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Presidential Documents

Title 3—

The President

Proclamation 7768 of April 7, 2004

National D.A.R.E. Day, 2004

By the President of the United States of America

A Proclamation

Drug Abuse Resistance Education (D.A.R.E.) is one of the most widely recognized substance abuse and violence prevention programs in America. For more than 20 years, D.A.R.E. has brought specially trained police officers into classrooms to teach students about the importance of making healthy choices. These efforts have helped reduce illegal drug use in our country, but there remains work to be done.

Drug abuse costs people their health and robs them of their promise. A critical component of stopping illegal drug use is cutting the demand for drugs, and D.A.R.E. is an important part of expanding these efforts. By introducing students to local police officers and teaching them to become good citizens, D.A.R.E. also strengthens communities.

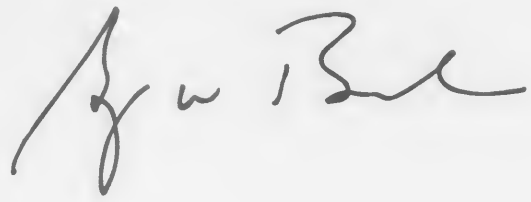
To help prevent illegal drug use, my National Drug Control Strategy includes the National Youth Anti-Drug Media Campaign; support for drug-free community coalitions; and $25 million for student drug testing. Our hard work is showing results. Youth drug use declined 11 percent between 2001 and 2003, meaning that 400,000 fewer young people used drugs.

As we educate young people about the dangers of illegal drugs, we are also helping to heal those who have fallen into addiction and working to disrupt the market for illegal drugs. The collaborative efforts of concerned citizens and officials at the Federal, State, and local levels are making our neighborhoods safer and our children healthier.

We will continue to work toward a society in which all citizens are free from the devastating influence of drugs. Law enforcement officials, community leaders, faith-based groups, parents, teachers, and programs like D.A.R.E. are all working to achieve this goal.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 8, 2004, as National D.A.R.E. Day. I call upon our youth, parents, educators, and all Americans to join in the effort to reduce drug use by expressing appreciation for the health care professionals, law enforcement officials, volunteers, teachers, and all those who help young people avoid the dangers of illegal drugs and violence.

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



[FR Doc. 04–8354
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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04–905–1 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxing Limits on the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that relaxed the weekly limits on small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this action. This rule finalizes a relaxation of the weekly limitation set for shipments of small-sized red seedless grapefruit entering the fresh market from 40 percent to 50 percent during the last week of the 22-week regulatory period. This change provided an additional volume of small red seedless grapefruit to address marketing conditions without saturating all markets with these small sizes. This rule helped stabilize the market and improve grower returns.

EFFECTIVE DATE: May 12, 2004.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

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

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

This rule finalizes an interim final rule that relaxed the limits on the volume of small red seedless grapefruit entering the fresh market. The interim final rule allowed for an additional volume of sizes 48 and 56 fresh red seedless grapefruit to be shipped during the last week of the 22-week percentage of size regulation period for the 2003–04 season. The relaxation supplied an additional volume of small red seedless grapefruit to address current marketing conditions without saturating all markets with these small sizes. This action helped stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit is handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

The interim final rule being finalized relaxed the limits on the volume of sizes 48 (3$^{9}/_{16}$ inches minimum diameter) and 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit entering the fresh market by increasing the weekly percentage established for week 22 (February 9 through February 15, 2004),

from 40 percent to 50 percent. The Committee unanimously recommended this change during a January 22, 2004, telephone meeting.

On July 1, 2003, the Committee recommended regulating all 22 weeks (September 15, 2003–February 15, 2004). The Committee recommended that the weekly percentages be set at 45 percent for the first 2 weeks, 35 percent for weeks 3 through 19, and 40 percent for the remaining 3 weeks. These percentages were established following informal rulemaking procedures, with an interim final rule published in the **Federal Register** on September 9, 2003 (68 FR 53015), and a final rule published in the **Federal Register** on November 14, 2003 (68 FR 64494). The interim final rule increasing the percentage of small red grapefruit shipments for week 22 from 40 percent to 50 percent was published in the **Federal Register** on February 6, 2004 (69 FR 5679).

The Committee believes that the over shipment of small-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes.

In its discussion of the relaxation of the percentage for the last week when percentage size limitations apply, the Committee reviewed the percentages previously recommended and the current state of the crop. The Committee also considered some additional information that was not available during its earlier meeting. On January 12, 2004, USDA released information regarding fruit size distribution developed from a December size survey. The size survey showed that more small sizes were available than anticipated. The release stated that the mean size indicated that only two other seasons during the past ten years have had smaller sizes. According to the survey, more than 50 percent of the remaining crop was size 48 and smaller. This compares to only 34 percent at this time last season.

The Committee had not expected small sizes to represent such a large portion of the available crop at this time of the season. With small sizes representing a significant amount of this year's crop, larger sizes were in shorter supply. Growers had spot picked their groves twice looking for larger sizes and to spot pick again would have been cost prohibitive. Also, with the fruit size not improving, there continued to be a shortage of large sizes. This meant that a sizable amount of small sizes would have been available at the end of the regulated period.

With a limited number of larger sizes available, there was also market pressure to use small sizes to serve markets that traditionally take larger sizes. However, at the same time, markets that traditionally demand small sizes were also demanding fruit. There were indications that importers of small-sized fruit had begun purchasing fruit earlier than in past seasons. Export shipments for the week ending January 18, 2004, were nearly 20 percent higher than for the same week last season. These factors made supplies of available allotment of small-sized fruit tight.

The Committee offices had been receiving calls from members of the industry asking that the weekly percentages be increased. The Committee staff was also actively working with handlers on allotment loans and transfers to accommodate the needs of handlers desiring to ship more small-sized red seedless grapefruit. Requests for loans and transfers had increased from 3 requests during week 15, to 19 for week 17, to 24 requests during week 18.

However, while the percentage of size regulation provides allowances for over shipments, loans, and transfers of allotment during regulation weeks 1 through 21, there are no allowances for loans or over shipments for week 22 because it is the end of the regulation period. The Committee agreed that some increase in the percentage was necessary for the last week of regulation to recognize that some handlers would be having to reduce their allotment to cover any over shipments from the previous week and that no additional over shipments would be permitted.

There was also concern in the industry that if the percentage had not been relaxed, a large volume of small-sized fruit would have been pushed into the market following the end of the regulation period. This would have negatively impacted prices and undermined the success of the regulation. During the 2001–02 season, small sizes also represented a significant percentage of the crop at the end of the regulation period. The Committee had recommended a relaxation in the percentages for the last few weeks of the season, but, due to rulemaking time frames, the percentage changes were not implemented. Following the end of the regulation period, sizable quantities of small sizes were dumped onto the market. This contributed to a 35 cent per carton reduction in the f.o.b. price. The Committee believed that relaxing the percentage for the last week of regulation might help relieve some of the volume of small sizes and provide for a smoother transition to the end of the regulation period.

The Committee discussed several alternatives ranging from maintaining the percentages at their current rate, increasing week 21 to 45 percent and week 22 to 50 percent, and just increasing the percentage rate for week 22. The Committee agreed it would be difficult to get a change to week 21 in place prior to that regulation week, and recommended increasing the percentage for week 22 from 40 percent to 50 percent. Such a change represented an additional industry allotment of 72,174 cartons for the last week of regulation. The Committee believes this provided the industry with some additional flexibility and helped with the transition from the end of the 22-week regulation period to the unrestricted shipment of small sizes.

Members agreed that one of the most important goals of percentage of size regulation was to create some discipline in the way fruit was packed and marketed. However, considering the size survey results, and the other information discussed, the Committee decided that increasing the weekly percentage for week February 9 through February 15 addressed the goals of this regulation, while providing handlers with some additional marketing flexibility.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red seedless grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2002–03 season was approximately $7.24 per 4⅕-bushel carton, and total fresh shipments for the 2002–03 season are estimated at 22.9 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 75 percent of the grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

On July 1, 2003, the Committee recommended limiting the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by setting weekly percentages for each of the 22 weeks, beginning September 15, 2003. Weekly percentages were established at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 21, and 22. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the percentages set.

This rule finalizes the interim final rule that relaxed the weekly limitation set for shipments of small-sized red seedless grapefruit entering the fresh market from 40 percent to 50 percent during the last week of the 22-week regulatory period. This action provided an additional volume of small red seedless grapefruit to address marketing conditions without saturating all markets with these small sizes. The interim final rule helped stabilize the market and improve grower returns. Procedures used in determining the weekly allotments of small sizes are specified in § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action during a telephone meeting on January 22, 2004.

The interim final rule increased the weekly percentage set for the last week of regulation. The Committee made this recommendation to address the issue that the majority of the remaining crop was made up of small sizes. By increasing the percentage, more small sizes were available for shipment. This helped handlers meet their market needs and provided some additional flexibility without putting too many small sizes on the market. This benefited both handler and producer returns.

The purpose of percentage of size regulation is to help stabilize the market and improve grower returns. This change provided a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. The interim final rule was not expected to decrease the overall consumption of red seedless grapefruit. It was expected to benefit all red seedless grapefruit growers and handlers regardless of their size of operation.

The Committee considered several alternatives when discussing this action, including maintaining the percentages at their current rate, increasing week 21 to 45 percent and week 22 to 50 percent, and just increasing the percentage rate for week 22. The Committee agreed it would be difficult to get a change to week 21 in place prior to that regulation week, and recommended increasing the percentage for week 22 from 40 percent to 50 percent to provide the industry with some additional flexibility and provide a smooth transition to the period without percentage size limitations.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, while the meeting on January 22, 2004, was a telephone meeting, interested persons outside the Committee had an opportunity to provide input in the decision. The Committee manager provided a notice to the industry and anyone had the opportunity to participate in the call. Like all Committee meetings, the January 22, 2004, meeting provided both large and small entities the opportunity to express views on this issue. Also, the weekly percentage size regulation has been an ongoing issue that has been discussed at numerous public meetings so that interested parties have had the opportunity to express their views on this issue.

As mentioned before, the interim final rule concerning this action was published in the **Federal Register** on February 6, 2004. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. The interim final rule invited comments until February 10, 2004. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (69 FR 5679, February 6, 2004) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

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

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 69 FR 5679 on February 6, 2004, is adopted as a final rule without change.

Dated: April 6, 2004.

A.J. Yates.

Administrator, Agricultural Marketing Service.

[FR Doc. 04–8214 Filed 4–9–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV04–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2003–2004 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule establishing interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2003–2004 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 6.8393 percent and 93.1607 percent, respectively, and the final free and restricted percentages are 8.2303 percent and 91.7697 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts that may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was unanimously recommended by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2003–2004 marketing year (July 1, 2003, through June 30, 2004). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect marketing percentages that allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 35,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 28, 2003, meeting, the Board adjusted the NASS crop estimate down to 33,717 tons by deducting the average crop disappearance over the preceding three years (4.64 percent or 1,624 tons) and adding the undeclared carryin (341 tons) to the 35,000 ton production estimate. Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers.

The Board computed the adjusted inshell trade demand of 2,306 tons by taking the difference between the average of the past three years' sales (3,127 tons) and the declared carryin from last year's crop (821 tons).

