem duties), some other factor such as weight or quantity (specific duties), or a combination of value and other factors (compound duties).

Electronic Export Information (EEI). The electronic equivalent of the export data formerly collected on the Shipper's Export Declaration (SED) now mandated to be filed through the AES or *AESDirect*.

Employer Identification Number (EIN). The USPPI's Internal Revenue Service Employer Identification Number is the 9-digit numerical code as reported on the Employer's Quarterly Federal Tax Return, Treasury Form 941.

End-User. The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not an authorized agent or intermediary, but may be the purchaser or ultimate consignee.

Enhancement. A change or modification to goods that increases their value.

Entry Number. Consists of a three-position entry filer code and a seven-position transaction code, plus a check digit assigned by the entry filer as a tracking number for goods entered into the United States.

Equipment Number. The identification number for shipping

equipment, such as container or igloo number, truck license number or rail car number.

Exception. A determination by BIS that releases the USPPPI or the authorized agent from the necessity to apply for a license from the agency.

Exemption. A specific reason as cited within this part that eliminates the requirement for filing EEI.

Exemption Legend. A notation placed on the bill of lading, air waybill, or other commercial loading document that describes the basis for not filing EEI for an export transaction. The exemption legend shall reference the number of the section or provision in this part where the particular exemption is provided (for example, § 30.38).

Export. To send or transport goods out of a country for consumption in another country.

Export Control. The establishment of procedures for the governmental control of exports for statistical or strategic purposes.

Export Control Classification Number (ECCN). Formerly Export Commodity Classification Number within the CCL. Every product on the CCL has an ECCN consisting of a five-character number that identifies categories, product groups, strategic level of control, and country groups.

Export License. A controlling agency document authorizing export of particular goods in specific quantities or values to a particular destination. Issuing agencies include but are not limited to: The U.S. State Department, Bureau of Industry and Security, and Bureau of Alcohol, Tobacco, and Firearms.

Export Statistics. Export statistics measure the quantity or value of goods (except for shipments to U.S. military forces overseas) moving out of the United States to foreign countries, whether such goods are exported from within the Customs territory of the United States, a CBP bonded warehouse, or a U.S. FTZ.

Export Value. The estimated worth of goods at the port of export; for example, the selling price or the cost (if the goods are not sold) including inland or domestic freight, insurance, and other charges to the U.S. port of export.

Fatal Error Message. A notice sent to the filer by the AES when invalid data or a critical condition has been encountered and the EEI has been rejected. The filer is required to immediately address the problem, correct the data, and retransmit the EEI.

Foreign Exports. Commodities of foreign origin that have entered the United States for consumption, for entry into a CBP bonded warehouse or U.S.

FTZ, and which, at the time of exportation, are in substantially the same condition as when imported.

Foreign Principal Party in Interest (FPPI). The party shown on the transportation document to whom final delivery or end-use of the goods will be made. If the FPPI is in the United States when the goods are purchased or obtained for export, it must be shown as the USPPPI. If an individual representing the foreign entity does not possess an EIN or SSN, their passport number, border crossing card number, or other official document number must be shown in the USPPPI field of the EEI.

Foreign Trade Zone (FTZ). Special commercial and industrial areas in or near ports of entry where foreign and domestic goods, including raw materials, components, and finished goods, may be brought in without being subject to payment of customs duties. Goods brought into these zones may be stored, sold, exhibited, repacked, assembled, sorted, graded, cleaned, or otherwise manipulated prior to reexport or entry into the country's customs territory.

Forwarding Agent. The person in the United States who is authorized by the principal party in interest to move the cargo from the United States to the foreign destination and/or prepare and file the required documentation.

Goods. Merchandise, supplies, raw materials, and products.

Harmonized System. A method of classifying goods in international trade developed by the Customs Cooperation Council (now the World Customs Organization).

Harmonized Tariff Schedule (HTS). An organized listing of goods and their duty rates, developed by the U.S. International Trade Commission, that is used by CBP as the basis for classifying imported products, including establishing the duty to be charged and providing statistical information about imports and exports.

Imports. All goods physically moving into the United States, including:

- (1) Commodities of foreign origin and
- (2) Goods of domestic origin returned to the United States with no change in condition, or after having been processed and/or assembled in other countries.

Inbond. A procedure established by CBP under which goods are transported or warehoused under CBP supervision until the goods are either formally entered into the customs territory of the United States and duties paid, or until they are exported from the United States. The procedure is so named because the cargo moves under the carrier's bond (financial liability assured

by the carrier) from the gateway seaport or airport and remains "in bond" until CBP releases the cargo at the inland Customs point or at the port of export.

Inland Freight. The cost to ship commodities between domestic ports and points inland by rail, air, road, or water, other than baggage, express mail, or regular mail.

Intermediate Consignee. The person or entity in the foreign country who acts as an agent for a principal party in interest with the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

Internal Transaction Number (ITN). The system generated number assigned to a shipment confirming that the AES transmission was accepted and is on file in AES.

Interplant Correspondence. Records or documents from a U.S. firm to its subsidiary or affiliate, whether in the United States or overseas.

Intransit. Goods shipped through the United States, Puerto Rico, or the U.S. Virgin Islands from one foreign country or area to another foreign country or area without entering the consumption channels of the United States.

ISO Country Codes. The 2-position alphabetic International Standards Organization code for countries.

Letter of Intent (LOI). A written statement of an individual or a company's desire to participate in the AES. It sets forth a commitment to develop, maintain, and adhere to CBP and Census Bureau performance requirements and operational standards.

License Applicant. The person who applies for an export or reexport license for agency-controlled commodities. (For example, obtaining a license for goods that are listed on the CCL.)

Loading Document. A document that establishes the terms of a contract between a shipper and a transportation company under which freight is to be moved between points for a specific charge. It is usually prepared by the shipper and actuated by the carrier and serves as a document of title, a contract of carriage, and a receipt for goods. For example, the air waybill, inland bill of lading, ocean bill of lading, and through bill of lading are all loading documents.

Manifest. A document listing and describing the cargo contents of a carrier, container, or warehouse. Carriers required to file manifests with the CBP Port Director must include a proof of filing citation, AES downtime filing citation, postdeparture filing citation, or exemption legend for all cargo being transported.

Merchandise. See *commodity* or *goods*.

Mode of Transportation. The method by which goods arrive in or are exported from the United States by way of seaports, airports, or land border crossing points. Modes of transportation include vessel, air, truck, rail, or other. When goods are transhipped across land borders, the mode of transportation to be reported is that by which the goods enter or depart from the United States.

North American Free Trade Agreement (NAFTA). A formal agreement, or treaty, between Canada, Mexico, and the United States to promote trade amongst the three countries. It includes measures for the elimination of tariffs and non-tariff barriers to trade, as well as numerous specific provisions concerning the conduct of trade and investment.

Order Party. The person in the United States that conducts the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, receives the order from the foreign purchaser or ultimate consignee. If a U.S. order party directly arranges for the sale and export of goods to a foreign entity, the U.S. order party shall be listed as the USPPI in the EEI.

Packing List. A list showing the number and kinds of items being shipped as well as other information needed for transportation purposes.

Partnership Agencies. U.S. Government agencies that have statistical and analytical reporting and/or monitoring and enforcement responsibilities related to AES postdeparture filing privileges.

Party Type. Identifies whether the Party ID is an EIN, SSN, DUNS, or Foreign Entity reported to the AES, for example, E=EIN, S=SSN, D=DUNS, T=Foreign Entity.

Person. In legal usage, any natural person, corporation or other entity, domestic or foreign.

Port of Export. The seaport of CBP airport where the goods are loaded on the exporting carrier that is taking the goods out of the United States, or the port where exports by overland transportation cross the U.S. border into foreign territory. In the case of an export by mail, it includes the place of mailing.

Postdeparture Filing. The privilege granted to approved USPPIs to file commodity data up to 10 calendar days after the date of export.

Postdeparture Filing Citation. A notation placed on the bill of lading, air waybill, or other commercial loading document from an approved USPPI that

states that the EEI will be filed after departure of the carrier.

Power of Attorney. A legal authorization from a USPPI or FPPI stating that the agent has authority to act as its true and lawful agent for purposes of preparing and filing the EEI in accordance with the laws and regulations of the United States.

Primary Benefit. Receiving the greatest satisfaction from an export trade negotiation; usually monetary.

Principal Parties in Interest. Those persons in a transaction that receive the primary benefit, monetary or otherwise, from the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, the forwarding or other agent is not a principal party in interest.

Proof of Filing Citation. A notation placed on the bill of lading, air waybill, or other commercial loading document, usually for carrier use, that provides evidence that export information has been filed and accepted as transmitted through the AES.

Reexport. For statistical purposes: exports of foreign-origin goods that have previously entered the United States or Puerto Rico for consumption, entry into a CBP bonded warehouse, or a U.S. FTZ, and at the time of exportation, have undergone no change in form or condition or enhancement in value by further manufacture in the United States, Puerto Rico, the U.S. Virgin Islands, or U.S. FTZs. For the purpose of goods subject to export controls (e.g., U.S. Munitions List (USML) articles): the shipment of U.S.-origin products from one foreign destination to another.

Related Party Transaction. A transaction involving trade between a USPPI and ultimate consignee in which one exercises at least 10 percent of interest or more (voting securities) in both.

Remission. The cancellation or release from a penalty, including fines, imprisonment, and/or forfeiture, under this part.

Retention. The necessary act of keeping all documentation pertaining to an export transaction for a period of at least five years for an EEI filing, or a time frame designated by the controlling agency for licensed shipments.

Routed Export Transaction. A transaction where the FPPI authorizes a U.S. agent to facilitate export of items from the United States on its behalf.

Schedule B. The Statistical Classification of Domestic and Foreign Commodities Exported from the United States. These 10-digit commodity classification numbers are administered by the Census Bureau and cover everything from live animals and food

products to computers and airplanes. It should also be noted that all import and export codes used by the United States are based on the Harmonized Tariff System. (See HTS.)

Schedule C. The Classification of Country and Territory Designations. The Schedule C provides a list of country of origin codes. The country of origin is reported in terms of International Standards Organization codes.

Schedule D. The classification of CBP ports. The Schedule D provides a list of CBP ports and the corresponding numeric codes used in compiling U.S. foreign trade statistics.

Schedule K. The Classification of Foreign Ports by Geographic Trade Area and Country. The Schedule K lists the major seaports of the world that directly handle waterborne shipments in the foreign trade of the United States, and includes numeric codes to identify these ports. This schedule is maintained by the Army Corps of Engineers.

Seller. The party, usually the manufacturer, producer, wholesaler, or distributor of the goods, that receives the monetary benefit of the export transaction (price) or other consideration for the exported goods.

Shipment. Unless as otherwise provided, all goods being sent from one exporter to one consignee in a single country of destination on a single conveyance.

Shipment Reference Number. A unique identification number assigned by the EEI filer for reference purposes. This number must remain unique for a period of five years.

Shipping Weight. The total weight of a shipment in kilograms including goods and packaging.

Split Shipment. A shipment booked for export on one aircraft but split by the carrier and sent on two or more aircraft of the same carrier.

Subzone. A special purpose foreign trade zone established as part of a foreign trade zone project with a limited purpose that cannot be accommodated within an existing zone. Subzones are often established to serve the needs of a specific company and may be located within an existing facility of the company.

Tariff Schedule. A comprehensive list or schedule of goods with applicable duty rates to be paid or charged for each listed article as it enters or leaves a country.

Transportation Reference Number. A reservation number assigned by the carrier to hold space on the carrier for cargo being shipped. It is the booking number for vessel shipments and the master air waybill number for air shipments.

U.S. Principal Party In Interest (USPPI). The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, of the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export.

Ultimate Consignee. The person located abroad who is the true principal party in interest, receiving the export or reexport for the designated end use. (See also End-User.)

Unloading. The physical removal of cargo from an aircraft, truck or vessel.

Vehicle Identification Number (VIN). A number used for the identification of a self-propelled vehicle.

Verify Message. A notice sent to the filer by the AES when an unlikely condition is found. The data may or may not be correct, and the filer is required to transmit a correction, if warranted, within four calendar days.

Warning Message. A notice sent to the filer by the AES when certain incomplete and conflicting data reporting conditions are encountered. AES accepts the information filed to facilitate the trade. The filer is required to transmit a correction to the commodity data within four calendar days. If left uncorrected, AES will periodically generate and transmit a "warning reminder" message back to the filer until the data have been corrected.

Wholesaler/Distributor. An agent who sells directly for a supplier and maintains an inventory of the supplier's products.

Written Authorization. A written consent by the USPPI or FPPI stating that the agent has authority to act as its true and lawful agent for purposes of preparing and filing the EEI in accordance with the laws and regulations of the United States.

Zone Admission Number. A unique and sequential number assigned by a FTZ operator or user to shipments admitted to a zone.

§ 30.2 General requirements for filing Electronic Export Information.

(a) *Filing requirements*—(1) The AES is the electronic system for collecting SED (or any successor document) information from persons exporting goods from the United States, Puerto Rico, Foreign Trade Zones (FTZs) located in the United States or Puerto Rico, the U.S. Virgin Islands, between Puerto Rico and the United States, and to the U.S. Virgin Islands from the United States or Puerto Rico. References to the AES also shall apply to *AESDirect*

unless otherwise specified. For purposes of the regulations in this part, SED information shall be referred to as Electronic Export Information (EEI). Electronic Export Information shall be filed through the AES by the U.S. principal party in interest (USPPI), the USPPI's authorized agent, or the authorized U.S. agent of the foreign principal party in interest (FPPI) for exports of physical goods, including shipments moving pursuant to orders received over the Internet. Exceptions, exclusions, and exemptions to this requirement are provided for in paragraphs (a)(1)(iv) and (d) of this section and subpart D of this part. Filing through the AES shall be done in accordance with the definitions, specifications, and requirements of the regulations in this part for all export shipments, except as specifically excluded in § 30.2(d) or exempted in subpart D, when shipped as follows:

(i) To foreign countries or areas, including free (foreign trade) zones located therein (see § 30.36 for exemptions for shipments from the United States to Canada), from any of the following:

(A) The United States, including the 50 states and the District of Columbia.

(B) Puerto Rico.

(C) FTZs located in the United States or Puerto Rico.

(D) The U.S. Virgin Islands.

(ii) Between any of the following non-foreign areas:

(A) To Puerto Rico from the United States.

(B) To the United States from Puerto Rico.

(C) To the U.S. Virgin Islands from the United States or Puerto Rico.

(iii) Electronic export information shall be filed for goods moving as described in paragraphs (a)(1)(i) and (ii) of this section by any mode of transportation. (Instructions for filing EEI for vessels, aircraft, railway cars, and other carriers when sold while outside the areas described in paragraphs (a)(1)(i) and (ii) are covered in § 30.26.)

(iv) Notwithstanding exemptions in subpart D, EEI shall be filed for the following types of export shipments, regardless of value:

(A) Destined for countries subject to the Department of Treasury export licensing under the Office of Foreign Assets Control (OFAC) regulations (31 CFR parts 500 through 599).