The Board computed and announced preliminary free and restricted percentages of 5.4720 percent and 94.5280 percent, respectively, at its August 28, 2003, meeting. The preliminary free percentage was computed by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,306 tons × 80 percent ÷ 33,717 tons = 5.4720 percent). The preliminary free percentage thus initially released 1,845 tons of hazelnuts from the 2003 supply for domestic inshell use, and the preliminary restricted percentage withheld 31,872 tons for the export and shelled (kernel) markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses crop estimates that are current at the time to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.*, desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 13, 2003, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 6.8393 percent free and 93.1607 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carryout, were recommended at 8.2303 free and 91.7697 percent restricted effective May 31, 2004. The final free percentage releases 2,775 tons of inshell hazelnuts from the 2003 supply for domestic inshell use.

The interim and final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2003–2004 marketing year:

	Tons
Inshell Supply:	
(1) Total production (crop estimate)	35,000
(2) Less substandard, farm use (disappearance; 4.64 percent of Item 1)	1,624
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	33,376
(4) Plus undeclared carryin as of July 1, 2003, (subject to regulation)	341
(5) Supply subject to regulation (Item 3 plus Item 4)	33,717
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	3,127
(7) Less declared carryin as of July 1, 2003, (not subject to regulation)	821
(8) Adjusted Inshell Trade Demand (Item 6 minus Item 7)	2,306
(9) Desirable carryout on August 31, 2004 (15 percent of Item 6)	469
(10) Adjusted Inshell Trade Demand plus desirable carryout (Item 8 plus Item 9)	2,775

Percentages	Free	Restricted
(11) Interim final percentages (Item 8 divided by Item 5) × 100	6.8393	93.1607
(12) Final percentages (Item 10 divided by Item 5) × 100	8.2303	91.7697
(13) Final free in tons (Item 10)	2,775	
(14) Final restricted in tons (Item 5 minus Item 10)		30,942

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 469 tons for desirable carryout effective May 31, 2004. The total free supply for the 2003–2004 marketing year is 3,596 tons of hazelnuts, which is the sum of the final trade demand of 3,127 tons and the 469 ton desirable carryout. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

Final Regulatory Flexibility Analysis

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

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

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service

firms are defined as those having annual receipts of less than $5,000,000. There are approximately 750 producers of hazelnuts in the production area and approximately 17 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $36,133. This is computed by dividing NASS figures for the average value of production for 2001 and 2002 ($27,100,000) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three market outlets: domestic inshell, export inshell, and kernel markets. Handlers and growers receive the highest return on domestic inshell, less for export inshell, and the least for kernels. Based on Board records of average shipments for 1993–2002, the percentage going to each of these markets was 13 percent (domestic inshell), 43 percent (export inshell), and 44 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low grower prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental United States. On average, 77 percent of domestic inshell hazelnuts are shipped during the period October 1 through November 30, primarily to supply the holiday nut market.

The current volume control procedures have helped the industry to improve its marketing situation by keeping inshell supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market.

The adjusted inshell trade demand (2,306 tons) and the larger 2003 crop were key market factors leading to the Board's recommendation for the 8.2303 percent final free percentage. The 35,000 ton hazelnut production for 2003 is 15,500 tons more than in 2002, and 14,500 tons less than the production level in 2001, the largest crop in the last ten years.

Although the domestic inshell market is a relatively small proportion of total sales (13 percent of average shipments over the last ten years, and 11 percent of average shipments for the last two years), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower grower prices. The domestic kernel market and inshell exports are both expected to continue to be good outlets for U.S. hazelnut production.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1993 and 2002, from a low of 15,400 tons in 1998 to a high of 49,500 tons in 2001. Production in the shortest crop year and the biggest crop year was 49 percent and 159 percent, respectively, of the 10-year average tonnage of 31,220. Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2004.

The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the 10-year period is 0.39. In contrast, the coefficient of variation for hazelnut grower prices is 0.12, less than one third of the CV for production. The considerably lower variability of prices versus production provides an illustration of the order's price-stabilizing impacts.

Comparing grower cost of production to grower revenue in recent years highlights the financial impacts on growers at varying production levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average grower revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2002. Average grower revenue was below typical costs in the other years. Since 1995, the highest level of revenue per bearing acre was $1,552 (1997) and the lowest was $561 in 1996. Without the stabilizing impact of the order, growers may have lost more money. While crop size fluctuates, the volume regulations contribute to orderly marketing and market stability, and help to moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides an equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the hazelnut crop during the 2003–2004 marketing year. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA the preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 4 percent of total U.S. production for other tree nuts, and less than 4 percent of the world's hazelnut production.

During the 2002–2003 season, 87 percent of the kernels were marketed in the domestic market and 13 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop new markets and expand demand, with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S.-produced inshell hazelnuts, with a 10-year average of 5,249 tons, 40 percent of total average exports of 12,478 tons. The largest share went to Germany. In 1995, 70 percent of export shipments went to

Europe. Recent years have seen a significant shift in export destinations, however, with Europe's share declining to 30 percent of inshell shipments (3,321 tons) in the 2002–2003 season. Inshell shipments to Asia have increased dramatically in the past few years, growing to 55 percent of total exports of 10,979 tons in the 2002–2003 season. Hong Kong is the largest export destination, followed by China. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 28 and November 13, 2003, were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 16, 2004. The Board's staff mailed copies of this rule to all Board members. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended March 16, 2004. Two comments were received during that period. However, because the comments did not address the substance of the interim final rule, they are not being considered in this finalization.

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

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 2493, January 16, 2004) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 982 which was published at 69 FR 2493 on January 16, 2004, is adopted as a final rule without change.

Dated: April 6, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–8213 Filed 4–9–04; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 335

RIN 3064–AC79

Securities of Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comment.

SUMMARY: The FDIC is adopting, on an interim basis, a final rule amending its securities disclosure regulations applicable to banks with securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). This amendment implements the requirements of the Exchange Act, as amended by the Sarbanes-Oxley Act of 2002, which mandates electronic filing of reports related to beneficial ownership of securities by the directors, executive officers, and principal shareholders of public companies. Current provisions of the FDIC's securities disclosure regulations prohibit electronically transmitted filings or submissions of materials in electronic format to the FDIC. The amended rules provide an exception to this prohibition, requiring electronically transmitted filings of beneficial ownership reports by bank directors, officers and principal shareholders to disclose securities transactions and ownership. Related technical or procedural provisions are also being amended as appropriate.

DATES: These amendments are effective on June 11, 2004. Written comments must be received by the FDIC not later than June 11, 2004. These amendments may be immediately followed by the affected party.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Website: http://www.fdic.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station located at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, D.C. 20429, between 9 a.m. and 4:30 p.m. on business days, and the FDIC may post the comments on its Web site at *http://www.fdic.gov/regulations/laws/federal/propose.html.*

FOR FURTHER INFORMATION CONTACT: Dennis Chapman, Senior Staff Accountant, Division of Supervision and Consumer Protection, (202) 898–8922; Mary Frank, Senior Financial Analyst, Division of Supervision and Consumer Protection, (202) 898–8903; or Carl J. Gold, Counsel, Legal Division, (202) 898–8702, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background and Authority for This Final Rule

a. Appropriate Federal Banking Agency Authority Under the Exchange Act

Section 12(i) of the Securities Exchange Act of 1934 as amended (15

U.S.C. 78*l*(i)) authorizes the Federal banking agencies (the FDIC, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS)) to enforce sections 10A(m) (standards relating to audit committees), 12 (securities registration), 13 (periodic reporting), 14(a) (proxies and proxy solicitation), 14(c) (information statements), 14(d) (tender offers), 14(f) (arrangements for changes in directors), and 16 (beneficial ownership and reporting) of the Exchange Act, and sections 302 (corporate responsibility for financial reports), 303 (improper influence on conduct of audits), 304 (forfeiture of certain bonuses and profits), 306 (insider trades during pension blackout periods), 401(b) (disclosure of pro forma financial information), 404 (management assessment of internal controls), 406 (code of ethics for senior financial officers), and 407 (disclosure of audit committee financial expert) of the Sarbanes-Oxley Act of 2002, in regard to the depository institutions for which each Federal banking agency is, respectively, the primary federal supervisor. The Exchange Act seeks to protect investors by requiring accurate, reliable, and timely corporate securities disclosures.

The FDIC is authorized, in administering the above-listed statutory provisions, to promulgate regulations applicable to the securities of insured banks (including foreign banks having an insured branch) which are neither members of the Federal Reserve System nor District banks (collectively referred to as "state nonmember banks"). These regulations must be substantially similar to the regulations of the Securities and Exchange Commission (SEC) under the listed sections of the Exchange Act, unless the FDIC publishes its reasons for deviating from the SEC's rules.

b. Section 16 of the Exchange Act

Section 16 of the Exchange Act applies to every person who is the beneficial owner of more than 10 percent of a class of equity security registered under section 12 of the Exchange Act and to each officer and director of the issuer of the security (collectively, "reporting persons," "insiders," or "filers"). Upon becoming a reporting person, or upon the section 12 registration of that class of securities, section 16(a) requires a reporting person to file an initial report with the SEC (or in the case of an insured depository institution, its appropriate Federal banking agency) disclosing the amount of his or her beneficial ownership of all equity securities of the issuer. To keep this information current, section 16(a) also requires reporting persons to report changes in their beneficial ownership. Prior to the Sarbanes-Oxley Act, insiders of state nonmember banks with a class of equity securities registered under section 12 of the Exchange Act filed these beneficial ownership reports on paper. In the case of insiders connected to state nonmember banks, reports were filed using FDIC Forms F–7, F–8, and F–8A.

c. Sarbanes-Oxley Act Amendments to Section 16

As amended by section 403 of the Sarbanes-Oxley Act of 2002, Public Law No. 107–204 (July 30, 2002), section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) requires electronic submission of certain beneficial ownership reports submitted on or after July 30, 2003. The SEC or, respectively, the appropriate Federal banking agency, is required to make those filings available to the public on the Internet. Institutions with Web sites are required to post their insiders' change in beneficial ownership reports on their Internet Web sites. In addition, section 16, as amended by Sarbanes-Oxley, requires filing of beneficial ownership reports before the end of the second business day following the day on which the subject transaction was executed (effective for transactions on or after August 29, 2002).

d. Agency Action to Implement Sarbanes-Oxley

On August 27, 2002, the SEC adopted rule amendments to implement the accelerated filing deadline for beneficial ownership reports [see SEC Release No. 34–46421 (Sept. 3, 2002) [67 FR 56462]]. These amendments have, since their adoption, been applicable to insiders of state nonmember banks in accordance with section 335.601 of the FDIC rules. Previously, beneficial ownership reports filed by insiders of state nonmember banks were filed with the FDIC within 10 days from the end of the month of the transaction. On May 7, 2003, the SEC issued a final rule implementing the electronic submission requirements for beneficial ownership reports as required by section 16 of the Exchange Act as amended [SEC Release No. 34–47809 (May 13, 2003) [68 FR 25788]]. On July 30, 2003, the FDIC, FRB, and OCC established an interagency electronic filing system for these beneficial ownership reports, hosted on the FDIC's Web site. See FIL–60-2003, Federal Banking Agencies Announce New Interagency Electronic Filing System for Beneficial Ownership Reports (July 28, 2003) [*http://www.fdic.gov/news/news/financial/2003/fil0360.html.*] The OTS joined this filing system on October 27, 2003. See OTS 03–36, Office of Thrift Supervision Joins the FDIC's Interagency Electronic Filing System for Beneficial Ownership Reports (October 30, 2003) [*http://www.ots.treas.gov/docs/77336.html.*] Since July 30, 2003, the filing of beneficial ownership reports using the electronic interagency filing system has been authorized for insiders of state nonmember banks to provide a period to test the efficacy of the system.

II. Discussion of Interim Final Rule

a. Current Part 335

The FDIC's securities disclosure regulations, which contain registration and reporting requirements applicable to state nonmember banks with securities registered under section 12 of the Exchange Act (registered banks), are contained in 12 CFR part 335. Before the effective date of section 403 of the Sarbanes-Oxley Act, part 335 of the FDIC rules prohibited any electronically transmitted filings or submissions of materials in electronic format to the FDIC. In regard to the filing of beneficial ownership reports, that prohibition was superseded by section 403 of the Sarbanes-Oxley Act of 2002, which amended section 16 of the Exchange Act.

b. Electronic Filing Requirements

As amended, 12 CFR part 335 will make clear that, except in limited circumstances described below, beneficial ownership reports by state nonmember bank insiders will be filed electronically with the FDIC, consistent with timeframes provided in section 16 of the Exchange Act and SEC regulations. Mandated electronic filing benefits members of the investing public and the financial community by making information contained in the filings available to them immediately after receipt by the FDIC. Electronically filed information concerning insiders' transactions in registered bank equity securities will be publicly accessible substantially sooner and more readily than before. The electronic format of the filed information facilitates research and data analysis by investors and the public. The accelerated filing requirements of section 16(a) of the Exchange Act that took effect on August 29, 2002, also make electronic filing of beneficial ownership reports more useful to the public. Finally, the FDIC believes that investors want electronic access to these forms, that reports of insiders' transactions in equity

securities of registered banks provide useful information as to management's views of the bank's performance or prospects, and that more timely and transparent access to reports will be useful to investors.

As required by section 12(i) of the Exchange Act, the amended 12 CFR part 335 is substantially similar to the Exchange Act regulations of the SEC.[1] Should a reason for deviating from SEC regulations become apparent in the future, the FDIC will consider amending its rules. The FDIC is adopting other technical provisions which address the forms on which beneficial ownership reports are filed. Also, to improve consistency with SEC requirements, the FDIC is revising the names of its existing beneficial ownership report Forms F–7, F–8 and F–8A. These Forms will be renamed as FDIC Forms 3, 4 and 5, respectively.

c. Hardship Exemption

As discussed, 12 CFR part 335 as amended requires all beneficial ownership reports to be electronically submitted on the FDIC's interagency Beneficial Ownership Filings system. If all or part of a filing cannot be made electronically without undue burden or expense, a reporting person may apply for a continuing hardship exemption under the new section 12 CFR 335.801(b)(6).

A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application must be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted by the FDIC. The written application for the exemption must include the following information:

(1) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;

(2) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(3) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period for the exemption.

If the FDIC determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors, it will so notify the applicant. Upon such notification the filer must submit the document for which the exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate. Additional provisions applicable to the continuing hardship exemption and detailed procedures for seeking the exemption are set forth in the text of the amended regulation.

d. Filing Date Adjustment

Instead of pursuing a hardship exemption, an electronic filer may request a filing date adjustment under this rule where the filer attempts in good faith to file a document with the FDIC in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control. In those instances, the filer may request an adjustment of the document's filing date. The FDIC may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors.

e. Potential Liability in Case of Transmission Errors

The SEC's rules governing electronic filings provide that an electronic filer "shall not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, where the filer corrects the error or omission by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission." 17 CFR 232.103. The FDIC believes that this regulation presents a reasonable approach to transmission errors and that it applies to electronic filings made with the FDIC as well. *See* 12 CFR 335.101(b). Nevertheless, the FDIC invites comments on whether it is necessary or appropriate for the FDIC to add a similar provision to its own rule, and if so, the appropriate scope of such a provision.

III. Regulatory Analysis and Procedure

a. Administrative Procedure Act (APA)

Public Comment Waiver and Effective Date. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), the FDIC finds good cause to issue this interim final rule without first seeking public comment. Section 553(b) of the APA does not apply to rules of agency organization, procedure, or practice, or when the agency for good cause finds that notice and public comment on the rules being promulgated are impracticable or unnecessary. The FDIC finds that this is a procedural rule, and that, in addition, there is good cause to issue the rule before providing an opportunity for public comment.

The portions of 12 CFR part 335 that are being amended are procedural and do not affect filers' substantive rights. The APA exemption for procedural rules applies to a rule that does not itself affect the substantive rights of those affected, even though the rule "may alter the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broadcasting Co., Inc.* v. *FCC*, 22 F.3d 320, 326–27 (D.C. Cir. 1994). Therefore, the APA's notice and comment procedures are not applicable.

In addition, as discussed above, the Sarbanes-Oxley Act mandates that certain beneficial ownership reports be filed electronically. Therefore, the current outright prohibition in 12 CFR part 335 on electronic filing is obsolete. Also, as noted, the SEC has made electronic filing mandatory and the Exchange Act requires that the FDIC issue regulations substantially similar to those of the SEC or publish its reasons for not doing so. Therefore, public comment on whether to continue to prohibit the electronic filing of these reports is impracticable and unnecessary. This constitutes good cause for not providing notice and an opportunity for public comment prior to amending the rule.

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve this rule before it is adopted in final form. We therefore request comment on all aspects of this interim rule. We also invite filing persons to submit feedback on their use of this system. Following the comment period, the FDIC will consider any comments and will finalize the rule, including making any necessary changes.

b. Paperwork Reduction Act

Reports of beneficial ownership are considered to be a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The FDIC has previously obtained Office of Management and Budget (OMB) approval of this collection of information under control number 3064–0030. OMB has reviewed and approved the collection as revised to take into account electronic filing. It is estimated that there will be 1,800

[1] The FDIC's rules, at 12 CFR 335.101(b), provide that part 335 generally incorporates the SEC's rules issued under Sections 12, 13, 14, and 16 of the Exchange Act.

responses annually, cumulatively resulting in 1,100 burden hours.

c. Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). As already noted, the FDIC has determined that a notice of proposed rulemaking is not required. Accordingly, no regulatory flexibility analysis is required.

d. Small Business Regulatory Flexibility Enforcement Fairness Act

Section 804 of the Small Business Regulatory Flexibility Enforcement Fairness Act ("SBREFA"), 5 U.S.C. 801 *et al.*, defines "rule" to exclude any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. The amendments to Part 335 are technical and ministerial applications of the statute and affect only procedural matters. Therefore, the rule is not covered by covered by SBREFA and is not being reported to Congress.

List of Subjects in 12 CFR Part 335

Accounting, Banks, banking, Confidential business information, Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth in the preamble, Part 335 of chapter III of title 12 of the Code of Federal Regulations is amended to read as follows:

PART 335—SECURITIES OF NONMEMBER INSURED BANKS

■ 1. The authority citation for part 335 continues to read as follows:

Authority: 15 U.S.C. 78l(i).

■ 2. Section 335.101 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 335.101 Scope of part, authority and OMB control number.

(a) * * * The FDIC is vested with the powers, functions, and duties vested in the Securities and Exchange Commission (the Commission or SEC) to administer and enforce the provisions of sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (the Exchange Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78(p)), and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265) regarding nonmember banks with one or more classes of securities subject to the registration provisions of sections 12(b) and 12(g) of the Exchange Act.

* * * * *

■ 3. Section 335.111 is amended by revising the sixth sentence to read as follows:

§ 335.111 Forms and schedules.

* * * Forms 3 (§ 335.611), 4 (§ 335.612), and 5 (§ 335.613) are FDIC forms which are issued under section 16 of the Exchange Act and can be obtained from the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

■ 4. Section 335.601 is revised to read as follows:

§ 335.601 Requirements of section 16 of the Securities Exchange Act of 1934.

Persons subject to section 16 of the Act with respect to securities registered under this part shall follow the applicable and currently effective SEC regulations issued under section 16 of the Act (17 CFR 240.16a-1 through 240.16e-1(1), except that the forms described in § 335.611 (FDIC Form 3), § 335.612 (FDIC Form 4), and § 335.613 (FDIC Form 5) shall be used in lieu of SEC Form 3 (17 CFR 249.103), Form 4 (17 CFR 249.104), and Form 5 (17 CFR 249.105), respectively. Copies of FDIC Forms 3, 4, 5 and the instructions thereto can be obtained from the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

■ 5. Section 335.611 is amended by revising the title to read as follows:

§ 335.611 Initial statement of beneficial ownership of securities (Form 3).

* * * * *

■ 6. Section 335.612 is amended by revising the title to read as follows:

§ 335.612 Statement of changes in beneficial ownership of securities (Form 4).

* * * * *

■ 7. Section 335.613 is amended by revising the title to read as follows:

§ 335.613 Annual statement of beneficial ownership of securities (Form 5).

* * * * *

■ 8. Section 335.701 is amended by revising paragraphs (a) and (b) to read as follows:

§ 335.701 Filing requirements, public reference, and confidentiality.

(a) *Filing requirements.* Unless otherwise indicated in this part, one original and four conformed copies of all papers required to be filed with the FDIC under the Exchange Act or regulations thereunder shall be filed at its office in Washington, DC. Official filings made at the FDIC's office in Washington, DC should be addressed as follows: Attention: Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Material may be filed by delivery to the FDIC through the mails or otherwise. The date on which papers are actually received by the designated FDIC office shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with.

(b) *Inspection.* Except as provided in paragraph (c) of this section, all information filed regarding a security registered with the FDIC will be available for inspection at the Federal Deposit Insurance Corporation, Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, 550 17th Street, NW., Washington, DC. Beneficial ownership report forms that are electronically submitted to the FDIC through the interagency Beneficial Ownership Filings system will be made available on the FDIC's Web site (*http://www.fdic.gov*).

* * * * *

■ 9. Section 335.801 is amended by revising paragraph (b) to read as follows:

§ 335.801 Inapplicable SEC regulations; FDIC substituted regulations; additional information.

* * * * *

(b) *Electronic filings.* (1) The FDIC does not participate in the SEC's EDGAR (Electronic Data Gathering Analysis and Retrieval) electronic filing program (17 CFR part 232). The FDIC does not permit electronically transmitted filings or submissions of materials in electronic format to the FDIC, with the exception of beneficial ownership report filings on FDIC Forms 3, 4 and 5.

(2) All reporting persons must file beneficial ownership report Forms 3, 4 and 5, including amendments and exhibits thereto, in electronic format using the Internet based, interagency Beneficial Ownership Filings system, which is accessible through the FDIC*connect* Business Center, except that a reporting person that has obtained a continuing hardship exemption under these rules may file the forms with the FDIC in paper format. For information and answers to questions regarding beneficial ownership and the

completion and filing of the forms, please contact the FDIC Accounting and Securities Disclosure Section in Washington DC. For information and answers to technical questions or problems relating to the use of FDIC*connect*, contact the FDIC*connect* Project Team toll-free at 877–275–3342 or by mail at 3501 North Fairfax Drive, Arlington, VA 22226.