(B) Requiring a Department of Commerce, Bureau of Industry and Security (BIS) license (15 CFR parts 730 through 774).

(C) Requiring a Department of State, Directorate of Defense Trade

Controls (DDTC) export license under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(D) Subject to the ITAR but exempt from license requirements.

(E) Requiring a Department of Justice, Drug Enforcement Administration (DEA) export permit (21 CFR part 1312).

(F) Requiring an export license issued by any other federal government agency.

(G) Classified as rough diamonds under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31.

(2) *Filing methods.* The USPPI has four optional means for filing EEI: use *AESDirect*; develop AES software using the *AESTIR*; purchase software developed by certified vendors using the *AESTIR*; or use an authorized agent.

(b) *General requirements*—(1) Electronic Export Information shall be filed prior to exportation unless the USPPI has been authorized to submit export data on a postdeparture basis (See § 30.5(c)). Shipments requiring a license or license exemption may be filed postdeparture only when the appropriate licensing agency has granted the USPPI authorization.

(2) Specific data elements required for EEI filing are contained in § 30.6.

(3) The AES downtime procedures provide uniform instructions for processing export transactions when the AES, *AESDirect* or the computer system of an AES participant is unavailable for transmission. (See § 30.4(b)(1) and § 30.4(b)(3).)

(4) Instructions for particular types of transactions and exemptions from these requirements are found in subparts C and D of this part.

(5) Electronic Export Information is required to be presented to CBP prior to export for commodities being exported by vessel going directly to the countries identified in 19 CFR 4.75(c) and by aircraft going directly or indirectly to those countries (See 19 CFR 122.74(b)(2)).

(c) *Certification and filing requirements.* Filers of EEI shall be required to meet application, certification, and filing requirements before being approved to submit export data through the AES or *AESDirect*. Steps leading toward approval for the AES or the *AESDirect* filing include the following processes: (See § 30.5 for specific application, certification, and filing standards applicable to AES and *AESDirect* submissions.)

(1) Submission of a Letter of Intent for AES filing or submission of an online registration for filing through *AESDirect*.

(2) Successful completion of certification testing for AES or for AESDirect filing.

(d) *Exclusions from filing EEI.* The following types of transactions are outside the scope of this part and shall be excluded from EEI filing:

(1) Goods shipped under CBP bond through the United States, Puerto Rico, or the U.S. Virgin Islands from one foreign country or area to another where such goods do not enter the consumption channels of the United States. Shipments under CBP bond leaving the United States by vessel may require the filing of Form 7513, Shipper's Export Declaration for In-transit Goods.

(2) Goods shipped from the U.S. possessions of Guam Island, American Samoa, Wake Island, Midway Island, Northern Mariana Islands, and Canton and Enderbury Islands to foreign countries or areas, and goods shipped between the United States and these possessions when an export license or license exemption is not required. As per this section, EEI is required for shipments between the United States and Puerto Rico, or from the United States or Puerto Rico to the U.S. Virgin Islands. (See subpart B of this part for filing requirements for export control purposes.)

(3) Electronic transmissions and intangible transfers. (See subpart B for export control requirements for these types of transactions.)

(4) Goods shipped to Guantanamo Bay Naval Base in Cuba from the United States, Puerto Rico, or the U.S. Virgin Islands and from Guantanamo Bay Naval Base to the United States, Puerto Rico, or the U.S. Virgin Islands. (See § 30.39 for filing requirements for shipments exported by the U.S. armed services.)

(e) *Penalties.* Failure of the USPPI, the authorized agent of either the USPPI or the FPPI, the exporting carrier, or any other person subject thereto to comply with any of the requirements of the regulations in this part renders such persons subject to the penalties provided for in subpart H of this part.

§ 30.3 Electronic Export Information filer requirements, parties to export transactions, and responsibilities of parties to export transactions.

(a) *General requirements.* The filer of EEI for export transactions is either the USPPI, its authorized agent, or the authorized U.S. agent of the FPPI. Export data provided to the AES shall be complete, correct, and based on personal knowledge of the facts stated or on information furnished by the parties to the export transaction. The

filer shall be physically located in the United States at the time of filing, have an Employer Identification Number (EIN) or social security number (SSN), and be certified to report in the AES. The filer is responsible for the truth, accuracy, and completeness of the EEI, except insofar as that party can demonstrate that he or she reasonably relied on information furnished by other responsible persons participating in the transaction. All parties involved in export transactions, including U.S. authorized agents, should be aware that invoices and other commercial documents may not necessarily contain all the information needed to prepare the EEI. The parties shall ensure that all information needed for reporting to the AES, including correct export licensing information, is provided to the authorized agent for the purpose of correctly preparing the EEI.

(b) *Parties to the export transaction—*
(1) *Principal parties in interest.* Those persons in a transaction that receive the primary benefit, monetary or otherwise, are considered principal parties to the transaction. Generally, the principals in a transaction are the seller and buyer.

(2) *USPPI.* For purposes of filing EEI, the USPPI is the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the transaction. Generally, that person or entity is the U.S. seller, manufacturer, order party, or foreign entity purchasing or obtaining goods for export. *The foreign entity shall be listed as the USPPI if it is in the United States when the items are purchased or obtained for export.* The foreign entity shall then follow the provisions for filing the EEI specified in § 30.3 and § 30.6 pertaining to the USPPI.

(i) If a U.S. manufacturer sells goods directly to an entity in a foreign area, the U.S. manufacturer shall be listed as the USPPI in the EEI.

(ii) If a U.S. manufacturer sells goods, as a domestic sale, to a U.S. buyer (wholesaler/distributor) and that U.S. buyer sells the goods for export to a FPPI, the U.S. buyer (wholesaler/distributor) shall be listed as the USPPI in the EEI.

(iii) If a U.S. order party directly arranges for the sale and export of goods to a foreign entity, the U.S. order party shall be listed as the USPPI in the EEI.

(iv) If goods are temporarily imported into the United States for reexport within one year (e.g., carnets), the authorized agent entering the goods may be listed as the USPPI in the EEI.

(v) If a customs broker is listed as the importer of record when entering goods into the United States for immediate consumption or warehousing entry, the

customs broker may be listed as the USPPI in the EEI if the goods are subsequently exported without change or enhancement.

(3) *Authorized agent.* The agent shall be authorized by the USPPI or, in the case of a routed export transaction, the FPPI to prepare and file the EEI. In a routed export transaction, the authorized agent can be the "exporter" for export control purposes as defined in 15 CFR 772.1 of the U.S. Department of Commerce Export Administration Regulations (EAR). However, the authorized agent shall not be shown as the USPPI in the EEI unless the agent acts as a USPPI in the export transaction as defined in paragraphs (b)(2)(iii), (iv), and (v) of this section.

(c) *General responsibilities of parties in export transactions—*(1) *USPPI responsibilities.* (i) The USPPI can prepare and file the EEI itself, or it can authorize an agent to prepare and file the EEI on its behalf. If the USPPI prepares the EEI itself, the USPPI is responsible for the accuracy and timely transmission of all the export information reported to the AES.

(ii) When the USPPI authorizes an agent to file the EEI on its behalf, the USPPI is responsible for:

(A) Providing the authorized agent with accurate export information necessary to file the EEI.

(B) Providing the authorized agent with a power of attorney or written authorization to file the EEI (see paragraph (f) of this section for written authorization requirements for agents).

(C) Maintaining documentation to support the information provided to the authorized agent for filing the EEI, as specified in § 30.10.

(2) *Authorized agent responsibilities.* The agent, when authorized by a USPPI to prepare and file the EEI for an export transaction, is responsible for performing the following activities:

(i) Accurately preparing and filing the EEI based on information received from the USPPI and other parties involved in the transaction.

(ii) Obtaining a power of attorney or written authorization to complete the EEI.

(iii) Maintaining documentation to support the information reported to the AES, as specified in § 30.10.

(iv) Upon request, providing the USPPI with a copy of the export information filed in the manner prescribed by the USPPI.

(d) *Filer responsibilities.* Responsibilities of USPPIs and authorized agents filing EEI are as follows:

(1) Transmitting complete and accurate information (see § 30.4 for a

delineation of filing responsibilities of USPPIs and authorized agents).

(2) Transmitting information in a timely manner in accordance with the provisions and requirements contained in this part.

(3) Responding to fatal errors, warning, verify and reminder messages, and compliance alerts generated by the AES in accordance with provisions and requirements contained in this part.

(4) Providing the exporting carrier with the required proof of filing citations or exemption legends in accordance with provisions contained in this part.

(5) Promptly transmitting corrections or cancellations to EEI in accordance with provisions contained in § 30.9.

(6) Maintaining all necessary and proper documentation related to EEI transactions in accordance with provisions contained in this part (see § 30.10 for specific requirements for maintaining and producing documentation for export shipments).

(e) *Responsibilities of parties in a routed export transaction.* The Census Bureau recognizes "routed export transactions" as a subset of export transactions. A routed export transaction is one in which the FPPI authorizes a U.S. agent to facilitate the export of items from the United States and to prepare and file EEI.

(1) *USPPI responsibilities.* In a routed export transaction, the FPPI may authorize or agree to allow the USPPI to prepare and file the EEI or authorize an agent to file the EEI on its behalf. If the USPPI prepares and files the EEI, it shall maintain documentation to support the EEI filed. If the FPPI authorizes an agent to prepare and file the EEI, the USPPI shall maintain documentation to support the information provided to the agent for preparing the EEI as specified in § 30.10 and provide the agent with the following information to assist in preparing the EEI:

- (i) Name and address of the USPPI.
- (ii) USPPI's EIN or SSN.
- (iii) Point of origin (State or FTZ).
- (iv) Commercial description of commodities.
- (v) Origin of goods indicator: Domestic (D) or foreign (F).
- (vi) Schedule B/Harmonized Tariff Schedule (HTS) Classification Commodity Code.
- (vii) Quantity/unit of measure.
- (viii) Value.

(ix) Upon request from the FPPI or its agent, the Export Control Classification Number (ECCN) or sufficient technical information to determine the ECCN.

(x) All licensing information necessary to file the EEI for commodities where the Department of

State, the Department of Commerce, or other U.S. Government agency issues a license for the commodities being exported, or the merchandise is being exported under a license exemption.

(xi) Any information that it knows will affect the determination of license authorization (see subpart B of this part for additional information on licensing requirements).

(2) *Authorized agent responsibilities.* In a routed export transaction, the authorized agent is responsible for obtaining a power of attorney or written authorization from the FPPI to prepare and file the EEI on its behalf; preparing and filing the EEI based on information obtained from the USPPI or other parties involved in the transaction; maintaining documentation to support the EEI reported to the AES; and upon request by the USPPI, verifying that the information provided by the USPPI was accurately reported to the AES. The authorized agent also shall provide the following export information to the AES:

- (i) Date of export.
- (ii) Transportation Reference Number.
- (iii) Ultimate consignee.
- (iv) Intermediate consignee, if applicable.
- (v) Authorized agent name and address.
- (vi) EIN, SSN or DUNS number of the authorized agent.
- (vii) Country of ultimate destination.
- (viii) Mode of transportation.
- (ix) Carrier identification and conveyance name.
- (x) Port of export.
- (xi) Foreign port of unloading.
- (xii) Shipping weight.
- (xiii) ECCN.
- (xiv) License or license exemption information.

(f) *Authorizing an agent.* In a power of attorney or other written authorization, authority is conferred upon an agent to perform certain specified acts or kinds of acts on behalf of a principal (see 15 CFR 758.1(h)). In cases where an authorized agent is filing EEI to the AES, the agent shall obtain a power of attorney or written authorization from a principal party in interest to file the information on its behalf. A power of attorney or written authorization should specify the responsibilities of the parties with particularity and should state that the agent has authority to act on behalf of a principal party in interest as its true and lawful agent for purposes of creating and filing EEI in accordance with the laws and regulations of the United States.

§ 30.4 Electronic Export Information filing procedures, deadlines, and certification statements.

Two electronic filing options (predeparture and postdeparture) for transmitting EEI are available to the USPPI or authorized agent. The electronic postdeparture filing takes into account that complete information concerning export shipments may not always be available prior to exportation and accommodates these circumstances by providing, when authorized, for filing of EEI after departure. For example, for exports of seasonal and agricultural commodities, only estimated quantities, values, and consignees may be known prior to exportation. The procedures for obtaining certification as an AES filer and for applying for authorization to file on a postdeparture basis are described in § 30.5.

(a) *EEI transmitted predeparture.* The EEI shall always be transmitted prior to departure to AES for the following types of shipments:

- (1) Used self-propelled vehicles (except those shipped between the United States and Puerto Rico) as defined in 19 CFR 192.1;
- (2) Essential and precursor chemicals requiring a permit from the DEA;
- (3) Shipments defined as "sensitive" by Executive Order;
- (4) Shipments where a U.S. Government agency requires predeparture filing;
- (5) Shipments defined as "routed export transactions" (see § 30.1(c) for a list of definitions that apply to this part);
- (6) Shipments to countries where complete outbound manifests are required prior to clearing vessels or aircraft for export (see 19 CFR 4.75(c) and 122.74(b)(2) for a listing of these countries);

(7) Items identified on the U.S. Munitions List (USML) of the ITAR (22 CFR part 121);

(8) Exports that require a license from the BIS, unless the BIS has approved postdeparture filing privileges for the USPPI;

(9) Shipments of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 and exported (reexported) in accordance with the Kimberley Process; and

(10) Shipments for which the USPPI has not been approved for postdeparture filing.

(b) *Filing deadlines for EEI transmitted predeparture.* The USPPI or the authorized agent shall file the required EEI and have received the AES Internal Transaction Number (ITN) no

later than the time period specified as follows:

(1) For State Department USML shipments, refer to the ITAR (22 CFR parts 120 through 130) for specific requirements concerning predeparture filing time frames. In addition, if a filer is unable to acquire an ITN because AES is not operating, the filer shall not export until AES is operating and an ITN is acquired.

(2) For non-USML shipments, file the EEI and transmit the ITN as follows:

(i) For vessel cargo, the USPPI or the authorized agent shall file the EEI required by § 30.6 and provide the AES ITN to the exporting carrier no later than 24 hours prior to the departure of the vessel from the U.S. port where the cargo is laden.

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or the authorized agent shall file the EEI required by § 30.6 and provide the AES ITN to the exporting carrier no later than two (2) hours prior to the scheduled departure time of the aircraft.

(iii) For truck cargo, including cargo departing by Express Consignment Couriers, the USPPI or the authorized agent shall file the EEI required by § 30.6 and provide the AES ITN to the exporting carrier no later than one (1) hour prior to the arrival of the truck at the United States border to go foreign.

(iv) For rail cargo, the USPPI or the authorized agent shall file the EEI required by § 30.6 and provide the AES ITN to the exporting carrier no later than two (2) hours prior to the time the train arrives at the U.S. border to go foreign.

(v) For mail and cargo shipped by other methods, except pipeline, the USPPI or the authorized agent shall file the EEI required by § 30.6 and provide the AES ITN to the exporting carrier no later than two (2) hours prior to exportation. (*See* § 30.4(d) for filing deadlines for shipments sent by pipeline.)