(3) Electronic filings of FDIC beneficial ownership report Forms 3, 4, and 5 must be submitted to the FDIC through the interagency Beneficial Ownership Filings system. Beneficial ownership reports and any amendments are deemed filed with the FDIC upon electronic receipt on business days from 8 a.m. through 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect (Eastern Time). Business days include each day, except Saturdays, Sundays and Federal holidays. All filings submitted electronically to the FDIC commencing after 10 p.m. Eastern Time on business days shall be deemed filed as of 8 a.m. on the following business day. All filings submitted electronically to the FDIC on non-business days shall be deemed filed as of 8 a.m. on the following business day.

(4) Adjustment of the filing date. If an electronic filer in good faith attempts to file a beneficial ownership report with the FDIC in a timely manner but the filing is delayed due to technical difficulties beyond the electronic filer's control, the electronic filer may request an adjustment of the filing date of such submission. The FDIC may grant the request if it appears that such adjustment is appropriate and consistent with the public interest and the protection of investors.

(5) *Exhibits.* (i) Exhibits to an electronic filing that have not previously been filed with the FDIC shall be filed in electronic format, absent a hardship exemption.

(ii) Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by applicable SEC rules under the Exchange Act. An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

(iii) Any document filed in paper format in violation of mandated electronic filing requirements shall not be incorporated by reference into an electronic filing.

(6) *Continuing Hardship Exemption.* The FDIC will not accept in paper format any beneficial ownership report filing required to be submitted electronically under this part unless the filer satisfies the requirements for a continuing hardship exemption:

(i) A filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall be sent to the Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, and shall contain the information set forth in paragraph (6)(ii) of this subsection.

(A) The application shall not be deemed granted until the applicant is notified by the FDIC.

(B) If the FDIC denies the application for a continuing hardship exemption, the filer shall file the required document in electronic format on the required due date or the proposed filing date or such other date as may be permitted.

(C) If the FDIC determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of investors and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (6)(iii) of this subsection.

(ii) The request for the continuing hardship exemption shall include, but not be limited to, the following:

(A) The reason(s) that the necessary hardware and software are not available without unreasonable burden and expense;

(B) The burden and expense involved to employ alternative means to make the electronic submission; and/or

(C) The reasons for not submitting electronically the document or group of documents, as well as justification for the requested time period for the exemption.

(iii) If the request for a continuing hardship exemption is granted, the electronic filer shall submit the document or group of documents for which the exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate. The paper format document(s) shall have placed at the top of page 1, or at the top of an attached cover page, a legend in capital letters:

IN ACCORDANCE WITH 12 CFR 335.801(b), THIS (SPECIFY DOCUMENT) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.

(iv) Where a continuing hardship exemption is granted with respect to an exhibit only, the paper format exhibit shall be filed with the FDIC under cover of SEC Form SE (17 CFR 249.444). Form SE shall be filed as a paper cover sheet to all exhibits to beneficial ownership reports submitted to the FDIC in paper form pursuant to a hardship exemption.

(v) Form SE shall be submitted along with all exhibits filed in paper form pursuant to a hardship exemption. Form SE may be filed up to six business days prior to, or on the date of filing of, the electronic form to which it relates but shall not be filed after such filing date. If a paper exhibit is submitted in this manner, requirements that the exhibit be filed with, provided with, or accompany the electronic filing shall be satisfied.

Any requirements as to delivery or furnishing the information to persons other than the FDIC shall not be affected by this section.

(7) *Signatures.* (i) Required signatures to, or within, any electronic submission must be in typed form. When used in connection with an electronic filing, the term "signature" means an electronic entry or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature.

(ii) Each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the FDIC a copy of any or all documents retained pursuant to this section.

(iii) Where the FDIC's rules require a filer to furnish to a national securities exchange, a national securities association, or a bank, paper copies of a document filed with the FDIC in electronic format, signatures to such paper copies may be in typed form.

* * * * *

Note —The following forms will not appear in the Code of Federal Regulations.

10. Amend Form F–7 (referenced in § 335.111 and § 335.611) by:

a. Revising General Instruction 2(a);

b. Revising General Instruction 3(a);

c. Adding a note following General Instruction 3;

d. Revising General Instruction 5(b)(v);

e. Revising General Instruction 6;

f. Adding a new General Instruction 8;

g. Revising the short title of the Initial Statement of BeneficialOwnership of Securities from Form F–7 to Form 3 in the form heading;

h. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and

i. Revising newly redesignated Item 5 to the information preceding Table I.

The revisions and additions read as follows:

Form 3 Initial Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

2. When Form Must Be Filed

(a) This form must be filed within 10 days after the event by which the person becomes a reporting person (*i.e.*, officer, director, 10 percent holder or other person). This form and any amendment is deemed filed with the appropriate Federal Banking Agency upon electronic receipt on business days during the hours of 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8:00 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8 a.m. on the following business day. Business days include all weekdays that are not Federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

* * * * *

3. Where Form Must Be Filed

(a) A reporting person must file Form 3 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877–275–3342 or via e-mail at *FDICconnect@fdic.gov*.

* * * * *

Note: If filing pursuant to a hardship exemption under FDIC rules, file three copies of this form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the form or amendment filed.)

* * * * *

5. Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest).

* * * * *

(v) Where more than one person beneficially owns the same equity securities, such owners may file Form 3 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Holdings of securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 3 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 3, copy of Form 3 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If space provided in the line items on this Form 3 is insufficient, identify and enter additional information and footnotes under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 3 or space provided for additional comments is insufficient, attach another Form 3, copy of Form 3 or separate 8½ by 11 inch white paper to Form 3, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included with the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation "P" (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

* * * * *

8. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes, under Explanation of Responses as necessary to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I orTable II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this GeneralInstruction 8, provide one or more notes under Explanation of

Responses, as necessary, to explain the amendment.

* * * * *

Form 3 Initial Statement of Beneficial Ownership of Securities

* * * * *

5. If Amendment, Date Original Filed (Month/Day/Year)

* * * * *

11. Amend Form F–8 (referenced in § 335.111 and § 335.612) by:

a. Revising General Instruction 1(a);

b. Revising General Instruction 2(a);

c. Adding a note following General Instruction 2;

d. Revising General Instruction 4(b)(v);

e. Revising General Instruction 6;

f. Adding a new General Instruction 9;

g. Revising the short title of the Statement of Changes in Beneficial Ownership of Securities from Form F–8 to Form 4 in the form heading;

h. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I; and

i. Revising newly redesignated Items 3 and 4 to the information preceding Table I.

The revisions and additions read as follows:

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

1. When Form Must Be Filed

(a) This form must be filed on or before the end of the second business day following the day on which a transaction resulting in a change in beneficial ownership has been executed (See SEC Rule 16a-1(a)(2) and Instruction 4 regarding the meaning of "beneficial owner," and SEC Rule 16a-3(g) regarding determination of the date of execution for specified transactions). This form and any amendment is deemed filed with the FDIC upon electronic receipt on business days during the hours of 8:00 a.m. until 10:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8:00 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8:00 a.m. on the following business day. Business days include all weekdays that are not Federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under applicable FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file Form 4 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877–275–3342 or via e-mail at *FDICconnect@fdic.gov*.

* * * * *

Note: If filing pursuant to a hardship exemption under FDIC rules, file three copies of this Form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the Form or amendment filed.)

* * * * *

4. Transactions and Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest).

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report transactions on Form 4, such owners may file Form 4 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 4 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all the required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 4, copy of Form 4 or separate page of 8 ½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a-3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If space provided in the line items on the Form 4 is insufficient, identify and enter additional information under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 4 or space provided for additional comments is insufficient, attach another Form 4, copy of Form 4 or separate 8½ by 11 inch white paper to Form 4, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included with the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation "P" (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

* * * * *

9. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes under

Explanation of Responses, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 9, provide one or more notes under Explanation of Responses, as necessary, to explain the amendment.

* * * * *

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

Item 3. Date of Earliest Transaction Required To Be Reported (Month/Day/Year)

Item 4. If Amendment, Date Original Filed (Month/Day/Year)

* * * * *

12. Amend Form F–8A (referenced in § 335.111 and § 335.613) by:

a. Revising General Instruction 1(a);

b. Revising General Instruction 2(a);

c. Adding a note following General Instruction 2;

e. Revising General Instruction 4(b)(v);

f. Revising General Instruction 6;

g. Adding a new General Instruction 9;

h. Revising the short title of the Annual Statement of Beneficial Ownership of Securities from Form F–8A to Form 5 in the form heading;

i. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6;

j. Revising newly redesignated Items 3 and 4 to the information preceding Table I;

k. Revising the heading for columns 9 and 10 in Table II.

The revisions and additions read as follows:

Form 5 Annual Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

1. When Form Must Be Filed

(a) This form must be filed on or before the 45th day after the end of the bank's fiscal year in accordance with SEC Rule 16a–3(f). This form and any amendment is deemed filed with the FDIC upon electronic receipt on business days during the hours of 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect. A form received after these business hours will be deemed filed at 8 a.m. on the following business day. If this form is submitted through FDICconnect on a non-business day, it will be deemed filed at 8 a.m. on the following business day. Business days include all weekdays that are not federal holidays. A paper form submitted by a reporting person that has obtained a hardship exemption under applicable FDIC rules will be deemed filed with the FDIC on the date it is received by the FDIC. If this form is required to be filed on an exchange, this form and any amendment is deemed filed with the exchange on the date it is received by the exchange.

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file Form 5 in electronic format using the secure, Internet-based, FDICconnect Business Center to access the interagency Beneficial Ownership Filings system, except that a filing person that has obtained a hardship exemption under applicable FDIC rules (see 12 CFR 335.801(b)) may file the form in paper form. For information and answers to questions regarding beneficial ownership and the completion and filing of the forms please contact the FDIC Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street NW., Washington, DC 20429. For technical questions or problems relating to the use of FDICconnect or Designated Coordinator registration, contact FDICconnect toll-free at 877–275–3342 or via e-mail at *FDICconnect@fdic.gov*.

* * * * *

Note: If filing pursuant to a hardship exemption under FDIC rules, file three copies of this form or any amendment, at least one of which is signed, with the FDIC in accordance with applicable rules. (Acknowledgement of receipt by the agency may be obtained by enclosing a self-addressed stamped postcard or envelope identifying the form or amendment filed.)

* * * * *

4. Transactions and Holdings Required To Be Reported

* * * * *

(b) Beneficial Ownership Reported (Pecuniary Interest)

* * * * *

(v) Where more than one beneficial owner of the same equity securities must report transactions on Form 5, such owners may file Form 5 individually or jointly. Joint and group filings may be made by any designated beneficial owner. Transactions with respect to securities owned separately by any joint or group filer are permitted to be included in the joint filing. Indicate the name and address of the designated reporting person in Item 1 of Form 5 and attach a list of the names and addresses of each other reporting person. Joint and group filings must include all the required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person. Use the Filer Information screen in the interagency Beneficial Ownership Filings system to submit additional joint or group filers' names and related filing information required by this form.