(vi) For all other modes, the USPPI or the authorized agent shall file the required EEI no later than two (2) hours prior to exportation.

(3) For non-USML shipments when the AES is unavailable, use the following instructions:

(i) If the participant's AES is unavailable, the filer must delay the export of the goods or find an alternative filing method;

(ii) If AES or *AESDirect* is unavailable, the goods may be exported and the filer must:

(A) Provide the appropriate proof of filing citation as described in § 30.7(b)(4); and

(B) Report the EEI at the first opportunity AES is available.

(c) *EEI transmitted postdeparture.* Postdeparture filing is only available for approved USPPIs and provides for the electronic filing of the data elements required by § 30.6 no later than ten (10) calendar days from the date of exportation. For USPPIs approved for postdeparture filing, all shipments (other than those for which predeparture filing is specifically required), by all methods of transportation, may be exported with the filing of EEI made postdeparture. Certified AES authorized agents or service centers may transmit information postdeparture on behalf of USPPIs approved for postdeparture filing, or the approved USPPI may transmit the data postdeparture itself. However, authorized agents or service centers will not be approved for postdeparture filing.

(d) *Pipeline.* The operator of a pipeline may transport goods to a foreign country without the prior filing of the proof of filing citation, on the condition that within four (4) days following the end of each calendar month the operator shall file on the AES and will deliver to the CBP Port Director the proof of filing citation covering all exportations through the pipeline to each consignee during the month.

(e) *Proof of filing citation or exemption legend.* The USPPI or the authorized agent shall provide the exporting carrier with the AES proof of filing citation or exemption legend as described in § 30.7.

§ 30.5 Electronic Export Information filing application and certification processes and standards.

Prior to filing EEI, the USPPI or the authorized agent shall be certified to file on the AES. A service center shall be certified to transmit electronically to the AES. The USPPI, authorized agent, or service center may use a software package designed by a certified vendor to file EEI to the AES. Once an authorized agent has successfully completed the certification process, any USPPI using that agent does not have to be certified. The certified authorized agent shall have a properly executed power of attorney, a written authorization from the USPPI or FPPI, and be domiciled in the United States to file EEI to the AES. The USPPI or authorized agent that utilizes a certified software vendor or service center shall complete certification testing. Service centers may only transmit export information; they may not prepare and file export information unless they have authorization from the USPPI in the

form of a power of attorney or written authorization, thus making them authorized agents. The USPPI seeking approval for postdeparture filing privileges shall be approved before they or their authorized agent may file on a postdeparture basis.

(a) *AES application process*—(1) *AES Letter of Intent.* The first requirement for all participation in AES, including approval for postdeparture filing privileges, is to submit a complete and accurate Letter of Intent to the Census Bureau. The Letter of Intent is a written statement of a company's desire to participate in AES. It shall set forth a commitment to develop, maintain, and adhere to CBP and Census Bureau performance requirements and operations standards. The format and content for the Letter of Intent are provided in Appendix A of this part.

(2) *AESDirect registration.* U.S. principal parties in interest desiring to file through *AESDirect* shall complete the online *AESDirect* registration form in lieu of the AES Letter of Intent. After submitting the registration, an *AESDirect* filing account is created for the filing company. The person designated as the account administrator is responsible for activating the account and completing the certification process as discussed in paragraph (b)(2) of this section.

(b) *Certification process*—(1) *AES certification process.* The USPPI shall perform an initial two-part communication test to ascertain whether its system is capable of both transmitting data to, and receiving data from, the AES. The USPPI shall demonstrate specific system application capabilities. The capability to correctly handle these system applications is the prerequisite to certification for participation in the AES. The USPPI shall successfully transmit the AES certification test. The CBP's and/or Census Bureau's client representatives provide assistance during certification testing. These representatives make the sole determination as to whether or not the USPPI qualifies for certification.

Upon successful completion of certification testing, the USPPI's status is moved from testing mode to operational status. Automated Export System filers may be required to repeat the certification testing process at any time. The Census Bureau will provide the AES filer with a certification notice after the USPPI has been approved for operational status. The certification notice will include:

(i) The date that filers may begin transmitting data;

(ii) Reporting instructions; and

(iii) Examples of the required AES proof of filing citations, postdeparture filing citations, AES downtime filing citation, and exemption legends.

(2) *AESDirect certification process.* To become certified for *AESDirect*, filers shall demonstrate knowledge of this part and the ability to successfully transmit EEI. Upon successful completion of the certification testing, notification by e-mail will be sent to the account administrator when an account is fully activated for filing via *AESDirect*. Certified filers should print and retain the page congratulating the filer on passing the test.

(c) *Postdeparture filing approval process.* The USPPI may apply for postdeparture filing privileges by submitting a Letter of Intent to the Census Bureau in accordance with the provisions contained in § 30.4 (see Appendix A of this part for the content and format of the Letter of Intent). An authorized agent may not apply on behalf of a USPPI. The Census Bureau will distribute the Letter of Intent for postdeparture filing privileges to CBP and the other Federal Government partnership agencies participating in the AES postdeparture filing review process. Failure to meet the standards of the Census Bureau, CBP or any of the partnership agencies is reason for denial of the applicant for postdeparture filing privileges. Each partnership agency will develop its own internal postdeparture filing acceptance standards, and each agency will notify the Census Bureau of the USPPI's success or failure to meet that agency's acceptance standards. Any partnership agency may require additional information from USPPIs that are applying for postdeparture filing. The Census Bureau will notify the USPPI of the decision to either deny or approve their application for postdeparture filing privileges within thirty (30) calendar days of receipt of the Letter of Intent by the Census Bureau, or if a decision cannot be reached at that time, the USPPI will be notified of an extension for a final decision as soon as possible after the thirty (30) calendar days.

(1) *Grounds for denial of postdeparture filing status.* The Census Bureau may deny a USPPI's application for postdeparture filing privileges for any of the following reasons:

(i) The USPPI has not demonstrated experience in filing or authorizing the filing of information electronically through the AES.

(ii) The USPPI's volume of EEI reported through the AES does not warrant participation in postdeparture filing.

(iii) The USPPI is not an established USPPI with regular operations.

(iv) The USPPI has consistently failed to submit EEI to the AES in a timely and accurate manner.

(v) The USPPI has a history of noncompliance with Census Bureau export regulations contained in this part.

(vi) The USPPI has been indicted, convicted, or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the USPPI is in violation of Census Bureau export regulations contained in this part.

(vii) The USPPI has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to any material fact.

(viii) The USPPI would pose a significant threat to national security interests such that its participation in postdeparture filing should be denied.

(ix) The USPPI has multiple violations of either the Export Administration Regulations (EAR) (15 CFR parts 730 through 774) or the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130) within the last three (3) years.

(2) *Notice of denial.* A USPPI denied postdeparture filing privileges by other agencies shall contact those agencies regarding the specific reason(s) for non-selection and for their appeal procedures. A USPPI denied postdeparture filing status by the Census Bureau will be provided with a specific reason for non-selection and a Census Bureau point of contact in an electronic notification letter. A USPPI may appeal the Census Bureau's non-selection decision by following the appeal procedure and re-application procedure provided in paragraph (c)(5) of this section.

(3) *Revocation of postdeparture filing privileges—(i) Revocation by the Census Bureau.* The Census Bureau may revoke postdeparture filing privileges of an approved USPPI for the following reasons:

(A) The USPPI's volume of EEI reported in the AES does not warrant continued participation in postdeparture filing.

(B) The USPPI or its authorized agent has failed to submit EEI to the AES in a timely and accurate manner;

(C) The USPPI has made or caused to be made in the Letter of Intent a false or misleading statement or omission with respect to material fact;

(D) The USPPI submitting the Letter of Intent has been indicted, convicted,

or is currently under investigation for a felony involving a violation of federal export laws or regulations and the Census Bureau has evidence of probable cause supporting such violation, or the applicant is in violation of Census Bureau export rules and regulations contained in this part;

(E) The USPPI has failed to comply with existing Census Bureau or other agency export regulations or has failed to pay any outstanding penalties assessed in connection with such noncompliance; or

(F) The USPPI would pose a significant threat to national security interests such that its continued participation in postdeparture filing should be terminated.

(ii) *Revocation by other agencies.* Any of the other agencies may revoke a USPPI's postdeparture filing privileges with respect to transactions subject to the jurisdiction of that agency. When doing so, the agency shall notify both the Census Bureau and the USPPI whose authorization is being revoked.

(4) *Notice of revocation.* Approved postdeparture filing USPPIs whose postdeparture filing privileges have been revoked by other agencies shall contact those agencies for their specific revocation and appeal procedures. When the Census Bureau makes a determination to revoke an approved USPPI's postdeparture filing privileges, the USPPI will be notified electronically of the reason(s) for the decision. In most cases, the revocation shall become effective when the USPPI has either exhausted all appeal procedures, or thirty (30) calendar days after receipt of the notice of revocation, if no appeal is filed. However, in cases judged to affect national security, revocations shall become effective immediately upon notification.

(5) *Appeal procedure.* Any USPPI whose request for postdeparture filing privileges has been denied by the Census Bureau or whose postdeparture filing privileges have been revoked by the Census Bureau may appeal the decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Appeals should be addressed to the Chief, Foreign Trade Division, U.S. Census Bureau, Washington, DC 20233. The Census Bureau will issue a written decision to the USPPI within thirty (30) calendar days from the date of receipt of the appeal by the Census Bureau. If a written decision is not issued within thirty (30) calendar days, the Census Bureau will forward to the USPPI a notice of extension within that time period. The USPPI will be provided with the reasons for the extension of

this time period and an expected date of decision. Approved postdeparture filing USPPIs who have had their postdeparture filing status revoked may not reapply for this privilege for one year following written notification of the revocation.

(d) *Electronic Export Information filing standards.* The data elements required for filing EEI are contained in § 30.6. When filing EEI, the USPPI or authorized agent shall comply with the data transmission procedures determined by CBP and the Census Bureau and shall agree to stay in complete compliance with all export rules and regulations in this part. Failure of the USPPI or the authorized agent of either the USPPI or FPPI to comply with these requirements constitutes a violation of the regulations in this part, and renders such principal party or the authorized agent subject to the penalties provided for in subpart H of this part. In the case of *AESDirect*, when submitting a registration form to *AESDirect*, the registering company is certifying that it will be in compliance with all applicable export rules and regulations. This includes complying with the following security requirements:

(1) *AESDirect* user names, administrator codes, and passwords are to be kept secure by the account administrator and not disclosed to any unauthorized user or any persons outside the registered company. Filers shall change administrator codes or passwords for security purposes when employees leave the company. The administrator shall change the password when any person with access leaves the company.

(2) Registered companies are responsible for those persons having access to the user name, administrator code, and password. If an employee with access to the user name, administrator code, and password leaves the company or otherwise is no longer an authorized user, the company shall immediately change the password, administrator code, and user name in the system to ensure the integrity and confidentiality of Title 13 data.

(3) Antivirus software shall be installed and set to run automatically on all computers that access *AESDirect*. All *AESDirect* registered companies will maintain subscriptions with their antivirus software vendor to keep antivirus lists current. Registered companies are responsible for performing full scans of these systems on a regular basis, but not less than every 30 days, to ensure the elimination of any virus contamination. If the registered company's computer system

is infected with a virus, the company shall contact the Census Bureau's Foreign Trade Division Computer Security Officer and refrain from using *AESDirect* until it is virus free. Failure to comply with these requirements will result in immediate loss of privilege to use *AESDirect* until the registered company can establish to the satisfaction of the Census Bureau's Foreign Trade Division Computer Security Officer that the company's computer systems accessing *AESDirect* are virus free.

(e) *Monitoring the filing of EEI.* The USPPI's or the authorized agent's AES filings will be monitored and reviewed for quality, timeliness, and coverage. The Census Bureau will provide performance reports to USPPIs and authorized agents who file EEI. The Census Bureau will take appropriate action to correct specific situations where the USPPI or authorized agent fails to maintain acceptable levels of data quality, timeliness, or coverage.

(f) *Support.* The Census Bureau provides online services that allow the USPPI and the authorized agent to seek assistance pertaining to AES and this part. For AES assistance, filers may send an e-mail to ASKAES@census.gov, and for regulatory assistance, filers may send an e-mail to FTDREGS@census.gov. *AESDirect* is supported by a help desk available twelve (12) hours a day from 7 a.m. to 7 p.m. EST, seven (7) days a week. Filers can obtain contact information from the Web site <http://www.aesdirect.gov>.

§ 30.6 Electronic Export Information data elements.

The information specified in this section is required for shipments transmitted to the AES. The data elements identified as "mandatory" shall be reported for each transaction. The data elements identified as "conditional" shall be reported if they are required for or apply to the specific shipment. The data elements identified as "optional" may be reported at the discretion of the USPPI or the authorized agent.

(a) *Mandatory data elements are as follows:*

(1) *USPPI and USPPI identification.* The name, address, identification, and contact information of the USPPI shall be reported to the AES as follows:

(i) *Name of the USPPI.* In all export transactions, the name listed in the USPPI field in the EEI shall be the USPPI in the transaction. (See § 30.1 for the definition of the USPPI and § 30.3 for details on the USPPI's reporting responsibilities.)

(ii) *Address of the USPPI.* In all EEI filings, the USPPI shall report the address or location (no post office box number) from which the goods actually begin the journey to the port of export. For example, EEI covering goods laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show the address of the warehouse in Georgia. If the USPPI does not have a facility (processing plant, warehouse, distribution center, or retail outlet, etc., whether owned or leased) at the location from which the goods began their export journey, report the USPPI address from which the export was directed. For shipments with multiple origins, report the address from which the commodity with the greatest value begins its export journey or, if such information is not known at the time of filing, the address from which the export is directed.

(iii) *USPPI identification number.* The USPPI's EIN or SSN. The USPPI shall report its own Internal Revenue Service (IRS) EIN in the USPPI field of the EEI. If the USPPI has only one EIN, report that EIN. If the USPPI has more than one EIN, report an EIN that the USPPI also uses to report employee wages and withholdings, not an EIN used to report only company earnings or receipts. If, and only if, no IRS EIN has been assigned to the USPPI, the USPPI's own SSN shall be reported to the AES. Use of another company's EIN or another individual's SSN is prohibited. The appropriate Party ID Type code shall be reported to the AES. When a foreign entity is in the United States when the items are purchased or obtained for export, the foreign entity is the USPPI for filing purposes. In such situations, when the foreign entity does not have an EIN or SSN, it shall report in the EEI a DUNS number, border crossing number, passport number, or any number assigned by CBP.

(iv) *Contact information.* Show contact name and telephone number.

(2) *Date of export.* The date of export is the date when goods are scheduled to leave the port of export on the exporting carrier that is taking the goods out of the United States.