If this form is being filed in paper form pursuant to a hardship exemption and the space provided for signatures is insufficient, attach a signature page. If this form is being filed in paper form, submit any attached listing of names or signatures on another Form 5, copy of Form 5 or separate page of 8½ by 11 inch white paper, indicate the number of pages comprising the report (form plus attachments) at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3), and include the name of the designated filer and information required by Items 2 and 3 of the form on the attachment.

See SEC Rule 16a–3(i) regarding signatures.

* * * * *

6. Additional Information

(a) If space provided in the line items on the Form 5 is insufficient, identify and enter additional information under Explanation of Responses.

(b) If the space provided in the line items on the paper Form 5 or space provided for additional comments is insufficient, attach another Form 5, copy of Form 5 or separate 8½ by 11 inch white paper to Form 5, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 3 of the form. The number of pages comprising the report (form plus attachments) shall be indicated at the

bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If one or more exhibits are included on the form, provide a reference to such exhibit(s) under Explanation of Responses. If the exhibit is being filed in paper form pursuant to a hardship exemption under applicable FDIC rules, place the designation "P" (paper) next to the name of the exhibit in the exhibit reference.

(d) If additional information is not reported in this manner, it will be assumed that no additional information was provided.

* * * * *

9. Amendments

(a) If this form is filed as an amendment in order to add one or more lines of ownership information to Table I or Table II of the form being amended, provide each line being added, together with one or more footnotes under Explanation of Responses, as necessary, to explain the addition of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(b) If this form is filed as an amendment in order to amend one or more lines of ownership information that already were disclosed in Table I or Table II of the form being amended, provide the complete line or lines being amended, as amended, together with notes under Explanation of Responses as necessary to explain the amendment of the line or lines. Do not repeat lines of ownership information that were disclosed in the original form and are not being amended.

(c) If this form is filed as an amendment for any other purpose other than or in addition to the purpose described in items (a) or (b) of this General Instruction 9, provide one or more notes under Explanation of Responses, as necessary, to explain the amendment.

* * * * *

Form 5 Annual Statement of Changes in Beneficial Ownership of Securities

* * * * *

3. Statement for Issuer's Fiscal Year Ended (Month/Day/Year).

4. If Amendment, Date Original Filed (Month/Day/Year).

* * * * *

Table II—Derivative Securities Acquired, Disposed of, or Beneficially Owned (*e.g.*, puts, calls, warrants, options, convertible securities)

* * * * *

9. Number of Derivative Securities Beneficially Owned at End of Issuer's Fiscal Year (Instr. 4).

10. Ownership Form of Derivative Securities: Direct (D) or Indirect (I) (Instr. 4).

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 6th day of April, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–8232 Filed 4–9–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

Imposition of Special Measures Against Burma

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: On November 18, 2003, the Secretary of the Treasury (Secretary) designated Burma as a jurisdiction of primary money laundering concern, and proposed a special measure that certain U.S. financial institutions would be required to take concerning Burma, pursuant to 31 U.S.C. 5318A, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. FinCEN is issuing this final rule to require certain U.S. financial institutions to take the proposed special measure regarding Burma.

DATES: Effective date: May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, (FinCEN), (202) 354–6400 or the Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Secretary has designated Burma as a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act (Pub. L. 107–56) (the Act). To protect the U.S. financial system against the money laundering risk posed by Burma, FinCEN is imposing a special measure authorized by section 5318A(b)(5). The special measure imposed under this section will generally prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts in the United States for, or on behalf of, Burmese banking institutions, unless (as explained below) operation of those accounts is not prohibited by Executive Order 13310 of July 28, 2003, and the Burma-related activities of such accounts are solely to effect transactions that are exempt from, or licensed pursuant to, Executive Order 13310. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used by the foreign bank to provide financial services to a Burmese banking institution indirectly.

Additionally, by separate notice, FinCEN is announcing concurrently the imposition of the fifth special measure against two Burmese banking institutions, Myanmar Mayflower Bank and Asia Wealth Bank. This special measure prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank, notwithstanding any exemption from, or license issued pursuant to, Executive Order 13310.

I. Background

A. Section 311 of the USA PATRIOT Act

On October 26, 2001, the President signed the Act into law. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA) (codified in subchapter II of chapter 53 of title 31, United States Code) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act (Section 311) added section 5318A to the BSA, granting the Secretary authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) to be of "primary money laundering concern," and to require U.S. financial institutions to take certain "special measures" against the primary money laundering concern.

Section 311 identifies factors to consider as well as agencies and departments to consult before the Secretary may designate a primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting specific special measures against the designee.

Taken as a whole, Section 311 provides Treasury with a range of options that can be adapted to target most effectively specific money laundering and terrorist financing

concerns. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can obtain more information about the concerned jurisdictions, institutions, transactions, and accounts; more effectively monitor the respective institutions, transactions, and accounts; and/or protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

1. Imposition of Special Measures

If the Secretary determines that a foreign jurisdiction is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence.[1]

The Secretary's imposition of special measures follows procedures similar to those for designations, but carries with it additional consultations to be made and factors to consider. The statute requires the Secretary to consult with appropriate agencies and other interested parties[2] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction; and
- The effect of the action on United States national security and foreign policy.

2. Procedures for Imposing Special Measures

In this final rule, the Secretary, through FinCEN, is requiring certain U.S. financial institutions to take the fifth special measure (31 U.S.C. 5318A(b)(5)) regarding Burma. This special measure may only be imposed through the issuance of a regulation.

B. Burma

Burma (also known as Myanmar) has no effective anti-money laundering controls in place. As a result, in June 2001 Burma was designated as a Non-Cooperative Country or Territory (NCCT) by the Financial Action Task Force (FATF)[3] for its lack of basic anti-money laundering provisions and weak oversight of the banking sector. Following the designation by the FATF, in April 2002, FinCEN issued an advisory to U.S. financial institutions to give enhanced scrutiny to all transactions originating in or routed to or through Burma, or involving entities organized or domiciled, or persons maintaining accounts, in Burma. Deficiencies identified by FATF and the FinCEN advisory included:

- Burma lacks a basic set of anti-money laundering laws and regulations.
- Money laundering is not a criminal offense for crimes other than drug trafficking in Burma.
- The Burmese Central Bank has no anti-money laundering regulations for financial institutions.
- Banks licensed by Burma are not legally required to obtain or maintain identification information about their customers.
- Banks licensed by Burma are not required to maintain transaction records of customer accounts.
- Burma does not require financial institutions to report suspicious transactions.
- Burma has significant obstacles to international co-cooperation by judicial authorities.

In June 2002, Burma responded to this international pressure by enacting an anti-money laundering law that purportedly addresses some of these deficiencies. However, in the absence of implementing regulations, the Burmese anti-money laundering law could not be regarded as effectively remedying any of the identified deficiencies. Due to Burma's lack of progress, the FATF called upon its member jurisdictions to impose additional countermeasures on Burma as of November 3, 2003. On December 5, 2003, Burma issued regulations to implement this law. However, the regulations do not set threshold amounts or time limits. The regulations also do not address the need for a mutual assistance law. Indeed, the 2003 International Narcotics Control Strategy Report, issued in March 2004, states that Burma must still implement and enforce the December 2003 regulations and address their deficiencies. In addition, Burma must provide adequate resources for supervision of the financial sector and end policies that make it easy for drug money to enter the legitimate economy.[4]

The United States continues to recognize that Burma is a haven for international drug trafficking. On January 31, 2003, the President also signed Presidential Determination No. 2003–14, identifying Burma as a major illicit drug producing and/or drug transiting country pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228) and as a country that has failed demonstrably during the previous twelve months to adhere to its obligations under international counter-narcotics agreements and take the measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended (FAA). In addition, this past year Burma continued to be named as a major money laundering country. A major money laundering country is defined by statute as one "whose financial institutions engage in currency transactions including significant amounts of proceeds from international narcotics trafficking." FAA section 481(e)(7).

C. Economic Sanctions

On July 28, 2003, the President signed both the Burmese Freedom and Democracy Act of 2003 and Executive Order 13310, imposing economic

[1] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, *see* 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

[2] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General and the Secretary of State if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions maintaining correspondent account relationships with the designated jurisdiction.

[3] For further information on the FATF, *see http://www.fatf-gafi.org.*

[4] The 2003 International Narcotics Control Strategy Report, released by the Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State, was issued March 1, 2004. Part II of the report covers money laundering and financial crimes. The portion of the report dealing with Burma can be found at *http://www.state.gov/g/inl/rls/nrcrpt/2003/vol2/html/29920.htm.*

sanctions on Burma. These sanctions generally include: (1) A ban on the exportation or reexportation, directly or indirectly, of financial services to Burma; (2) the blocking of property and interests in property of the State Peace and Development Council of Burma and three state-owned foreign trade banks that are in the United States or in the possession or control of U.S. persons; and (3) a ban on the importation of Burmese goods into the United States. The new sanctions have frozen hundreds of thousands of dollars of assets and have disrupted an already weak economy, especially in the important garment sector where many firms have closed or moved outside of Burma.

Executive Order 13310 prohibits broadly the provision of financial services to Burma from the United States or by a U.S. person, subject to limited exceptions.[5] Since the President signed the Order, however, Treasury has issued several licenses to permit transactions with Burma for certain specified purposes. For example, Treasury issued licenses authorizing transactions for the conduct of the official business of the United States Government, the United Nations, the World Bank, and the International Monetary Fund, and non-commercial personal remittances of up to $300 per household per quarter. The exemptions and licenses reflect the judgment of the United States that certain transactions are necessary and appropriate, even within the framework of this sanctions regime.

D. The Section 311 Special Measures

The imposition of Section 311 special measures reinforces the existing restrictions on transactions with Burma that are outlined above. Although they are similar in their effect, the Section 311 special measures differ in certain respects and serve distinct policy goals. First, the Section 311 special measures are potentially broader than the existing sanctions in at least one respect—they apply to all foreign branches of Burmese banking institutions. Second, the purposes served by the Section 311 action differ markedly from the purposes of the economic sanctions described above. This action under Section 311 is premised on the Secretary's determination that Burma poses an unacceptable risk of money laundering and other financial crimes, due to its failure to implement an effective anti-money laundering regime. The goals of this action include protecting the U.S. financial system and encouraging Burma to make the necessary changes to its anti-money laundering regime. The existing sanctions pursuant to Executive Order 13310, on the other hand, were imposed for different reasons, in particular to take additional steps with respect to the government of Burma's continued repression of the democratic opposition.

These underlying purposes for the designation of Burma fuel another intended consequence, namely, to encourage other jurisdictions and financial institutions to take similar steps to cut off Burma from the international financial system due to the unacceptable risk of money laundering. In addition to stemming the flow of illicit funds from Burma into the United States, the act of naming Burma publicly and formally denying it access to the U.S. financial system is an important statement to the rest of the world about the need for caution in financial dealings with Burma and the need for reform.

Next, this action fulfills an important role of the United States in supporting the multilateral effort to encourage Burma to implement effective anti-money laundering controls. The FATF has called on all members to impose additional countermeasures as a result of Burma's failure to address its money laundering deficiencies. The assessment of Section 311 special measures, premised squarely on the absence of money laundering controls, fulfills this obligation in a way that the existing sanctions cannot.