(3) *Ultimate consignee.* The ultimate consignee is the person, party, or designee that is located abroad and actually receives the export shipment. The name and address of the ultimate consignee, whether by sale in the United States or abroad or by consignment, shall be reported in the EEI. The ultimate consignee as known at the time of export shall be reported. For shipments requiring an export license, the ultimate consignee shall be the

person so designated on the export license or authorized to be the ultimate consignee under the applicable license exemption in conformance with the EAR or ITAR, as applicable. For goods sold en route, report the appropriate "To be Sold En Route" indicator in the EEI, and report corrected information as soon as it is known (see § 30.9 for procedures on correcting AES information).

(4) *U.S. state of origin.* The U.S. state of origin is the 2-character postal code for the state in which the goods begin their journey to the port of export. For example, a shipment covering goods laden aboard a truck at a warehouse in Georgia for transport to Florida for loading onto a vessel for export to a foreign country shall show Georgia as the state of origin. The U.S. state of origin may be different from the U.S. state where the goods were produced, mined, or grown, or where the USPPI is located. For shipments of multi-state origin, reported as a single shipment, report the U.S. state of the commodity with the greatest value. If such information is not known, report the state in which the commodities are consolidated for export.

(5) *Country of ultimate destination.* The country of ultimate destination is the country in which the goods are to be consumed or further processed or manufactured. The country of ultimate destination is the code issued by the International Standards Organization (ISO).

(i) *Shipments under an export license or license exemption.* For shipments under an export license or license exemption issued by the Department of State, DDTC, or the Department of Commerce, BIS, the country of ultimate destination shall conform to the country of ultimate destination as shown on the license. In the case of a Department of State license, the country of ultimate destination is the country specified with respect to the end user.

(ii) *Shipments not moving under an export license.* The country of ultimate destination is the country known to the USPPI at the time of exportation. The country to which the goods are being shipped is not the country of ultimate destination if the USPPI has knowledge at the time the goods leave the United States that they are intended for reexport or transshipment in their present form to another known country. For goods shipped to Canada, Mexico, Panama, Hong Kong, Belgium, United Arab Emirates, The Netherlands, or Singapore, for example, special care should be exercised before reporting these countries as the ultimate destination, since these are countries

through which goods from the United States are frequently transshipped. If the USPPI does not know the ultimate destination of the goods, the country of destination to be shown is the last country, as known to the USPPI at the time of shipment from the United States, to which the goods are to be shipped in their present form. (For instructions as to the reporting of country of destination for vessels sold or transferred from the United States to foreign ownership, see § 30.26.)

(iii) For goods to be sold en route, report the country of the first port of call and then report corrected information as soon as it is known.

(6) *Mode of transportation.* The mode of transportation is the means by which the goods are exported from the United States.

(i) *Conveyances exported under their own power.* The mode of transportation for aircraft, vessels, or locomotives (railroad stock) transferring ownership or title and moving out of the United States under its own power is the mode of transportation by which the conveyance moves out of the United States.

(ii) *Exports through Canada, Mexico, or other foreign countries for transshipment to another destination.* For transshipments through Canada, Mexico, or another foreign country, the mode of transportation is the mode of the carrier transporting the goods out of the United States.

(7) *Conveyance name/carrier name.* The conveyance name/carrier name is the name of the conveyance/carrier transporting the goods out of the United States as known at the time of exportation. For exports by sea, the conveyance name is the vessel name. For exports by air, rail, or truck, the carrier name is that which corresponds to the carrier identification as specified in paragraph (a)(8) of this section. Terms such as airplane, train, rail, truck, vessel, barge, or international footbridge are not acceptable. For shipments by other modes of transportation, including mail or fixed modes (pipeline), the conveyance/carrier name is not required.

(8) *Carrier identification.* The carrier identification specifies the carrier that transports the goods out of the United States. The carrier transporting the goods to the port of export and the carrier transporting the goods out of the United States may be different. For transshipments through Canada, Mexico, or another foreign country, the carrier identification is that of the carrier that transports the goods out of the United States. The carrier identification is the Standard Carrier

Alpha Code (SCAC) for vessel, rail, and truck shipments or the International Air Transport Association (IATA) code for air shipments. For other valid modes of transportation, including mail and fixed modes (pipeline), the carrier identification is not required. The National Motor Freight Traffic Association (NMFTA) issues and maintains the SCAC. (See <http://www.nmfta.org>.) The IATA issues and maintains the IATA codes. (See <http://www.census.gov/trade> for a list of IATA codes.)

(9) *Port of export.* The port of export is the seaport or airport where the goods are loaded on the exporting carrier that is taking the goods out of the United States, or the port where exports by overland transportation cross the U.S. border into foreign territory. The port of export shall be reported in terms of Schedule D, "Classification of CBP Districts and Ports." Use port code 8000 for shipments by air.

(i) *Vessel and air exports involving several ports of exportation.* For goods loaded aboard a carrier in a port of lading, where the carrier stops at several ports before clearing to the foreign country, the port of export is the first port where the goods were loaded on the exporting carrier. For goods off-loaded from the original conveyance to another conveyance (even if the aircraft or vessel belongs to the same carrier) at any of the ports, the port where the goods were loaded on the last conveyance before going foreign is the port of export.

(ii) *Exports through Canada, Mexico, or other foreign countries for transshipment to another destination.* For transshipments through Canada, Mexico, or another foreign country to a third country, the port of export is the location where the goods are loaded on the carrier that is taking the goods out of the United States.

(10) *Related company indicator.* The related company indicator shows if the USPPI and the ultimate consignee are related. A related party transaction involves trade between an affiliated USPPI and ultimate consignee in which one person or business exercises at least a 10 percent interest (voting securities) in both parties. Shipments to independent distributors are considered non-related unless there is at least 10 percent control.

(11) *Domestic or foreign indicator.* Indicate if the goods exported are of domestic or foreign origin. Show foreign goods separately from goods of domestic production even if the commodity classification number is the same.

(i) *Domestic.* Exports of domestic goods include those commodities that

are the growth, produce, or manufacture of the United States, including goods exported from U.S. FTZs, Puerto Rico, or the U.S. Virgin Islands (including commodities incorporating foreign components), and those articles of foreign origin that have been enhanced in value or changed from the form in which they were originally imported by further manufacture or processing in the United States, including goods exported from U.S. FTZs, Puerto Rico, or the U.S. Virgin Islands. Identify domestic goods by the designation "D" in the EEI.

(ii) *Foreign*. Exports of foreign goods include those commodities that are the growth, produce, or manufacture of foreign countries that entered the United States, including goods admitted to U.S. FTZs as imports and that, at the time of exportation, have undergone no change in form or condition or enhancement in value by further manufacture in the United States, in U.S. FTZs, in Puerto Rico, or in the U.S. Virgin Islands. Identify foreign goods by the designation "F" in the EEI.

(12) *Commodity classification number*. Report the 10-digit commodity classification number as provided in Schedule B, *Statistical Classification of Domestic and Foreign Commodities Exported from the United States* in the EEI. The 10-digit commodity classification number provided in the HTS may be reported in lieu of the Schedule B commodity classification number except as noted in the headnotes of the HTS. The HTS is a global classification system used to describe most world trade in goods. Furnishing the correct Schedule B or HTS number does not relieve the USPPi or the authorized agent of furnishing, in addition, a complete and accurate commodity description. When reporting the Schedule B number or HTS number, the decimals shall be omitted. (See <http://www.census.gov/trade> for a list of Schedule B Classification Numbers).

(13) *Commodity description*. Report the description of the goods shipped in sufficient detail to permit verification of the Schedule B or HTS number. Clearly and fully state the name of the commodity in terms that can be identified or associated with the language used in Schedule B or HTS (usually the commercial name of the commodity), and any and all characteristics of the commodity that distinguish it from commodities of the same name covered by other Schedule B or HTS classifications. If the shipment requires a license, the description reported in the EEI shall conform with that shown on the license. If the shipment qualifies for a license exemption, the description shall be

sufficient to ensure compliance with that license exemption. However, where the description on the license does not state all of the characteristics of the commodity that are needed to completely verify the commodity classification number, as described in this paragraph, report the missing characteristics, as well as the description shown on the license, in the commodity description field of the EEI.

(14) *Primary unit of measure*. The unit of measure shall correspond to the primary quantity as prescribed in the Schedule B or HTS. If neither Schedule B or HTS specifies a unit of measure for the item, an "X" is required in the unit of measure field.

(15) *Primary quantity*. The quantity is the total number of units that correspond to the first unit of measure specified in the Schedule B or HTS. Where the unit of measure is in terms of weight (grams, kilograms, metric tons, etc.), the quantity reflects the net weight, not including the weight of barrels, boxes, or other bulky coverings, and not including salt or pickle in the case of salted or pickled fish or meats. For a few commodities where "content grams" or "content kilograms" or some similar weight unit is specified in Schedule B or HTS, the quantity may be less than the net weight. The quantity is reported as a whole unit only, without commas or decimals. If the quantity contains a fraction of a whole unit, round fractions of one-half unit or more and fractions of less than one-half unit up or down to the nearest whole unit, respectively. (For example, where the unit for a given commodity is in terms of "tons," a net quantity of 8.4 tons would be reported as 8 for the quantity. If the quantity is less than one unit, the quantity is 1.)

(16) *Shipping weight*. The shipping weight is the weight in kilograms, which includes the weight of the commodity as well as the weight of normal packaging, such as boxes, crates, barrels, etc. The shipping weight is required for exports by air, vessel, rail, and truck, and required for exports of household goods transported by all modes. For exports (except household goods) by mail, fixed transport (pipeline), or other valid modes, the shipping weight is not required and shall be reported as zero. For containerized cargo in lift vans, cargo vans, or similar substantial outer containers, the weight of such containers is not included in the shipping weight. If the shipping weight is not available for each Schedule B or HTS item included in one or more containers, the approximate shipping weight for each item is estimated and

reported. The total of these estimated weights equals the actual shipping weight of the entire container or containers.

(17) *Value*. In general, the value to be reported in the EEI shall be the value of the goods at the U.S. port of export. The value shall be the selling price as defined in this paragraph (or the cost if the goods are not sold), including inland or domestic freight, insurance, and other charges to the U.S. seaport, airport, or land border port of export. Report value to the nearest dollar; omit cents figures. Fractions of a dollar less than 50 cents should be ignored, and fractions of 50 cents or more should be rounded upward to the next dollar.

(i) *Selling price*. The selling price for goods exported pursuant to sale, and the value to be reported in the EEI, is the USPPi's price to the FPPI (the foreign buyer). Deduct from the selling price any unconditional discounts, but do not deduct discounts that are conditional upon a particular act or performance on the part of the foreign buyer. For goods shipped on consignment without a sale actually having been made at the time of export, the selling price to be reported in the EEI is the market value at the time of export at the U.S. port.

(ii) *Adjustments*. When necessary, make the following adjustments to obtain the value.

(A) Where goods are sold at a point other than the port of export, freight, insurance, and other charges required in moving the goods from their U.S. point of origin to alongside the exporting carrier at the port of export shall be added to the selling price (as defined in paragraph (a)(17)(i) of this section) for purposes of reporting the value in the EEI.

(B) Where the actual amount of freight, insurance, and other domestic costs are not available, an estimate of the domestic costs shall be made and added to the cost of the goods or selling price to derive the value to be reported in the EEI. Add the estimated domestic costs to the cost or selling price of the goods to obtain the value to be reported in the EEI.

(C) Where goods are sold at a "delivered" price to the foreign destination, the cost of loading the goods on the exporting carrier, if any, and freight, insurance, and other costs beyond the port of export shall be subtracted from the selling price for purposes of reporting value in the EEI. If the actual amount of such costs is not available, an estimate of the costs should be subtracted from the selling price.

(D) Costs added to or subtracted from the selling price in accordance with the

instructions in this paragraph (a)(17)(ii) should not be shown separately in the EEI, but the value reported should be the value after making such adjustments, where required, to arrive at the value of the goods at the U.S. port of export.

(iii) *Exclusions.* Exclude the following from the selling price of goods exported.

(A) Commissions to be paid by the USPPI to its agent abroad or commissions to be deducted from the selling price by the USPPI's agent abroad.

(B) The cost of loading goods on the exporting carrier at the port of export.

(C) Freight, insurance, and any other charges or transportation costs beyond the port of export.

(D) Any duties, taxes, or other assessments imposed by foreign countries.

(iv) For definitions of the value to be reported in the EEI for special types of transactions where goods are not being exported pursuant to commercial sales, or where subsidies, government financing or participation, or other unusual conditions are involved, see subpart C of this part.

(18) *Export information code.* A code that identifies the type of export shipment or condition of the exported items (e.g., goods donated for relief or charity, impelled shipments, shipments under the Foreign Military Sales program, household goods, shipments under carnet, and all other shipments).

(19) *Shipment reference number.* A unique identification number assigned by the filer that allows for the identification of the shipment in the filer's system. The number must be unique for five (5) years.

(20) *Line number.* A number that identifies the specific commodity line item within a shipment.

(21) *Hazardous material (HAZMAT) indicator.* An indicator identifying the shipment as hazardous as defined by the Department of Transportation.

(22) *Inbond code.* The code indicating whether the shipment is being transported under bond.

(23) *License code/license exemption code.* The code identifies the commodity as having a Federal Government agency requirement for a license, permit, license exception or exemption or that no license is required.

(24) *Routed export transaction indicator.* An indicator that the FPPI has authorized, through a power of attorney or written authorization, an agent to prepare and file the EEI. See § 30.3 for responsibilities of the parties to the routed export transaction.

(25) *Shipment filing action request indicator.* An indicator that allows the

filer to add, change, replace, or cancel an export shipment transaction.

(26) *Line item filing action request indicator.* An indicator that allows the filer to add, change, or delete a commodity line within an export shipment transaction.

(27) *Filing option indicator.* An indicator of whether the filer is reporting export information predeparture or postdeparture. Only approved USPPIs may file postdeparture. See § 30.4 for more information on EEI filing options.

(b) *Conditional data elements are as follows:*

(1) *Authorized agent and authorized agent identification.* If an authorized agent is used to prepare and file the EEI, the following information shall be provided to the AES.

(i) *Name of the authorized agent.* Report the name of the authorized agent. The authorized agent is that person or entity in the United States that is authorized by the USPPI or the FPPI to prepare and file the EEI or the person or entity, if any, named on the export license. (See § 30.3 for details on the specific reporting responsibilities of authorized agents and subpart B of this part for export control licensing requirements for authorized agents.)

(ii) *Address of the authorized agent.* Report the address or location (no post office box number) of the authorized agent. The authorized agent's address shall be reported with the initial shipment. Subsequent shipments may be identified by the agent's identification number (see paragraph (b)(1)(iii) of this section).

(iii) *Authorized agent's identification number.* Report the authorized agent's own EIN, SSN, or DUNS in the EEI for the first shipment and for each subsequent shipment. Use of another company's or individual's EIN or other identification number is prohibited. The type of agent identification (E=EIN, S=SSN, etc.) shall be indicated.

(iv) *Contact information.* Show contact name and telephone number.

(2) *Intermediate consignee.* The name and address of the intermediate consignee (if any) shall be reported. The intermediate consignee acts in a foreign country as an agent for the principal party in interest or the ultimate consignee for the purpose of effecting delivery of the export shipment to the ultimate consignee. The intermediate consignee is the person named as such on the export license or authorized to act as such under the applicable general license and in conformity with the Export Administration Regulations (EAR) (15 CFR parts 730 through 774).

(3) *Foreign Trade Zone (FTZ) identifier.* If goods are removed from the FTZ and not entered for consumption, report the FTZ identifier. This is the unique 5-digit identifier assigned by the Foreign Trade Zone Board that identifies the FTZ, sub-zone or site from which goods are withdrawn for export.

(4) *Foreign port of unloading.* The foreign port of unloading is the port and country where the goods are removed from the exporting carrier. The foreign port does not have to be located in the country of destination. For exports by sea to foreign countries, not including Puerto Rico, the foreign port of unloading is the code in terms of Schedule K, "Classification of Foreign Ports by Geographic Trade Area and Country." For exports by sea or air between the United States and Puerto Rico, the foreign port of unloading is the code in terms of Schedule D, "Classification of CBP Districts and Ports." The foreign port of unloading is not required for exports by other modes of transportation, including rail, truck, mail, fixed (pipeline), or air (unless between the U.S. and Puerto Rico).

(5) *Export license number/CFR citation/authorization symbol.* License number, permit number, citation, or authorization symbol assigned by the Department of Commerce, BIS; Department of State, DDTC; Department of Treasury, OFAC; Department of Justice, Drug Enforcement Administration (DEA); Nuclear Regulatory Commission (NRC); or any other federal government agency.

(6) *Export Control Classification Number (ECCN).* The number used to identify items on the Commerce Control List (CCL), Supplement No. 1 to Part 774 of the EAR. The five (5) position ECCN consists of a set of digits and a letter or EAR99. Section 738.2 of the EAR describes the ECCN format.

(7) *Secondary unit of measure.* The unit of measure is a code that corresponds to the secondary quantity as prescribed in the Schedule B or HTS. If neither Schedule B nor HTS specifies a secondary unit of measure for the item, the unit of measure is not required.

(8) *Secondary quantity.* The quantity is the total number of units that correspond to the secondary unit of measure, if any, specified in the Schedule B or HTS. See the definition of the primary quantity for specific instructions on reporting the quantity as a weight and whole unit, and rounding fractions.

(9) *Vehicle Identification Number (VIN)/Product ID.* The identification found on the reported used vehicle. For used self-propelled vehicles that do not

have a VIN, the Product ID is reported. "Used" vehicle refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. See 19 CFR 192.1 for more information on exports of used vehicles.

(10) *Vehicle ID qualifier*. The qualifier that identifies the type of used vehicle reported. The valid codes are V for VIN and P for Product ID.

(11) *Vehicle title number*. The number issued by the Motor Vehicle Administration.

(12) *Vehicle title state code*. The 2-character postal abbreviation code for the state or territory that issued the vehicle title.

(13) *Entry number*. The entry number is the import entry number for a shipment transported under bond or if a FTZ or North American Free Trade Agreement (NAFTA) deferred duty claim is made. For goods imported into the United States for export to a third country of ultimate destination, where the importer of record on the entry is a foreign entity, the USPPPI will be the authorized agent designated by the foreign importer for service of process. The USPPPI, in this circumstance, is required to report the import entry number. This number shall not contain any imbedded slashes or dashes.

(14) *Transportation reference number* (TRN) is as follows:

(i) *Vessel shipments*. Report the booking number for vessel shipments. The booking number is the reservation number assigned by the carrier to hold space on the vessel for cargo being exported. The TRN is required for all vessel shipments.

(ii) *Air shipments*. Report the master air waybill number for air shipments. The air waybill number is the reservation number assigned by the carrier to hold space on the aircraft for cargo being exported. The TRN is optional for air shipments.

(iii) *Rail shipments*. Report the bill of lading (BL) number for rail shipments. The BL number is the reservation number assigned by the carrier to hold space on the rail car for cargo being exported. The TRN is optional for rail shipments.

(iv) *Truck shipments*. Report the freight or pro bill number for truck shipments. The freight or pro bill number is the number assigned by the carrier to hold space on the truck for cargo being exported. The freight or pro bill number correlates to a bill of lading number, air waybill number or trip number for multimodal shipments. The TRN is optional for truck shipments.

(15) *Department of State requirements*.

(i) *DDTC registration number*. The number assigned by DDTC to persons who are required to register per part 122 of the ITAR (22 CFR parts 120 through 130), that has an authorization (license or exemption) from DDTC to export the article.

(ii) *DDTC Significant Military Equipment (SME) indicator*. A term used to designate articles on the U.S. Munitions List (USML) (22 CFR part 121) for which special export controls are warranted because of their capacity for substantial military utility or capability. See § 120.7 of the ITAR (22 CFR parts 120 through 130), for a definition of SME and § 121.1 for items designated as SME articles.

(iii) *DDTC eligible party certification indicator*. Certification by the U.S. exporter that the exporter is an eligible party to participate in defense trade. See 22 CFR 120.1(c). This certification is required only when an exemption is claimed.

(iv) *DDTC USML category code*. The USML category of the article being exported (22 CFR part 121).

(v) *DDTC Unit of Measure (UOM)*. This unit of measure is the UOM covering the article being shipped as described on the export authorization or declared under an ITAR exemption.

(vi) *DDTC quantity*. This quantity is for the article being shipped. The quantity is the total number of units that corresponds to the DDTC UOM code.

(vii) *DDTC exemption number*. The exemption number is the specific citation from the ITAR (22 CFR parts 120 through 130) that exempts the shipment from the requirements for a license or other written authorization from DDTC.

(viii) *DDTC export license line number*. The line number of the State Department export license that corresponds to the article being exported.

(16) *Kimberley Process Certificate (KPC) number and authorization symbol*. The unique identifying number of the KPC issued by the United States KPC authority that must accompany any export shipment of rough diamonds. Rough diamonds are classified under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31. Enter the KPC number in the license number field excluding the 2-digit U.S. ISO country code.

(c) *Optional data elements*. (1) *Seal number*. The security seal number placed on the equipment or container.

(2) *Equipment number*. Report the identification number for the shipping equipment, such as container or igloo

number, truck license number, or rail car number.

§ 30.7 *Annotating the bill of lading, air waybill, and other commercial loading documents with the proper proof of filing citations, approved postdeparture filing citations, downtime filing citation, and exemption legends*.

(a) Items identified on the U.S. Munitions List (USML) (22 CFR part 121) shall meet the predeparture reporting requirements identified in the ITAR (22 CFR parts 120 through 130) for the State Department requirements concerning AES proof of filing citations, and time and place of filing.

(b) For shipments other than USML, the USPPPI or the authorized agent is responsible for annotating the proper proof of filing citation or exemption legend on the first page of the bill of lading, air waybill, or other commercial loading document. The USPPPI or the authorized agent must provide the proof of filing citation or exemption legend to the exporting carrier. The carrier must annotate the proof of filing citation or exemption legend on the carrier's outbound manifest when required. The carrier is responsible for presenting the appropriate exemption legend or the proof of filing citation to the CBP Port Director at the port of export as stated in subpart E of this part. Such presentation shall be without material change or amendment of the proof of filing citation, postdeparture filing citation, AES downtime filing citation, or exemption legend as provided to the carrier by the USPPPI or the authorized agent. The proof of filing citation will identify that the export information has been accepted as transmitted. The postdeparture filing citation, AES downtime filing citation, or exemption legend will identify that no filing is required prior to export. The proof of filing citations, postdeparture filing citations, or exemption legends shall appear on the bill of lading, air waybill, manifest or other commercial loading documentation and shall be clearly visible and include either of the following:

(1) For shipments other than USML, the proof of filing citation shall include the statement "AES," followed by the returned confirmation number provided by the AES when the transmission is accepted, referred to as the ITN (for example, AES ITN). Items on the USML shall meet the predeparture reporting requirements in the ITAR (22 CFR parts 120 through 130).

(2) Requirements for shipments filed postdeparture for approved USPPPIs.

(i) If the USPPPI files the EEI postdeparture, only the USPPPI's EIN and the date of export are required in the

postdeparture filing citation (e.g., AESPOST EIN (USPPI) mm/dd/yyyy).

(ii) If the authorized agent files the EEI postdeparture on behalf of an approved USPPI, the filing citation will include the statement "AESPOST," followed by the USPPI's EIN, followed by the filer's identification number and the date of export (e.g., AESPOST EIN (USPPI)–EIN (Authorized agent) mm/dd/yyyy).

(3) Exports of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31, in accordance with the Clean Diamond Act, will require the proof of filing citation, as stated in paragraph (b)(2) of this section, to be annotated on the Kimberley Process Certificate.

(4) For goods shipped pursuant to § 30.4(b)(3)(ii), the filer must provide the following downtime filing citation: "AESDOWN" followed by the filer's EIN, shipment reference number, and date of export (e.g., AESDOWN EIN (filer) shipment reference number mm/dd/yyyy).

§ 30.8 Time and place for presenting proof of filing citations, postdeparture filing citations, AES downtime filing citation, and exemption legends.

The following conditions govern the time and place to present proof of filing citations, postdeparture filing citations, AES downtime filing citation, and/or exemption legends. The USPPI or the authorized agent is required to deliver the proof of filing citations, postdeparture filing citations, AES downtime filing citation, and/or exemption legends required in § 30.4(a). See § 30.7 for instructions for properly formatting the proof of filing citations, postdeparture filing citation, and AES downtime filing citation. See subpart D of this part for instructions on properly formatting exemption legends. Failure of the USPPI or the authorized agent of either the USPPI or FPPI to comply with these requirements constitutes a violation of the the regulations in this part and renders such principal party or the authorized agent subject to the penalties provided for in subpart H of this part.

(a) *Postal exports.* The proof of filing citations, postdeparture filing citations, AES downtime filing citation, and/or exemption legends for items being sent by mail, as required in § 30.2, shall be presented to the postmaster with the packages at the time of mailing. The postmaster is required to deliver the proof of filing citations and/or exemption legends prior to exportation.

(b) *Pipeline exports.* See subpart E of this part for the proof of filing citation and/or exemption legend requirements.

(c) *Exports by other methods of transportation.* For exports sent other than by mail or pipeline, the USPPI or the authorized agent is required to deliver the proof of filing citations, postdeparture filing citations, AES downtime filing citation, and/or exemption legends prior to exportation.

§ 30.9 Transmitting and correcting Automated Export System information.

(a) The USPPI or the authorized filing agent is responsible for electronically transmitting accurate export information as known at the time of filing in the AES and transmitting any changes to that information as soon as they are known. Corrections, cancellations, or amendments to that information shall be electronically identified and transmitted to the AES for all required fields as soon as possible after exportation. The provisions of this paragraph relating to the reporting of corrections, cancellations, or amendments to EEI, shall not be construed as a relaxation of the requirements of the rules and regulations pertaining to the preparation and filing of EEI. Failure to correct the EEI is a violation of the provisions of this part.

(b) For shipments where the USPPI or the authorized agent has received an error message from AES, the corrections shall take place as required. Failure to respond to error messages or otherwise transmit corrections to the AES constitutes a violation of the regulations in this part and renders such principal party or authorized agent subject to the penalties provided for in subpart H of this part. A fatal error message will cause the EEI to be rejected. This error shall be corrected prior to exportation of goods. For EEI that generates a warning message, the correction shall be made within four (4) calendar days of receipt of the original transmission. For EEI that generates a verify message, the correction, when warranted, shall be made within four (4) calendar days. A compliance alert indicates that the shipment was not reported in accordance with regulation. The USPPI or the authorized agent is required to review filing practices and take whatever corrective actions are required to conform with export reporting requirements.

§ 30.10 Authority to require production of documents and retaining electronic data.

(a) *Authority to require production of documents.* For purposes of verifying the completeness and accuracy of the information reported as required under § 30.6, and for other purposes under the regulations in this part, all parties to the export transaction (owners and

operators of the exporting carriers, USPPIs, FPPIs, and/or authorized agents) shall retain documents or records pertaining to the shipment for five (5) years from the date of export. The Department of State or other regulatory agencies may have record keeping requirements for exports that exceed the retention period specified in the regulations in this part, and those requirements prevail. The CBP, Immigration and Customs Enforcement (ICE), the Census Bureau, the BIS, and other participating agencies may require that EEI, shipping documents, invoices, orders, packing lists, and correspondence, as well as any other relevant documents and any other information bearing upon a particular exportation be produced at any time within the 5-year time period for inspection or copying. These records may be retained in an elected format, including electronic or hard copy as provided for in the applicable agency's regulations. Acceptance of the documents by CBP, the Census Bureau, or the BIS does not relieve the USPPI or its authorized agent from providing complete and accurate information at a later time, if all requirements have not in fact been properly met.

(b) *Retaining Electronic Export Information.* Automated Export System filers shall retain a copy of their letter of intent to participate in AES and a copy of the electronic certification notice from the Census Bureau that the filer's AES account has been approved for operational status. The Letter of Intent and certification notice shall be retained for as long as the filer submits EEI through AES. Filers using AES are able to retrieve their AES filings. *AESDirect* and/or *AESpLink* filers shall retain a copy of the electronic certification notice and print the notice indicating the filer has attained certification on *AESDirect* and/or *AESpLink*. Filers using the *AESDirect* and/or *AESpLink* are able to retrieve a copy of their submissions. The Census Bureau will maintain a database of EEI filed in AES to ensure that all filers can retrieve a validated record of their submissions. The USPPI or the authorized agent of the USPPI or FPPI also may request a copy of the electronic record, or submission from the Census Bureau, as provided for in subpart G of this part.

§§ 30.11–30.14 [Reserved]**Subpart B—Export Control and Licensing Requirements****§ 30.15 Introduction.**

(a) For export shipments to foreign countries, the EEI is used both for statistical and for export control purposes. All parties to an export transaction must comply with all relevant export control regulations, including the requirements of the statistical regulations of this part. For convenience, references to provisions of the EAR, ITAR, CBP, and OFAC regulations that affect the statistical reporting requirements of this part have been incorporated into this part. For regulations and information concerning other agencies that exercise export control and licensing authority for particular types of commodity shipments, a USPPI or the authorized agent shall consult the appropriate agency regulations.

(b) In addition to the reporting requirements set forth in § 30.6, further information may be required for export control purposes by the regulations of CBP, BIS, State Department, or the U.S. Postal Service under particular circumstances.

(c) This part requires the retention of documents or records pertaining to a shipment for five (5) years from the date of export. All records concerning license exceptions or license exemptions shall be retained in the format (including electronic or hard copy) required by the controlling agency's regulations. For information on recordkeeping retention requirements exceeding the requirements of this part, refer to the regulations of the agency exercising export control authority for the specific shipment.

(d) In accordance with the provisions of subpart G of this part, information from the EEI is used solely for official purposes, as authorized by the Secretary of Commerce, and any unauthorized use is not permitted.

§ 30.16 Export Administration Regulations (EAR).

The EAR issued by the U.S. Department of Commerce, BIS, also contain some additional reporting requirements pertaining to EEI (see 15 CFR parts 730 through 774).