Finally, the Section 311 special measures incorporate the exemptions from, and licenses issued pursuant to, Executive Order 13310. Thus, U.S. financial institutions may maintain otherwise prohibited correspondent account relationships so long as the maintenance of such accounts is not prohibited by E.O. 13310 and provided that the only transactions conducted on behalf of Burmese banking institutions are those that are otherwise permissible under the existing sanctions regime. The policy of allowing certain transactions under the Executive Order should not be undermined by Section 311 special measures. However, Burma has been designated under Section 311 of the Act due to inadequate anti-money laundering controls, and the fact that the overarching purpose for a transaction is permissible under the Executive Order does not itself reduce the risk of money laundering. Therefore, while the exemptions and licenses are incorporated into the Section 311 special measures, U.S. financial institutions processing such transactions must still conduct enhanced scrutiny to guard against the flow of illicit proceeds.

II. Imposition of Special Measures

As a result of the designation of Burma as a jurisdiction of primary money laundering concern, and based upon consultations[6] and the consideration of all relevant factors, the Secretary has determined that grounds exist for the imposition of the special measures authorized by section 5318A(b)(5). Thus, the final rule prohibits covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent or payable-through account for, or on behalf of, a Burmese banking institution. This prohibition extends to any correspondent or payable-through account maintained in the United States for any foreign bank if the account is used by the foreign bank to provide banking services indirectly to a Burmese banking institution. Financial institutions covered by this rule that obtain knowledge that this is occurring are required to ensure that any such account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship in the manner set forth in this rulemaking. Other than with respect to Myanmar Mayflower Bank and Asia Wealth Bank, the rule does, however, allow U.S. financial institutions to maintain correspondent accounts otherwise prohibited by this rule if such accounts are permitted to be maintained pursuant to Executive Order 13310 and the Burma-related activity of those accounts is solely for the purpose of conducting transactions that are exempt from, or authorized by regulation, order, directive, or license issued pursuant to, Executive Order 13310.

In imposing this special measure, the Secretary has considered the following pursuant to section 5318A(a)(4)(b):

1. Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against Burma Generally

In June 2001, the FATF designated Burma as an NCCT, resulting in FATF members issuing advisories to their financial sectors recommending enhanced scrutiny of transactions involving Burma. In April 2002 FinCEN issued an advisory notifying U.S.

[5] For example, the prohibition does not extend to transactions relating to certain contracts entered into prior to May 21, 1997. *See* Executive Order 13310, section 13.

[6] For purposes of this action, the required consultation with the Federal functional regulators was performed at the staff level.

financial institutions that they should accord enhanced scrutiny with respect to transactions and accounts involving Burma. In October 2003, FATF called upon its 33 members to take additional countermeasures with respect to Burma as of November 3, 2003. Imposition of the fifth special measure on Burma is consistent with this call for additional countermeasures and forms part of an international effort to protect the financial system. Based on informal discussions and the past practices of the FATF membership, the majority of FATF members are expected to take countermeasures, including all of the Group of Seven countries. The countermeasures imposed by such FATF members will likely include imposition of additional reporting requirements, issuance of additional advisories, shifting the burden for reporting obligations, and/or restrictions on the licensing of Burmese financial institutions.

2. Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

U.S. financial institutions are already prohibited from providing financial services to Burma, unless such services are exempted or licensed. The imposition of the fifth special measure potentially imposes a broader prohibition than currently exists, because it precludes maintaining correspondent accounts for foreign branches of Burmese banking institutions. However, on balance, it is unlikely that the imposition of the fifth special measure will create any significant additional costs or place U.S. financial institutions at a competitive disadvantage. In fact, Treasury's action is intended to encourage other jurisdictions and financial institutions to take similar steps to cut off Burma from the international financial system, which will further minimize any potential competitive disadvantage for U.S. financial institutions.

Moreover, the final rule does not itself require U.S. financial institutions to perform additional due diligence on their existing foreign bank correspondent account customers beyond what is already required under existing regulations.

3. The Proposed Action or the Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving the Jurisdiction

Given the preexisting sanctions on Burma, it is unlikely that these new measures or the timing of the new measures will have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities of Burma.

4. The Proposed Action Would Enhance the National Security of the United States and is Consistent With, and in Furtherance of, United States Foreign Policy

The imposition of this countermeasure on Burma is consistent with an overall foreign policy strategy to enhance our national security through comprehensive economic and political sanctions against Burma.

III. Notice of Proposed Rulemaking and Comments

FinCEN published a notice of proposed rulemaking on November 25, 2003,[7] that would require certain U.S. financial institutions to take the fifth special measure regarding Burma. The comment period for that notice closed on December 26, 2003. FinCEN received no comment letters on the proposed rule. The final rule is identical to that found in the November 2003 notice, except that the term "foreign financial institution" has been replaced by "foreign banking institution," with a corresponding change in the term's definition, to conform with the language of Section 5318A(b)(5).

IV. Section-by-Section Analysis

A. Overview

This final rule is intended to deny Burmese banking institutions access to the U.S. financial system through correspondent accounts, which includes payable-through accounts. The rule prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent accounts in the United States for, or on behalf of, a Burmese banking institution. If a U.S. financial institution covered by this rule learns that a correspondent account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to a Burmese banking institution, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. As explained below, the rule does not itself require U.S. financial institutions to perform additional due diligence on foreign bank customers.

The rule does allow U.S. financial institutions to maintain otherwise prohibited correspondent accounts to the extent they are permitted pursuant to Executive Order 13310 and the Burma-related activities of those accounts are for the purpose of conducting transactions that are exempt from, or licensed pursuant to, Executive Order 13310.

B. Definitions

Correspondent account. Section 103.186(a)(1) of the rule's definition of correspondent account is the definition contained in 31 CFR 103.175(d), which defines the term to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign bank, including payable-through accounts. In the case of securities broker-dealers, futures commission merchants and introducing brokers, and mutual funds, a correspondent account would include any account that permits the foreign bank to engage in (1) trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions. FinCEN is using the same definition for purposes of the rule as that established in the final rule implementing Sections 313 and 319(b) of the Act[8] with one notable exception: The term also applies to such accounts maintained by futures commission merchants and introducing brokers and mutual funds.

Covered financial institution. Section 103.186(a)(2) of the rule defines covered financial institution to mean all of the following: any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or

[7] 68 FR 66299 (November 25, 2003).

[8] 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.175 (d)(1))

required to register with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) that is registered, or required to register, with the SEC pursuant to that Act.

Burmese banking institution. Section 103.186(a)(3) of the final rule defines a Burmese banking institution to include all foreign banks chartered or licensed by Burma. The definition of foreign bank is that contained in 31 CFR 103.11(o). Foreign branches and offices of Burmese banking institutions are included in this definition. However, subsidiaries are not at this time. Also, the Central Bank of Burma is not a Burmese banking institution.

C. Requirements for Covered Financial Institutions

1. Prohibition on Correspondent Accounts

Section 103.186(b)(1) of the final rule prohibits generally all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of, a Burmese banking institution. The prohibition requires all covered financial institutions to review their account records to determine that they maintain no accounts directly for, or on behalf of, a Burmese banking institution. This prohibition is subject to the exception contained in section 103.186(b)(4), described below.

2. Prohibition on Indirect Correspondent Accounts

Under section 103.186(b)(2) of the final rule, if a covered financial institution obtains knowledge that a correspondent or payable-through account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to a Burmese banking institution, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. In contrast to the obligation placed on covered financial institutions to identify correspondent accounts maintained directly for, or on behalf of, a Burmese banking institution in section 103.186(b)(1), this section does not itself impose an independent obligation on covered financial institutions to review or investigate correspondent accounts they maintain for foreign banks to ascertain whether a foreign bank is using the account to provide services to a Burmese banking institution. Instead, if covered financial institutions become aware, through due diligence that is otherwise appropriate or required under existing anti-money laundering obligations, that a foreign bank is using its correspondent account to provide banking services indirectly to a Burmese banking institution, then the covered financial institutions must ensure that the account is no longer used for such purposes.

Additionally, when a covered financial institution becomes aware that a foreign bank customer is using the U.S. correspondent account to provide services to a Burmese banking institution indirectly, the covered financial institution may afford that foreign bank customer a reasonable opportunity to take corrective action prior to terminating the U.S. correspondent account. Should the foreign bank customer refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account in accordance with this regulation. FinCEN has also incorporated the requirement of termination within a reasonable period of time and the reinstatement of a terminated correspondent account found in the final regulation implementing Sections 313 and 319(b) of the Act.[9]

This provision is likewise subject to the exception contained in section 103.186(b)(3), described below.

3. Exception

Section 103.186(b)(3) provides for an exception to the prohibition on both direct and indirect correspondent account relationships of the final rule. U.S. financial institutions covered by the final rule may maintain a correspondent account relationship otherwise prohibited by this rule if the maintenance of such an account is permitted pursuant to Executive Order 13310 and if the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted in, or otherwise authorized by regulation, order, directive, or license issue pursuant to, Executive Order 13310. As described previously in section I(C), certain transactions with Burma are exempt from the prohibitions of Executive Order 13310 or have been authorized through the licensing process. The general licenses (*i.e.*, those of general applicability) or other authorizations issued will be set forth in 31 CFR part 537, and are available on the Web site of Treasury's Office of Foreign Assets Control, *http://www.treas.gov/offices/eotffc/ofac/sanctions/sanctguide-burma.html*. To ensure that those authorized activities are available as a practical matter, U.S. correspondent accounts permitted to operate pursuant to Executive Order 13310 may be used to effect those permitted transactions.

4. Reporting and Recordkeeping Not Required

Section 103.186(b)(3) of the final rule states that it does not impose any reporting or recordkeeping requirement upon any covered financial institution that is not otherwise required by applicable law or regulation.

V. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, financial institutions covered by this final rulemaking are already prohibited under existing sanctions from maintaining correspondent accounts for Burmese banking institutions. Given the comprehensive sanctions regime, FinCEN believes that few foreign correspondent bank customers of small U.S. financial institutions covered by the rulemaking will themselves maintain correspondent accounts for Burmese banking institutions.

VI. Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

[9] 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

■ 2. Subpart I of part 103 is amended by adding § 103.186 under the undesignated centerheading "SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS" to read as follows:

§ 103.186 Special measures against Burma.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Burmese banking institution* means any foreign bank, as that term is defined in § 103.11(o), chartered or licensed by Burma, including branches and offices located outside Burma.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

Dated: April 2, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

RIN 1506–AA63

Imposition of Special Measures Against Myanmar Mayflower Bank and Asia Wealth Bank

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: On November 18, 2003, the Secretary of the Treasury (Secretary) designated Myanmar Mayflower Bank (Mayflower Bank) and Asia Wealth Bank, both Burmese banks, as financial institutions of primary money laundering concern, and proposed a special measure certain U.S. financial institutions would be required to take concerning these two banks, pursuant to 31 U.S.C. 5318A, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. FinCEN is issuing this final rule to require certain U.S. financial institutions to take the proposed special measure with respect to these two institutions.

DATES: *Effective date:* May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs (FinCEN), (202) 354–6400 or; the Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll free numbers).