(a) The EAR require that export information be filed for shipments from U.S. Possessions to foreign countries or areas. (See 15 CFR 758.1(b) and 772.1, definition of the *United States*.)

(b) Requirements to place certain export control information in the EEI are found in the EAR.

§ 30.17 Customs and Border Protection regulations.

Refer to the U.S. Department of Homeland Security's CBP regulations, 19 CFR part 192, for information referencing the advanced electronic submission of cargo information on exports for targeting and inspection purposes pursuant to the Trade Act of 2002. The regulations also prohibit postdeparture filing of export information for certain shipments, and contain other regulatory provisions affecting the reporting of EEI. The CBP's regulations can be obtained from the U.S. Government Printing Office's Web site at: <http://www.gpoaccess.gov>.

§ 30.18 Department of State regulations.

(a) The USPPI or the authorized agent shall file export information, when required, for items on the U.S. Munitions List (USML) of the ITAR (22 CFR part 121). Information for items identified on the USML, including those exported under an export license exemption, shall be filed prior to export.

(b) Refer to the ITAR (22 CFR parts 120 through 130) for requirements regarding information required for electronically reporting export information for USML shipments, proof of filing citations, and filing time requirements.

(c) Department of State regulations can be found at: <http://www.state.gov>.

§ 30.19 Other Federal agency regulations.

Other Federal agencies have requirements regarding the reporting of certain types of export transactions. USPPIs and/or authorized agents are responsible for adhering to these requirements.

§§ 30.20–30.24 [Reserved]**Subpart C—Special Provisions and Specific-Type Transactions****§ 30.25 Values for certain types of transactions.**

The following special procedures govern the values to be reported for shipments of the following unusual types:

(a) *Subsidized exports of agricultural products.* Where provision is made for the payment to the USPPI for the exportation of agricultural commodities under a program of the Department of Agriculture, the value required to be reported for EEI is the selling price paid by the foreign buyer minus the subsidy.

(b) *General Services Administration (GSA) exports of excess personal property.* For exports of GSA excess personal property, the value to be shown in the EEI will be "fair market value," plus charges when applicable, at

which the property was transferred to GSA by the holding agency. These charges include packing, rehabilitation, inland freight, or drayage. The estimated "fair market value" may be zero, or it may be a percentage of the original or estimated acquisition costs. (Bill of lading, air waybill, and other commercial loading documents for such shipments will bear the notation "Excess Personal Property, GSA Regulations 1–III, 303.03.")

§ 30.26 Reporting of vessels, aircraft, cargo vans, and other carriers and containers.

(a) Vessels, locomotives, aircraft, rail cars, ferries, trucks, other vehicles, trailers, pallets, cargo vans, lift vans, or similar shipping containers are not considered "shipped" in terms of the regulations in this part, when they are moving, either loaded or empty, without transfer of ownership or title, in their capacity as carriers of goods or as instruments of such carriers, and EEI is not required.

(b) However, EEI shall be filed for such items, when moving as goods pursuant to sale or other transfer from ownership in the United States to ownership abroad. If a vessel, car, aircraft, locomotive, rail car, vehicle, or container, whether in service or newly built or manufactured, is sold or transferred to foreign ownership while in the Customs territory of the United States or at a port in such area, EEI shall be reported in accordance with the general requirements of the regulations in this part, identifying the port through or from which the vessel, aircraft, locomotive, rail car, car, vehicle, or container first leaves the United States after sale or transfer. If the vessel, aircraft, locomotive, rail car, car, vehicle, or shipping container is outside the Customs territory of the United States at the time of sale or transfer to foreign ownership, EEI shall be reported identifying the last port of clearance or departure from the United States prior to sale or transfer. The country of destination to be shown in the EEI for vessels sold foreign is the country of new ownership. The country for which the vessel clears, or the country of registry of the vessel, should not be reported as the country of destination in the EEI unless such country is the country of new ownership.

§ 30.27 Return of exported cargo to the United States prior to reaching its final destination.

When goods reported as exported from the United States are not exported or returned without having been entered

into a foreign destination, the filer shall correct or cancel the EEI.

§ 30.28 “Split shipments” by air.

When a shipment by air covered by a single EEI submission is divided by the exporting carrier at the port of export where the manifest is filed, and part of the shipment is exported on one aircraft and part on another aircraft of the same carrier, the following procedures shall apply:

(a) The carrier shall deliver the manifest to the CBP Port Director with the manifest covering the flight on which the first part of the split shipment is exported and shall make no changes to the EEI. However, the manifest shall show in the “number of packages” column the actual portion of the declared total quantity being carried and shall carry a notation to indicate “Split Shipment.” All manifests with the notation “Split Shipment” will have identical ITNs.

(b) On each subsequent manifest covering a flight on which any part of a split shipment is exported, a prominent notation “SPLIT SHIPMENT” shall be made on the manifest for identification. On the last shipment, the notation shall read “SPLIT SHIPMENT, FINAL.” Each subsequent manifest covering a part of a split shipment shall also show in the “number of packages” column only the goods carried on that particular flight and a reference to the total amount originally declared for export (for example, 5 of 11, or 5/11). Immediately following the line showing the portion of the split shipment carried on that flight, a notation will be made showing the air waybill number shown in the original EEI and the portions of the originally declared total carried on each previous flight, together with the number and date of each such previous flight (for example, air waybill 123; 1 of 2 flight 36A, June 6 SPLIT SHIPMENT; 2 of 2, flight 40X, June 6 SPLIT SHIPMENT, FINAL).

(c) Since the complete EEI was filed for the entire shipment initially, additional electronic reporting will not be required for these subsequent shipments.

§ 30.29 Reporting of repairs and replacements.

These guidelines will govern the reporting of the following:

(a) The return of goods previously imported for repair and alteration only and other returns to the foreign shipper of temporary imported goods (declared as such on importation) shall have Schedule B or HTS classification commodity number 9801.10.0000. The

value reported in the EEI shall include parts and labor. The value of the original product shall not be included.

(b) Goods that are covered under warranty.

(1) Goods that are reexported after repair under warranty shall follow the procedures in paragraph (a) of this section. It is recommended that the bill of lading, air waybill, or other loading documents include the statement, “This product was repaired under warranty.”

(2) Goods that are replaced under warranty at no charge to the customer shall include the statement, “Product replaced under warranty, value for EEI purposes” on the bill of lading, air waybill, or other commercial-loading documents. Place the notation below the proof of filing citation or exemption legend on the commercial document. Report the value of the replacement part only.

§§ 30.30–30.34 [Reserved]

Subpart D—Exemptions From the Requirements for the Filing of Electronic Export Information

§ 30.35 Procedure for shipments exempt from filing requirements.

Where an exemption from the requirement for filing is provided in this subpart, a legend describing the basis for the exemption shall be made on the first page of the bill of lading, air waybill, or other commercial loading document for carrier use, or on the carrier’s outbound manifest. The exemption legend shall reference the number of the section or provision in this part where the particular exemption is provided (for example, § 30.36).

§ 30.36 Exemption for shipments destined to Canada.

(a) Except as noted in § 30.2(a)(1)(iv), and in paragraph (b) of this section, shipments originating in the United States where the country of ultimate destination is Canada are exempt from the EEI reporting requirements of this part.

(b) This exemption does not apply to the following types of export shipments:

(1) Sent for storage in Canada, but ultimately destined for third countries.

(2) Exports moving from the United States through Canada to a third destination shall be reported in the same manner as for all other exports. The USPPi or authorized agent shall follow the instructions as contained in this part for preparing and filing the EEI.

(3) Requiring a Department of State, DDTTC, export license under the ITAR (22 CFR parts 120 through 130).

(4) Requiring a Department of Commerce, BIS export license under EAR 15 CFR parts 730 through 774.

(5) Subject to the ITAR, but exempt from license requirements.

(6) Classified as rough diamonds under 6-digit Harmonized System subheadings 7102.10, 7102.21, and 7102.31.

§ 30.37 Miscellaneous exemptions.

Electronic Export Information is not required for the following kinds of shipments. However, the Census Bureau has the authority to periodically require the reporting of shipments that are normally exempt from filing.

(a) Except as noted in § 30.2(a)(1)(iv), exports of commodities where the value of the commodities shipped from one USPPi to one consignee on a single exporting carrier, classified under an individual Schedule B or HTS commodity classification code, is \$2,500 or less. This exemption applies to individual Schedule B or HTS commodity classification codes regardless of the total shipment value. In instances where a shipment contains a mixture of individual Schedule B or HTS commodity codes valued \$2,500 or less and individual Schedule B or HTS commodity classification codes valued over \$2,500, only those commodity classification codes valued over \$2,500 need be reported. If the filer reports multiple items of the same Schedule B or HTS code, this exception only applies if the total value of exports for the Schedule B/HTS code is \$2,500 or less. This exemption does not apply to shipments requiring a license from either the Department of Commerce or the Department of State or a license exemption for commodities controlled under the USML.

(b) Tools of trade and their containers that are usual and reasonable kinds and quantities of commodities and software intended for use by individual USPPis or by employees or representatives of the exporting company in furthering the enterprises and undertakings of the USPPi abroad. Commodities and software eligible for this exemption are those that do not require an export license or that are exported as tools of the trade under a license exception of the EAR (15 CFR 740.9(a)(2)(i) and 740.14(b)(4)), and are subject to the following provisions:

(1) Are owned by the individual USPPi or exporting company.

(2) Accompany the individual USPPi, employee, or representative of the exporting company.

(3) Are necessary and appropriate and intended for the personal and/or business use of the individual USPPi,

employee, or representative of the company or business.

(4) Are not for sale.

(5) Are returned to the United States no later than one year from the date of export.

(6) Are not shipped under a bill of lading or an air waybill.

(c) Shipments from one point in the United States to another point in the United States by routes passing through Canada or Mexico.

(d) Shipments from one point in Canada or Mexico to another point in the same country by routes through the United States.

(e) Shipments, other than by vessel, of goods for which no export licenses or ITAR exemptions are required, transported in bond through the United States, and exported from another U.S. port, or transshipped and exported directly from the port of arrival.

(However, where goods are shipped through the United States for export to a third country of ultimate destination, but are first entered for consumption or for warehousing in the United States, EEI shall be filed when the goods are exported from the United States.)

(f) Exports of technology and software as defined in 15 CFR part 772 of the EAR that do not require an export license are exempt from filing requirements. However, EEI is required for mass-market software. For purposes of this part, mass-market software is defined as software that is generally available to the public by being sold at retail selling points, or directly from the software developer or supplier, by means of over-the-counter transactions, mail-order transactions, telephone transactions, or electronic mail-order transactions, and designed for installation by the user without further substantial technical support by the developer or supplier.

(g) Intangible exports of software and technology, such as downloaded software and technical data, regardless of whether an export license is required, and mass-market software exported electronically.

(h) Shipments to foreign libraries, government establishments, or similar institutions, as provided in § 30.40(d).

(i) Shipments as authorized under License Exception GFT for gift parcels and humanitarian donations (*see* 15 CFR 740.12 of the EAR).

(j) Diplomatic pouches and their contents.

(k) Human remains and accompanying appropriate receptacles and flowers.

(l) Shipments of interplant correspondence, executed invoices and other documents, and other shipments

of company business records from a U.S. firm to its subsidiary or affiliate. This excludes highly technical plans, correspondence, etc. that could be licensed.

(m) Shipments of pets as baggage, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.

(n) Carriers' stores, not shipped under a bill of lading or an air waybill (including goods carried in ships aboard carriers for sale to passengers), supplies, and equipment for departing vessels, planes, or other carriers, including usual and reasonable kinds and quantities of bunker fuel, deck engine and steward department stores, provisions and supplies, medicinal and surgical supplies, food stores, slop chest articles, and saloon stores or supplies for use or consumption on board and not intended for unloading in a foreign country, and including usual and reasonable kinds and quantities of equipment and spare parts for permanent use on the carrier when necessary for proper operation of such carrier and not intended for unloading in a foreign country. Hay, straw, feed, and other appurtenances necessary to the care and feeding of livestock while en route to a foreign destination are considered part of carriers' stores of carrying vessels, trains, planes, etc.

(o) Dunnage, not shipped under a bill of lading or an air waybill, of usual and reasonable kinds and quantities necessary and appropriate to stow or secure cargo on the outgoing or any immediate return voyage of an exporting carrier, when exported solely for use as dunnage and not intended for unloading in a foreign country.

(p) Shipments of aircraft parts and equipment; food, saloon, slop chest, and related stores; and provisions and supplies for use on aircraft by a U.S. airline to its own installations, aircraft, and agents abroad, under EAR license exception (AVS) for aircraft and vessels (*see* 15 CFR 740.15(c)).

(q) Electronic Export Information is not required for the following types of commodities when they are not shipped as cargo under a bill of lading or an air waybill and do not require an export license, but the USPPPI shall be prepared to make an oral declaration to the CBP Port Director, when required: baggage and personal effects, accompanied or unaccompanied, of persons leaving the United States, including members of crews on vessels and aircraft.

§ 30.38 Exemption from the requirements for reporting complete commodity information.

The following type of shipments will require limited reporting of EEI when goods are shipped under a bill of lading or an air waybill. In such cases, Schedule B or HTS commodity classification codes, unit of measure, and domestic/foreign indicator shall not be required.

(a) Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects and their containers.

(b) Usual and reasonable kinds and quantities of furniture, household effects, household furnishings, and their containers.

(c) Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, baby carriages, strollers, and their containers provided that the above-indicated baggage, personal effects, and vehicular property: (*see* 19 CFR part 192 for separate CBP requirements for the exportation of used self-propelled vehicles.)

(1) Shall include only such articles as are owned by such person or members of his/her immediate family;

(2) Shall be in his possession at the time of or prior to his/her departure from the United States for the foreign country;

(3) Are necessary and appropriate for the use of such person or his/her immediate family;

(4) Are intended for his use or the use of his/her immediate family; and

(5) Are not intended for sale.

§ 30.39 Special exemptions for shipments to the U.S. armed services.

Electronic Export Information is not required for any and all commodities, whether shipped commercially or through government channels, consigned to the U.S. Armed Services for their exclusive use, including shipments to armed services exchange systems. This exemption does not apply to articles that are on the USML or controlled by the ITAR and shipments that are not consigned to the U.S. armed services but are for their ultimate use.

§ 30.40 Special exemptions for certain shipments to U.S. Government agencies and employees.

Electronic Export Information is not required for the following types of shipments to U.S. Government agencies and employees:

(a) Office furniture, office equipment, and office supplies shipped to and for

the exclusive use of U.S. Government offices.

(b) Household goods and personal property shipped to and for the exclusive and personal use of U.S. Government employees.

(c) Food, medicines, and related items and other commissary supplies shipped to U.S. Government offices or employees for the exclusive use of such employees, or to U.S. Government employee cooperatives or other associations for subsequent sale or other distribution to such employees.

(d) Books, maps, charts, pamphlets, and similar articles shipped by U.S. Government offices to U.S. or foreign libraries, government establishments, or similar institutions.

§§ 30.41–30.44 [Reserved]

Subpart E—General Carrier and Manifest Requirements

§ 30.45 General statement of requirement for the filing of carrier manifests with proof of filing citations for the electronic submission of export information or exemption legends when Automated Export System filing is not required.

(a) *Requirement for filing carrier manifest.* Carriers transporting goods from the United States, Puerto Rico, or U.S. Possessions to foreign countries; from the United States or Puerto Rico to the U.S. Virgin Islands; or between the United States and Puerto Rico; shall not be granted clearance and shall not depart until complete manifests (for vessels, aircraft, and rail carriers) have been delivered to the CBP Port Director in accordance with all applicable requirements under CBP regulations. Each bill of lading, air waybill, or other commercial loading document shall contain the appropriate AES proof of filing citations, covering all cargo for which EEI is required, or exemption legends, covering cargo for which EEI need not be filed by the regulations of this part. Such annotation shall be without material change or amendment of AES proof of filing citations or exemption legends as provided to the carrier by the USPPPI or its authorized agent.

(1) *Vessels.* Vessels transporting goods as specified (except vessels exempted by paragraph (a)(4) of this section) shall file a complete manifest. Manifests may be filed via paper or electronically through the AES Vessel Transportation Module as provided in CBP Regulations, 19 CFR 4.63 and 4.76.

(i) *Bunker fuel.* The manifest (including vessels taking bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall show the quantities and values of

bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo.

(ii) *Coal and fuel oil.* The quantity of coal shall be reported in metric tons (2240 pounds), and the quantity of fuel oil shall be reported in barrels of 158.98 liters (42 gallons). Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(2) *Aircraft.* Aircraft transporting goods shall file a complete manifest as required in CBP Regulations 19 CFR 122.72 through 122.76. The manifest shall be filed with the CBP Port Director at the port where the goods are laden. For shipments from the United States to Puerto Rico, the manifests shall be filed with the CBP Port Director at the port where the goods are unloaded in Puerto Rico.

(3) *Rail carriers.* Rail carriers transporting goods shall file a car manifest with the CBP Port Director at the border port of export in accordance with 19 CFR part 123.

(4) *Carriers not required to file manifests.* Carriers exempted from filing manifests under applicable CBP regulations are required, upon request, to present to the CBP Port Director, the proof of filing citation or exemption legend for each shipment.

(5) *Penalties.* Failure of the carrier to file a manifest as required constitutes a violation of the regulations in this part and renders such carrier subject to the penalties provided for in subpart H of this part.

(b) *Partially exported shipments.* Except as provided in paragraph (c) of this section, when a carrier identifies, prior to filing the manifest, that a portion of the goods covered by a single EEI transaction has not been exported on the intended carrier, it shall be noted on the manifest submitted to CBP. The carrier shall notify the USPPPI or the authorized agent of changes to the commodity data, and the USPPPI or the authorized agent shall electronically transmit the corrections, cancellations, or amendments as soon as they are known in accordance with § 30.9. Failure by the carrier to correct the manifest constitutes a violation of the regulations in this part, and renders the carrier subject to the penalties provided for in subpart H of this part.

(c) *“Split shipments” by air.* When a shipment by air covered by a single EEI transmission is exported in more than one aircraft of the carrier, the “split shipment” procedure provided in § 30.28 shall be followed by the carrier in delivering manifests with the proof of

filing citation or exemption legend to the CBP Port Director.

(d) *Attachment of commercial documents.* The manifest shall carry a notation that values stated are as presented on the bills of lading, cargo lists, or other commercial documents. The bills of lading, cargo lists, or other commercial forms shall be securely attached to the manifest in such manner as to constitute one document. The manifest shall reference the statement “Cargo as per bills of lading attached” or “Cargo as per commercial forms attached.” Also required on the face of each bill of lading shall be the information required by the manifest for cargo covered by that document.

(e) *Exempt items.* For any item for which EEI need not be reported by the regulations in this part, a notation on the manifest, or an oral declaration to the CBP Port Director, shall be made by the carrier as to the basis for the exemption.

(f) *Proof of filing citations and exemption legends.*

(1) The exporting carrier shall not accept paper SEDs under any circumstances nor load cargo that does not have an appropriate proof of filing citation or exemption legend.

(2) The exporting carrier is subject to the penalties provided for in subpart H of this part if the exporting carrier

- (i) Accepts paper SEDs for cargo or
- (ii) Loads cargo without appropriate AES proof of filing citations or exemption legends.

§ 30.46 Requirements for the filing of export information by pipeline carriers.

The operator of a pipeline may transport goods to a foreign country without the prior filing of the proof of filing citation or exemption legend, on the condition that within four (4) calendar days following the end of each calendar month the operator will deliver to the CBP Port Director the proof of filing citations covering all exports through the pipeline to each consignee during the month.

§ 30.47 Clearance or departure of carriers under bond on incomplete manifests.

(a) Except when carriers are transporting goods from the United States to Puerto Rico, clearance or permission to depart may be granted to any carrier by the CBP Port Director prior to the filing of a complete manifest, to the extent authorized, per the bond provisions as contained in 19 CFR 4.75, 4.76, and 122.74.

(b) Except as provided in 19 CFR 4.75, 4.76 and 122.74 as applicable, on the bond, or on a separate listing as part of the bond, a pro forma list of AES proof

of filing citations and exemption legends shall be shown by the departing carrier. This listing may be waived by the CBP Port Director if such waiver does not interfere with the ability of the CBP Port Director to check on performance under the bond or with identifying shipments for which statistical data are required.

§§ 30.48–30.49 [Reserved]

Subpart F—Import Requirements

§ 30.50 General requirements for filing import entries.

Electronic entry filing Automated Broker Interface (ABI), paper import entry summaries (CBP–7501), or paper record of vessel foreign repair or equipment purchase (CBP–226) shall be completed by the importer or its licensed import broker and filed directly with CBP in accordance with 19 CFR. Information on all mail and informal entries required for statistical and CBP purposes shall be reported, including value not subject to duty. Upon request, the importer or import broker shall provide the Census Bureau with information or documentation necessary to verify the accuracy of the reported information, or to resolve problems regarding the reported import transaction received by the Census Bureau.

(a) Import information for statistical purposes shall be filed for goods shipped as follows:

(1) Entering the United States from foreign countries.

(2) Admitted to U.S. FTZs.

(3) From the U.S. Virgin Islands.

(4) From other non-foreign areas (except Puerto Rico).

(b) Sources for collecting import statistics include the following:

(1) CBP's ABI Program (*see* 19 CFR, subpart A, part 143).

(2) CBP–7501 paper entry summaries required for individual transactions (*see* 19 CFR, subpart B, part 142).

(3) CBP–226, Record of Vessel Foreign Repair or Equipment Purchase (*see* 19 CFR 4.7 and 4.14).

(4) CBP–214, Application for Foreign Trade Zone Admission and/or Status Designation (Statistical copy).

(5) Automated Foreign Trade Zone Reporting Program (AFTZRP).

§ 30.51 Statistical information required for import entries.

The information required for statistical purposes is, in most cases, also required by CBP regulations for other purposes. Refer to CBP Web site at <http://www.cbp.gov> to download "Instructions for Preparation of CBP–

7501," for completing the paper entry summary documentation (CBP–7501). Refer to the Customs and Trade Automated Interface Requirements for instructions on submitting an ABI electronic record, or instructions for completing the CBP–226 for declaring any equipment, repair parts, materials purchased, or expense for repairs incurred outside of the United States.

§ 30.52 Foreign Trade Zones.

Foreign goods entering FTZs shall be reported as a general import. When goods are withdrawn from a FTZ for export to a foreign country, the export shall be reported in accordance with § 30.2. When goods are drawn for domestic consumption or entry into a bonded warehouse, the withdrawal shall be reported on CBP–7501 or through the ABI in accordance with CBP regulations. (This section emphasizes the reporting requirements contained in CBP regulations 19 CFR part 146, "Foreign Trade Zones.") When foreign goods enter a FTZ, the zone operator is required to file CBP–214, "Application for Foreign Trade Zone Admission and/or Status Designation." Refer to the CBP Web site for instructions on completing the CBP–214. Per 19 CFR 146.32(a), the applicant for admission shall present the CBP–214 to the Port Director and shall include the statistical (pink) copy, CBP–214(A), for transmittal to the Census Bureau, unless the applicant makes arrangements for the electronic transmission of statistical information to the Census Bureau through the AFTZRP. Companies operating in FTZs interested in reporting CBP–214 statistical information electronically on a monthly basis shall apply directly to the Census Bureau. Monthly electronic reports shall be filed with the Census Bureau no later than the tenth calendar day of the month following the report month. Participation in the Census Bureau program does not relieve companies of the responsibility to file the CBP–214 with CBP. The following data items are required to be filed, in the AFTZRP, for statistical purposes (Use the instructions and definitions provided in 19 CFR part 146 for completing these fields.):

(a) HTS Classification Code.

(b) Country of Origin.

(c) Country Sub-code.

(d) U.S. Port of Entry.

(e) U.S. Port of Unlading.

(f) Transaction Type.

(g) Statistical Month.

(h) Mode of Transportation.

(i) Company Authorization Symbol.

(j) Carrier Code.

(k) Foreign Port of Lading.

(l) Date of Exportation.

(m) Date of Importation.

(n) Special Program Indicator Field.

(o) Unit of Quantity.

(p) CBP (dutiable) Value.

(q) Gross (shipping) Weight.

(r) Charges.

(s) U.S. Value.

(t) FTZ/Subzone Number.

(u) Zone Admission Number.

(v) Vessel Name.

(w) Serial number.

(x) Trade Identification.

(y) Admission Date.

§ 30.53 Import of goods returned for repair.

Import entries covering U.S. goods imported temporarily for repair or alteration and reexport are required to show the following statement: "Imported for Repair and Reexport" on the CBP–7501 or in the ABI entry. Whenever goods are returned to the United States after undergoing either repair, alteration, or assembly under HTS heading 9802, the country of origin shall be shown as the country in which the repair, alteration, or assembly is performed. When the goods are for reexport and if they meet all of the requirements for filing EEL, file according to the instructions provided in § 30.2, except for the following data items:

(a) *Value*. Report the value of the repairs, including parts and labor. Do not report the value of the original product. If goods are repaired under warranty, at no charge to the customer, report the cost to repair as if the customer is being charged.

(b) *HTS Classification Code*. Report HTS commodity classification code, 9801.10.0000 for goods re-exported after repair.

§ 30.54 Special provisions for imports from Canada.

(a) When certain softwood lumber products described under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020 are imported from Canada, import entry records are required to show a valid Canadian Province of Manufacture Code. The Canadian Province of Manufacture is determined on a first mill basis (the point at which the item was first manufactured into a covered lumber product). For purposes of determination, Province of Manufacture is the first province where the subject goods underwent a change in tariff classification to the tariff classes cited in this paragraph. The Province of Manufacture Code should replace the Country of Origin code on the CBP–7501, Entry Summary form. For

electronic ABI entry summaries, the Canadian Province Code should be transmitted in positions 6–7 of the A40 records. These requirements apply only for imports of certain soft lumber products for which the Country of Origin is Canada.

(b) All other imports from Canada, including certain softwood lumber products not covered in paragraph (a) of this section, will require the two-letter designation of the Canadian Province of Origin to be reported on U.S. entry summary records. This information is required only for U.S. imports that under applicable CBP rules of origin are determined to originate in Canada. For nonmanufactured goods determined to be of Canadian origin, the Province of Origin is defined as the Province where the exported goods were originally grown, mined, or otherwise produced. For goods of Canadian origin that are manufactured or assembled in Canada, with the exception of the certain softwood lumber products described in paragraph (a) of this section, the Province of Origin is that in which the final manufacture or assembly is performed prior to exporting that good to the United States. In cases where the province in which the goods were manufactured, assembled, grown, mined, or otherwise produced is unknown, the province in which the Canadian vendor is located can be reported. For those reporting on paper forms the Province of Origin code replaces the country of origin code on the CBP–7501, Entry Summary form.

(c) All electronic ABI entry summaries for imports originating in Canada also required the new Canadian Province of Origin code to be transmitted for each entry summary line item in the A40 record positions 6–7.

(d) The Province of Origin code replaces the Country of Origin code only for imports that have been determined, under applicable CBP rules, to originate in Canada. Valid Canadian Province/Territory codes are:

XA—Alberta
 XB—New Brunswick
 XC—British Columbia
 XM—Manitoba
 XN—Nova Scotia
 XO—Ontario
 XP—Prince Edward Island
 XQ—Quebec
 XS—Saskatchewan
 XT—Northwest Territories
 XV—Nunavut
 XW—Newfoundland
 XY—Yukon

§ 30.55 Confidential information, import entries, and withdrawals.

The contents of the statistical copies of import entries and withdrawals on

file with the Census Bureau are treated as confidential and will not be released without authorization by CBP, in accordance with 19 CFR 103.5 relating to the copies on file in CBP offices. The importer or import broker must provide the Census Bureau with information or documentation necessary to verify the accuracy or resolve problems regarding the reported import transaction.

(a) The basic responsibility for obtaining and providing the information required by the general statistical headnotes of the HTS rests with the person filing the import entry. This is provided for in section 484(a) of the Tariff Act, 19 CFR 141.61(e) of CBP regulations, and § 30.50 of this subpart. Authority can also be found in CBP Regulations 19 CFR 141.61(a) which require that the entry summary data clearly set forth all information required.

(b) 19 CFR 141.61(e) of the CBP regulations provides that penalty procedures relating to erroneous statistical information shall not be invoked against any person who attempts to comply with the statistical requirements of the General Statistical Notes of the HTS. However, in those instances where there is evidence that statistical suffixes are misstated to avoid quota action, or a misstatement of facts is made to avoid import controls or restrictions related to specific commodities, the importer or its licensed broker should be aware that the appropriate actions will be taken under 19 U.S.C. 1592, as amended.

§§ 30.56–30.59 [Reserved]

Subpart G—General Administrative Provisions

§ 30.60 Confidentiality of Electronic Export Information.

(a) *Confidential status.* The EEI contained in the AES is confidential, to be used solely for official purposes as authorized by the Secretary of Commerce. The collection of EEI by the Department of Commerce has been approved by the Office of Management and Budget. The information collected is used by the Census Bureau for statistical purposes only and by the BIS of the Department of Commerce for export control purposes. In addition, EEI is used by other Federal agencies such as the Department of State and CBP for export control. Except as provided for in paragraph (f) of this section, information reported through the AES shall not be disclosed to anyone by any officer, employee, contractor, or agent of the federal government other than to the USPPPI, FPPI, the authorized agent of the USPPPI

or the FPPI, or the transporting carrier (the parties). Such disclosure shall be limited to that information provided to the AES by each party.

(b) *Penalties.* Disclosure of confidentiality of EEI by any officer, employee, contractor, or agent of the Federal Government except as provided for in paragraphs (a) and (f) of this section renders such persons subject to the penalties provided for in subpart H of this part.