SUPPLEMENTARY INFORMATION: The Secretary has designated Mayflower Bank and Asia Wealth Bank as financial institutions of primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act (Pub. L. 107–56) (the Act). To protect the U.S. financial system from the money laundering threat posed by these financial institutions, FinCEN is imposing one of the special measures authorized by section 5318A(b), specifically, the fifth special measure. The fifth special measure prohibits certain U.S. financial institutions from maintaining correspondent or payable-through accounts in the United States for, or on behalf of, Mayflower Bank and Asia Wealth Bank. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used to provide banking services to the two named Burmese banks indirectly.

Additionally, by separate notice and final rule, the Department is imposing the fifth special measure to prohibit certain U.S. financial institutions from maintaining correspondent or payable-through accounts for, or on behalf of, any Burmese banking institution. Notwithstanding any exemption in that notice and final rule applicable to other Burmese financial institutions under Executive Order 13310 of July 28, 2003, the special measure in this notice prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

I. Background

A. Section 311 of the USA PATRIOT Act

On October 26, 2001, the President signed the Act into law. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA) (codified in subchapter II of chapter 53 of title 31, United States Code) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act (Section 311) added section 5318A to the BSA, granting the Secretary authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) as a "primary money laundering concern" and to require U.S. financial institutions to take certain "special measures" against the primary money laundering concern.

Section 311 identifies factors to consider and agencies to consult before the Secretary may designate a primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting the imposition of specific special measures against the designee.

Taken as a whole, Section 311 provides FinCEN with a range of options that can be adapted to target most effectively specific money laundering and terrorist financing concerns. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; more effectively monitor the respective institutions, transactions, and accounts; and/or protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

1. Imposition of Special Measures

If the Secretary determines that a foreign financial institution is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence.[1]

The Secretary's imposition of special measures follows procedures similar to those for designations, but carries with it additional consultations to be made and factors to consider. The statute requires the Secretary to consult with appropriate agencies and other interested parties[2] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on United States national security and foreign policy.

2. Procedures for Imposing Special Measures

In this final rule, the Secretary, through FinCEN, is imposing the fifth special measure (31 U.S.C. 5318A(b)(5)) against Mayflower Bank and Asia Wealth Bank. This special measure may only be imposed through the issuance of a regulation.

B. Burma, Myanmar Mayflower Bank, and Asia Wealth Bank

1. The Burmese Anti-Money Laundering Regime

Burma (also known as Myanmar) has no effective anti-money laundering controls in place. As a result, in June 2001 Burma was designated as a Non-Cooperative Country and Territory (NCCT) by the Financial Action Task Force (FATF)[3] for its lack of basic anti-money laundering provisions and weak oversight of the banking sector. Following the designation by the FATF, in April 2002, FinCEN issued an advisory to U.S. financial institutions to give enhanced scrutiny to all transactions originating in or routed to or through Burma, or involving entities organized or domiciled, or persons maintaining accounts, in Burma. Deficiencies identified by FATF and the FinCEN advisory included:

- Burma lacks a basic set of anti-money laundering laws or regulations.
- Money laundering is not a criminal offense for crimes other than drug trafficking in Burma.
- The Burmese Central Bank has no anti-money laundering regulations for financial institutions.
- Banks licensed by Burma are not legally required to obtain or maintain identification information about their customers.
- Banks licensed by Burma are not required to maintain transaction records of customer accounts.
- Burma does not require financial institutions to report suspicious transactions.
- Burma has significant obstacles to international co-cooperation by judicial authorities.

In June 2002, Burma responded to this international pressure by enacting an anti-money laundering law that purportedly addresses some of these deficiencies. Because of the lack of implementing regulations, the Burmese anti-money laundering law could not be regarded as effectively remedying any of the identified deficiencies. Due to Burma's continuing lack of progress, the FATF called upon its member jurisdictions to impose countermeasures on Burma as of November 3, 2003. On December 5, 2003, Burma issued regulations to implement this law. However, the regulations do not set threshold amounts or time limits. The regulations also do not address the need for a mutual assistance law. The 2003 International Narcotics Control Strategy Report, issued in March 2004, states that Burma must still implement and enforce the December 2003 regulations and address their deficiencies. In addition, Burma must provide adequate resources for supervision of the financial sector and end policies that make it easy for drug money to enter the legitimate economy.[4]

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[1] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, *see* 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

[2] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General and the Secretary of State, if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions maintaining correspondent account relationships with the designated entity.

[3] For further information on the FATF go to *www.fatf-gafi.org.*

[4] The 2003 International Narcotics Control Strategy Report, released by the Bureau for

Continued

The United States continues to recognize that Burma is a haven for international drug trafficking. On January 31, 2003, the President also signed Presidential Determination No. 2003–14, identifying Burma as a major illicit drug producing and/or drug transiting country pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228), and as a country that has failed demonstrably during the previous twelve months to adhere to its obligations under international counter-narcotics agreements and take the measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended (FAA). In addition, this past year Burma continued to be named as a major money laundering country. A major money laundering country is defined by statute as one "whose financial institutions engage in currency transactions including significant amounts of proceeds from international narcotics trafficking." FAA section 481(e)(7).

2. Mayflower Bank and Asia Wealth Bank

Mayflower Bank was incorporated in 1996 as a full-service commercial bank in Rangoon, Burma. The bank maintains 25 branches and has 1,153 employees. The Banker's Almanac and Dun and Bradstreet reports indicate that Mayflower Bank was incorporated in 1994. According to the 2003 Europa World Yearbook, the chairman of Mayflower Bank is Kyaw Win. The 1996–1997 Worldwide Correspondents Guide indicates that Mayflower Bank claims to have correspondent accounts in major cities, but advises readers to contact the bank for more information. The current issue of Thomson Bank Directory states that current financial figures for the bank are not available.

Asia Wealth Bank started its banking operation in 1995 and is one of the largest private banks in Burma, offering a wide variety of banking services. In August 2000, Asia Wealth Bank held 52 percent of the market share in fixed deposits of Burmese banks (over U.S. $23 billion). At the end of March 2001, it had 39 branches with a total of 3,200 employees (in December 2002, Dun and Bradstreet indicated only 2,200 employees). According to the 2003 Europa World Yearbook, Win Maung is the Chairman and Aik Htun is the Vice-Chair.

Presently Burma is reported to have only ten local private banks, and Mayflower Bank and Asia Wealth Bank are two of the five largest. There are also five state-run (*i.e.*, public) banks in Burma.[5] Other reports indicate that there may be as many as 20 private banks, but confirm that Mayflower Bank and Asia Wealth Bank are two of the leading banks.[6]

The Secretary designated Mayflower Bank and Asia Wealth Bank, both located in Burma, as primary money laundering concerns due to a number of factors, including: (1) They are licensed in Burma, a jurisdiction with inadequate anti-money laundering controls; (2) individuals owning and controlling both banks are linked to drug trafficking and money laundering, including using the banks for such purposes; and (3) the individuals who own and control the banks are linked to the United Wa State Army (UWSA), an organization involved in narcotics trafficking, and designated as significant narcotics traffickers under the Foreign Narcotics Kingpin Designation Act,[7] and, in the case of the Asia Wealth Bank, the owners are linked to organized crime.

C. Economic Sanctions

On July 28, 2003, the President signed both the Burmese Freedom and Democracy Act of 2003 and Executive Order 13310, imposing economic sanctions on Burma. These sanctions generally include: (1) A ban on the exportation or reexportation, directly or indirectly, of financial services to Burma; (2) the blocking of property and interests in property of the State Peace and Development Council of Burma and three state-owned foreign trade banks that are in the United States or in the possession or control of U.S. persons; and (3) a ban on the importation of Burmese goods into the United States. These sanctions build on an investment ban imposed under Executive Order 13047 issued pursuant to the International Emergency Economic Powers Act (IEEPA) on May 20, 1997, and a recently expanded visa ban in place since October 1996. The new sanctions have frozen hundreds of thousands of dollars of assets and have disrupted an already weak economy, especially in the important garment sector where many firms have closed or moved outside of Burma.

Executive Order 13310 prohibits broadly the provision of financial services to Burma from the United States or by a U.S. person, subject to limited exceptions.[8] Since the President signed the Order, however, Treasury has issued several licenses to permit transactions with Burma for certain specified purposes. For example, Treasury issued licenses authorizing transactions for the conduct of the official business of the United States Government, the United Nations, the World Bank, and the International Monetary Fund, and non-commercial personal remittances of up to $300 per household per quarter. The exemptions and licenses reflect the judgment of the United States that certain transactions are necessary and appropriate, even within the framework of this sanctions regime.

D. The Section 311 Special Measures

The requirements imposed against Mayflower Bank and Asia Wealth Bank pursuant to Section 311 reinforce the existing restrictions on transactions with Burma that are outlined above, and are a necessary addition to the Section 311 special measures FinCEN is imposing on the jurisdiction of Burma. Although they are similar in their effect on these two banks, the Section 311 special measures differ in certain respects and serve distinct policy goals from the economic sanctions imposed pursuant to Executive Order 13310. Most notably, the Section 311 special measure imposed by this notice does not permit U.S. financial institutions to maintain indirect correspondent accounts even to conduct transactions that are exempt from, or licensed pursuant to, Executive Order 13310. The justification for this absolute prohibition lies in the Secretary's determination that Mayflower Bank and Asia Wealth Bank pose an unacceptable risk of money laundering and other financial crimes and are linked to narcotics traffickers. The specific information concerning these two banks justifies their exclusion entirely from the U.S. financial system. This underscores the important policy justification for the Section 311 action—stemming the flow of illicit funds into the U.S. financial system. In contrast, the existing sanctions pursuant to Executive Order 13310 were imposed for different reasons, including, for example, the government of Burma's continued suppression of the democratic opposition.

International Narcotics and Law Enforcement Affairs, U.S. Department of State, was issued March 1, 2004. Part II of the report covers money laundering and financial crimes. The portion of the report dealing with Burma can be found at *http://www.state.gov/g/inl/rls/nrcrpt/2003/vol2/html/29920.htm*.

[5] *See* Official Myanmar Finance Ministry Web site, *www.Myanmar.com*.

[6] *See* Xinhua News Agency, March 8, 2002.

[7] 21 U.S.C. 1901–1908, 8 U.S.C. 1182.

[8] For example, the prohibition does not extend to transactions relating to certain contracts entered into prior to May 21, 1997. *See* Executive Order 13310, section 13.

Moreover, as with the designation of Burma generally, the United States is sending a strong message to other jurisdictions and financial institutions to take similar steps to cut off these two banks from the international financial system due to the unacceptable risk of money laundering.

Finally, while the special measures applicable to all Burmese banking institutions would certainly apply to Mayflower Bank and Asia Wealth Bank, a separate designation is necessary. The special measure FinCEN is applying to all Burmese banking institutions incorporates the licenses and exemptions applicable to the economic sanctions under Executive Order 13310. These exceptions are not appropriate when dealing with Mayflower Bank and Asia Wealth Bank, given their affiliation with narcotics traffickers. Also, by separately designating these two banks, to the extent Burma responds to the international call and begins to implement effective anti-money laundering controls, FinCEN has the flexibility to alter the special measures applicable to all Burmese financial institutions while maintaining the absolute prohibition against these two institutions. The separate designation of Mayflower Bank and Asia Wealth Bank under Section 311 also fulfills another important goal of FinCEN: to name publicly institutions posing risks to the international financial system and encourage all jurisdictions to exclude them.