(c) *Supplying EEI for official purposes.* The EEI may be supplied to federal agencies for official purposes, defined to include, but not limited to:

(1) Verification of export shipments for export control and compliance purposes;

(2) Providing proof of export; and

(3) Compliance and audit purposes by the USPPPI, FPPI, agents of USPPPI and FPPI, and carriers. Such disclosure shall be limited to that information provided to the AES by each party. Official purposes shall also include those determined to be in the national interest pursuant to Title 13 U.S.C., Section 301(g) and paragraph (e) of this section.

(d) *Supplying EEI for non-official purposes.* The EEI shall not be disclosed by the USPPPI or the authorized agent or representative of the USPPPI or authorized agent for non-official purposes, defined to include, but not limited to:

(1) Claims for exemption from Federal internal revenue tax or state taxes;

(2) Use by the IRS for purposes not related to export control or compliance;

(3) Use by state and local government agencies, and non-governmental entities; and

(4) Use by foreign governments.

(e) *Copying of information to manifests.* Because the ocean manifest can be made public under provision of CBP regulations, no information from the EEI, except the ITN, proof of filing citation or exemption legend, shall be copied to the outward manifest of ocean carriers.

(f) *Determination by the Secretary of Commerce.* Under Title 13, U.S.C., Chapter 9, Section 301(g), the EEI is exempt from public disclosure unless the Secretary or delegate determines that such exemption would be contrary to the national interest. The Secretary or his or her delegate may make such information available, if he or she determines it is in the national interest, taking such safeguards and precautions to limit dissemination as deemed appropriate under the circumstances. In recommendations or decisions regarding such actions, it shall be presumed to be contrary to the national interest to provide EEI for purposes set forth in

paragraph (d) of this section. In determining whether, under a particular set of circumstances, it is contrary to the national interest to apply the exemption, the maintenance of confidentiality and national security shall be considered as important elements of national interest.

§ 30.61 Statistical classification schedules.

The following statistical classification schedules are referenced in this part. These schedules, except as noted, may be accessed through the Census Bureau's Web site at: <http://www.census.gov/trade>.

(a) *Schedule B: Statistical Classification for Domestic and Foreign Commodities Exported from the United States* shows the detailed commodity classification requirements and 10-digit statistical reporting numbers to be used in preparing EEL, as required by the regulations in this part.

(b) *Harmonized Tariff Schedules of the United States Annotated for Statistical Reporting* shows the 10-digit statistical reporting number to be used in preparing import entries and withdrawal forms. (**Note:** This site is maintained by the United States International Trade Commission (USITC) at <http://www.usitc.gov>.)

(c) *Schedule C—Classification of Country and Territory Designations for U.S. Foreign Trade Statistics.*

(d) *Schedule D—Classification of CBP Districts and Ports for U.S. Foreign Trade Statistics.*

(e) *Schedule K—Classification of Foreign Ports by Geographic Trade Area and Country.* (**Note:** This site is maintained by the Army Corps of Engineers.)

(f) *International Air Transport Association (IATA)—Code of the carrier for air shipments.* These are the 2-digit or 3-digit air carrier codes to be used in reporting EEL, as required by the regulations in this part.

(g) *Standard Carrier Alpha Code (SCAC)—Classification of the carrier for vessel, rail and truck shipments, showing the 4-character code necessary to prepare EEL, as required by the regulations in this part.* (**Note:** This site is maintained by the National Motor Freight Traffic Association at <http://www.nmfta.org>.)

§ 30.62 Emergency exceptions.

The Census Bureau and CBP may jointly authorize the postponement of or exceptions to the requirements of the regulations in this part as warranted by the circumstances in individual cases of emergency where strict enforcement of the regulations would create a hardship. In cases where export control

requirements also are involved, the concurrence of the regulatory agency and CBP also will be obtained.

§ 30.63 Office of Management and Budget control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart will comply with the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3507(f), which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control no.
30.1 through 30.99	0607–0152

§§ 30.64–30.69 [Reserved]

Subpart H—Penalties

§ 30.70 Violation of the Clean Diamond Trade Act.

Public Law 108–19, the Clean Diamond Trade Act (the Act), section 8(c), authorizes CBP and the Bureau of Immigration and Customs Enforcement (ICE), as appropriate, to enforce the laws and regulations governing exports of rough diamonds, including those with respect to the validation of the Kimberley Process Certificate by the exporting authority. The Treasury Department's OFAC also has enforcement authority pursuant to section 5(a) of the Clean Diamond Trade Act (the Act), Executive Order 13312, and Rough Diamonds Control Regulations (31 CFR part 592). CBP, ICE, and OFAC, pursuant to section 5(a) of the Act, are further authorized to enforce provisions of section 8(a) of the Act, that provide for the following civil and criminal penalties:

(a) *Civil penalties.* A civil penalty not to exceed \$10,000 may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act.

(b) *Criminal penalties.* For the willful violation or attempted violation of any license, order, or regulation issued under the Act, a fine not to exceed \$50,000, shall be imposed upon conviction, or:

(1) If a natural person, imprisoned for not more than ten (10) years, or both;

(2) If an officer, director, or agent of any corporation, imprisoned for not more than 10 years, or both.

§ 30.71 False or fraudulent reporting on or misuse of the Automated Export System.

(a) *Criminal penalties.* (1) *Failure to file; submission of false or misleading information.* Any person, including

USPPIs, authorized agents or carriers, who knowingly fails to file or knowingly submits, directly or indirectly, to the U.S. Government, false or misleading export information through the AES, shall be subject to a fine not to exceed \$10,000 or imprisonment for not more than five (5) years, or both, for each violation.

(2) *Furtherance of illegal activities.* Any person, including USPPIs, authorized agents or carriers, who knowingly reports, directly or indirectly, to the U.S. Government any information through or otherwise uses the AES to further any illegal activity shall be subject to a fine not to exceed \$10,000 or imprisonment for not more than five (5) years or both for each violation.

(3) *Forfeiture penalties.* Any person who is convicted under this subpart shall, in addition to any other penalty, be subject to forfeiting to the United States:

(i) Any of that person's interest in, security of, claim against, or property or contractual rights of any kind in the goods or tangible items that were the subject of the violation.

(ii) Any of that person's interest in, security of, claim against, or property or contractual rights of any kind in tangible property that was used in the export or attempt to export that was the subject of the violation.

(iii) Any of that person's property constituting, or derived from, any proceeds obtained directly or indirectly as a result of this violation.

(4) *Exemption.* The criminal fines provided for in this subpart are exempt from the provisions of section 3571 of Title 18, U.S.C.

(b) *Civil penalties.* (1) *Filing false/misleading information, failure to file, furtherance of illegal activities, delayed filing violations.* A civil penalty not to exceed \$1,000 for each day's delinquency beyond the applicable period prescribed in § 30.4, but not more than \$10,000 per violation, may be imposed for failure to file information or reports in connection with the exportation or transportation of cargo.

(2) *Penalties for other violations.* A civil penalty not to exceed \$10,000 per violation may be imposed for each violation of provisions of this part other than any violation encompassed by paragraph (b)(1) of this section. Such penalty may be in addition to any other penalty imposed by law.

(3) *Forfeiture penalties.* In addition to any other civil penalties specified in this section, any property involved in a violation may be subject to forfeiture under applicable law.

§ 30.72 Civil penalty procedures.

(a) *General.* Whenever a civil penalty is sought for a violation of this part, the charged party is entitled to receive a formal complaint specifying the charges and, at his or her request, to contest the charges in a hearing before an administrative law judge. Any such hearing shall be conducted in accordance with sections 556 and 557 of Title 5, U.S.C.

(b) *Commencement of civil actions.* If any person fails to pay a civil penalty imposed under this subpart, the Secretary may request the Attorney General to commence a civil action in an appropriate district court of the United States to recover the amount imposed (plus interest at currently prevailing rates from the date of the final order). No such action may be commenced more than five (5) years after the date the order imposing the civil penalty becomes final. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(c) *Remission and mitigation.* Any penalties imposed under § 30.71(b)(1) and (b)(2) may be remitted or mitigated, if:

- (1) The penalties were incurred without willful negligence or fraud; or
- (2) Other circumstances exist that justify a remission or mitigation.

(d) *Applicable law for delegated function.* If, pursuant to Title 13, U.S.C., section 306, the Secretary delegates functions addressed in this part to another agency, the provisions of law of that agency relating to penalty assessment, remission or mitigation of such penalties, collection of such penalties, and limitations of action and compromise of claims shall apply.

(e) *Deposit of payments in General Fund of the Treasury.* Any amount paid in satisfaction of a civil penalty imposed under this subpart shall be deposited into the general fund of the Treasury, and credited as miscellaneous receipts.

§ 30.73 Enforcement.

(a) *Department of Commerce.* The BIS's Office of Export Enforcement (OEE) may conduct investigations pursuant to this part. In conducting investigations, OEE may, to the extent necessary or appropriate to the enforcement of this part, exercise such authorities as are conferred upon OEE by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(b) *Department of Homeland Security.* The ICE and CBP may enforce the provisions of this part or conduct investigations under this part.

§§ 30.74–30.99 [Reserved]**Appendix A to Part 30—Format for the Letter of Intent, Automated Export System**

The first requirement for approval/certification to file in the AES is to submit an electronic Letter of Intent (LOI). The LOI is a statement of a company's desire to participate in the AES. It shall set forth a commitment to develop, maintain, and adhere to CBP and Census performance requirements and operations standards. Once the LOI is received, a CBP Client Representative and a U.S. Census Bureau Client Representative will be assigned to the company. Census will forward additional information to prepare the company for participation in the AES.

The AES postdeparture filing privilege allows a USPPI approved to file postdeparture (an approved USPPI) or an authorized agent filing on behalf of an approved USPPI to submit complete export data at any time prior to or within ten (10) calendar days after the date of exportation. Applicants will be reviewed by several government agencies prior to acceptance for the postdeparture filing. Failure to provide complete and accurate information will be grounds for rejecting the LOI for the postdeparture filing option. Incomplete or inaccurate information on the LOI for the predeparture filing status will be returned without action to the organization filing the application.

The LOIs shall include all of the following:

1. Company Name, Address (no P.O. boxes), City, State, Postal Code.

2. Company Contact Person, Phone Number, Fax Number, E-mail Address.

3. Technical Contact Person, Phone Number, Fax Number, E-mail Address.

4. Corporate Office Address, City, State, Postal Code.

5. Type of Business—USPPI, Authorized Agent/Broker, Ocean Carrier, Software Vendor, Service Center, etc. (Indicate all that apply).

- (i) Authorized Agents/Brokers, indicate the number of USPPIs for which export information is filed.

- (ii) USPPIs, indicate whether you applied for AES predeparture and/or postdeparture filing (only USPPIs can apply for postdeparture filing).

6. Identify the filing type sought: Predeparture, Postdeparture filing, or BOTH (Note: Only USPPIs can apply for postdeparture filing).

If applying for postdeparture filing, state/identify the reason for the request.

7. Filer Code—EIN, SSN, or DUNS (Indicate all that apply).

8. Description of products exported and 6-digit Schedule B/HTS number(s). Only the 6-digit Schedule B/HTS number(s) identified will be approved for use in postdeparture filing.

- (i) Indicate seasonal product(s).

- (ii) Identify why the product is seasonal.

9. Types of Licenses or Permits.

10. U.S. Ports of Export Expected to be Utilized.

11. Average Monthly Number of Export Shipments requiring the filing of EEL.

12. Average Monthly Value of Export Shipments requiring the filing of EEL.

13. Software Vendor Name, Contact, and Phone Number (if using vendor provided software).

14. Modes of Transportation used for export shipments (Air, Vessel, Truck, Rail, etc.).

15. The following self-certification statement, signed by an officer of the company: "I, _____ representing or on behalf of, (COMPANY NAME) certify that all statements made and all information provided herein are true and correct. I understand that civil and criminal penalties may be imposed for making false or fraudulent statements herein, failing to provide the requested information or for violation of U.S. laws on exportation (13 U.S.C. 305; 18 U.S.C. 1001)."

BILLING CODE 3510-07-P

Appendix B to Part 30—Sample for Power of Attorney and Written Authorization

SAMPLE FORMAT: Power of Attorney

POWER OF ATTORNEY

U.S. PRINCIPAL PARTY IN INTEREST/AUTHORIZED AGENT

Know all men by these presents, That _____, the

(Name of U.S. Principal Party in Interest (USPPI))

(USPPI) organized and doing business under the laws of the State or Country of

_____ and having an office and place of business at

_____ (Address of USPPI)

hereby authorizes _____, the (Authorized Agent)

(Authorized Agent)

of _____

(Address of Authorized Agent)

to act for and on its behalf as a true and lawful agent and attorney of the U.S. Principal Party in Interest for and in the name, place, and stead of the U.S. Principal Party in Interest, from this date, in the United States either in writing, electronically, or by other authorized means to:

Act as Authorized Agent for Export Control, Census Reporting, and Customs purposes. Prepare and transmit any Electronic Export Information (EEI) or other documents or records required to be filed by the U.S. Census Bureau, the Bureau of Customs and Border Protection, the Bureau of Industry and Security or any other U.S. Government agency, and perform any other act that may be required by law or regulation in connection with the exportation or transportation of any goods shipped or consigned by or to the U.S. Principal Party in Interest, and to receive or ship any goods on behalf of the U.S. Principal Party in Interest.

The U.S. Principal Party in Interest hereby certifies that all statements and information contained in the documentation provided to the Authorized Agent relating to exportation will be true and correct. Furthermore, the U.S. Principal Party in Interest understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any United States laws or regulations on exportation.

This power of attorney is to remain in full force and effect until revocation in writing is duly given by the U.S. Principal Party in Interest and received by the Authorized Agent.

IN WITNESS WHEREOF, _____ caused these

(Full Name of USPPI/USPPI Company)

presents to be sealed and signed:

Witness: _____

Signature: _____

Capacity: _____

Date: _____

Sample Written Authorization
SAMPLE FORMAT: Written Authorization

WRITTEN AUTHORIZATION TO PREPARE OR TRANSMIT ELECTRONIC EXPORT INFORMATION

I, _____, authorize
(U.S. Principal Party in Interest)
_____ to act as authorized agent for
(Authorized Agent)

export control and customs purposes and to transmit such export information electronically that may be required by law or regulation in connection with the exportation or transportation of any goods on behalf of said U.S. Principal Party in Interest. The U.S. Principal Party in Interest certifies that necessary and proper documentation to accurately transmit the information electronically is and will be provided to the said Authorized Agent. The U.S. Principal Party in Interest further understands that civil and criminal penalties may be imposed for making false or fraudulent statements or for the violation of any U.S. laws or regulations on exportation and agrees to be bound by all statements of said agent based upon information or documentation provided by the U.S. Principal Party in Interest to said agent.

Signature: _____
(U.S. Principal Party in Interest)

Capacity: _____

Date: _____

Dated: February 10, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 05-2926 Filed 2-16-05; 8:45 am]

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the

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A cumulative List of Public Laws for the second session of the 108th Congress will appear in the issue of January 31, 2005.

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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To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami. (Jan. 7, 2005; 119 Stat. 3)

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