II. Imposition of Special Measures

As a result of the designation of Mayflower Bank and Asia Wealth Bank as primary money laundering concerns, and based upon consultations and the consideration of all relevant factors,[9] the Secretary has determined that grounds exist for the imposition of the special measure authorized by section 5318A(b)(5). Thus, this rulemaking prohibits covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent or payable-through account for, or on behalf of, Mayflower Bank or Asia Wealth Bank. This prohibition extends to any correspondent account maintained for any foreign bank if the account is used to provide banking services indirectly to either of these two banks. Financial institutions covered by this rule that obtain knowledge that this is occurring are required to ensure that any such account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship in the manner set forth in this rulemaking.

In imposing this special measure, the Secretary has considered the following pursuant to section 5318A(a)(4)(b):

1. Similar Actions Have Been or Will Be Taken by Qther Nations or Multilateral Groups Against Burma Generally

In June of 2001, the FATF designated Burma as an NCCT, resulting in FATF members issuing advisories to their financial sectors recommending enhanced scrutiny of transactions involving Burma. In April 2002 FinCEN issued an advisory notifying U.S. financial institutions that they should accord enhanced scrutiny with respect to transactions and accounts involving Burma. In October 2003, FATF called upon its 33 members to take additional countermeasures with respect to Burma as of November 3, 2003. Based on informal discussions and the past practices of the FATF membership, the majority of FATF members are expected to take countermeasures, including all of the Group of Seven countries. The countermeasures imposed by such FATF members will likely include imposition of additional reporting requirements, issuance of advisories, shifting the burden for reporting obligations, and/or restrictions on the licensing of Burmese financial institutions. Imposition of the fifth special measure against Mayflower Bank and Asia Wealth Bank (as well as the jurisdiction of Burma) is consistent with this call for additional countermeasures and forms part of an international effort to protect the financial system.

2. Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, For Financial Institutions Organized or Licensed in the United States

United States financial institutions are already prohibited from providing financial services to Burma, unless such services are exempted or licensed. The imposition of the fifth special measure potentially imposes a broader prohibition than currently exists for two reasons—it precludes maintaining correspondent accounts for foreign branches of these two banks and the exemptions and licenses do not apply. However, on balance, it is unlikely that the imposition of the fifth special measure will create any significant additional costs or place U.S. financial institutions at a competitive disadvantage with respect to these two institutions. In fact, FinCEN's action is intended to encourage other jurisdictions and financial institutions to take similar steps to cut off Mayflower Bank and Asia Wealth Bank from the international financial system, which will further minimize any potential competitive disadvantage for U.S. financial institutions.

Moreover, the rule does not itself require U.S. financial institutions to perform additional due diligence on their existing foreign bank correspondent account customers beyond what is already required under existing regulations.

3. The Proposed Action or Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or On Legitimate Business Activities of the Two Banks

Private banks, such as Mayflower Bank and Asia Wealth Bank, are not permitted to deal in foreign exchange. All foreign currency transfers into Burma are required to be executed by one of three of Burma's state banks. And, as noted previously, it is unlikely that Mayflower Bank or Asia Wealth Bank can conduct any legitimate banking operations at this time. Therefore, this action or timing of the action will affect neither the international payment, clearance, and settlement system nor the potential legitimate banking operations of the two banks.

4. The Proposed Action Would Enhance the National Security of the United States and Is Consistent With, and In Furtherance Of, United States Foreign Policy

The imposition of this countermeasure against Mayflower Bank, Asia Wealth Bank, and Burma is part of an overall foreign policy strategy to enhance our national security through comprehensive economic and political sanctions against Burma.

III. Notice of Proposed Rulemaking and Comments

FinCEN published a notice of proposed rulemaking on November 25, 2003,[10] that would impose special measures against Mayflower Bank and Asia Wealth Bank. The comment period for that notice closed on December 26, 2003. FinCEN received no comment letters on the proposed rule. The final rule is identical to that found in the November 2003 notice.

[9] For purposes of this action, the required consultation with the Federal functional regulators was performed at the staff level.

[10] 68 FR 66305 (November 25, 2003).

IV. Section-by-Section Analysis

A. Overview

This final rule is intended to deny Mayflower Bank and Asia Wealth Bank access to the U.S. financial system through correspondent accounts, which includes payable-through accounts. The rule prohibits certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent accounts in the United States for, or on behalf of, Mayflower Bank and Asia Wealth Bank. If a U.S. financial institution covered by this rulemaking learns that a correspondent account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to Mayflower Bank or Asia Wealth Bank, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. As explained below, however, the rule does not itself require U.S. financial institutions to perform additional due diligence on foreign bank customers.

B. Definitions

Correspondent account. Section 103.187(a)(1) of the rule's definition of correspondent account is the definition contained in 31 CFR 103.175(d), which defines the term to mean an account established to receive deposits from, or make payments on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign bank, including payable-through accounts.

In the case of securities broker-dealers, futures commission merchants and introducing brokers, and mutual funds, a correspondent account would include any account that permits the foreign bank to engage in (1) Trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions.

FinCEN is using the same definition for purposes of the final rule as that established in the final rule implementing Sections 313 and 319(b) of the Act [11] with the notable exception that the term also applies to such accounts maintained by futures commission merchants and introducing brokers, and mutual funds.

Covered financial institution. Section 103.187(a)(2) of the final rule defines covered financial institution to mean all of the following: Any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to register with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is registered, or required to register, with the SEC pursuant to that Act.

Myanmar Mayflower Bank. Section 103.187(a)(3) of the final rule defines Myanmar Mayflower Bank to include all headquarters, branches, and offices operating in Burma or in any jurisdiction. This definition does not include subsidiaries.

Asia Wealth Bank. Section 103.187(a)(4) of the final rule defines Asia Wealth Bank to include all headquarters, branches, and offices operating in Burma or in any jurisdiction. Similarly, this definition does not include subsidiaries.

C. Requirements for Covered Financial Institutions

1. Prohibition on Correspondent Accounts

Section 103.187(b)(1) of the rule prohibits all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of, Mayflower Bank or Asia Wealth Bank. The prohibition requires all covered financial institutions to review their account records to determine that they maintain no accounts directly for, or on behalf of, either bank.

2. Prohibition on Indirect Correspondent Accounts

Under § 103.187(b)(2) of the rule, if a covered financial institution obtains knowledge that a correspondent or payable-through account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to Mayflower Bank or Asia Wealth Bank, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. In contrast to the obligation placed on covered financial institutions to identify correspondent accounts maintained directly for, or on behalf of, a Burmese financial institution in § 103.187(b)(1), this section does not itself impose an independent obligation on covered financial institutions to review or investigate correspondent accounts they maintain for foreign banks to ascertain whether such foreign banks are using the account to provide services to Mayflower Bank or Asia Wealth Bank. Instead, if covered financial institutions become aware, through due diligence that is otherwise appropriate or required under existing anti-money laundering obligations, that a foreign bank is using its correspondent account to provide banking services indirectly to Mayflower Bank or Asia Wealth Bank, then the covered financial institutions must ensure that the account is no longer used for such purposes. This reflects the approach taken in the proposed rulemaking imposing special measures against Nauru.[12]

Additionally, when a covered financial institution becomes aware that a foreign bank customer is using a correspondent account to provide services to either of the two designated banks indirectly, the covered financial institution may afford that foreign bank customer a reasonable opportunity to take corrective action prior to terminating the U.S. correspondent account. Should the foreign bank customer refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account in accordance with this regulation. FinCEN has also incorporated the requirement of termination within a reasonable period of time and the reinstatement of a terminated correspondent account found in the final regulation implementing sections 313 and 319(b) of the Act.[13]

3. Reporting and Recordkeeping Not Required

Section 103.187(b)(3) of the rule states that it does not impose any reporting or recordkeeping requirement upon any

[11] 67 FR 60562 (September 26, 2002), codified at 31 CFR 103.175 (d)(1).

[12] *See* 68 FR 18917 (April 17, 2003).

[13] 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).

covered financial institution that is not otherwise required by applicable law or regulation.

V. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, financial institutions covered by this rulemaking are already prohibited under existing sanctions from maintaining correspondent accounts for Mayflower Bank and Asia Wealth Bank. Given the limitations placed by the Burmese government on the international activities of these banks, FinCEN believes that few foreign correspondent bank customers of small U.S. financial institutions covered by the rulemaking will themselves maintain correspondent accounts for Mayflower Bank or Asia Wealth Bank.

VI. Executive Order 12866

This rule is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

■ 2. Subpart I of part 103 is amended by adding § 103.187 under the undesignated centerheading "SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS" to read as follows:

§ 103.187 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(4) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

Dated: April 2, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 04–8026 Filed 4–9–04; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–049]

RIN 1625–AA09

Drawbridge Operation Regulation; Belle River, Belle River, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is temporarily changing the regulation governing the operation of the State Route 70 pontoon drawbridge across Belle River, mile 23.8, near Belle River, Louisiana. The temporary change will allow the bridge operations to be adjusted to facilitate the relocation of the tender's house. The final rule will be in effect for eight months from May 15, 2004, to January 15, 2005.

DATES: This rule is effective from May 15, 2004 to January 15, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–03–049 and are available for inspection or copying at 500 Poydras Street, Room 1313, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 504–589–2965. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 9, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation

Regulations; Belle River, Belle River, LA in the **Federal Register** (69 FR 1554). We received one letter regarding the NPRM and that letter offered no comments or objections. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard, at the request of the Louisiana Department of Transportation and Development (LDOTD), issued a Notice of Proposed Rulemaking on January 9, 2004 to temporarily change the operation of the State Route 70 pontoon drawbridge across Belle River (on the Gulf Intracoastal Waterway Morgan City to Port Allen Alternate Route (Landside Route)), mile 23.8, at Belle River, Louisiana. During construction of the bridge tender's house, vehicular traffic will be limited to one lane. Since the bridge tender's house will be removed and replaced, the tender will have no place to stay at night or during inclement weather. The final rule allows for the continued operation of the bridge with minor changes to the operating schedule. Presently, 33 CFR 117.424 requires that the draw of the S70 bridge, mile 23.8 (Landside Route) near Belle River, must open on signal; except that, from 10 p.m. to 6 a.m., the draw must open on signal if at least four hours notice is given. During the advance notice period, the draw must open on less than four hours notice for an emergency and open on demand should a temporary surge in waterway traffic occur.

LDOTD indicates that approximately 60 vessels per month pass through the bridge site.

The final rule requires the bridge to continue to operate normally from 8 a.m. to 5 p.m. Monday through Friday while opening on signal with four hours advance notice at all other times. The advance notice requirement would affect marine traffic for an additional two hours in the mornings and five hours in the evenings. Additionally, mariners would be required to give advance notification on weekends. This proposed change allows for the replacement of the bridge tender's house while not unnecessarily inconveniencing the mariners transiting the waterway. An alternate route is available via the Morgan City to Port Allen Alternate Route. This final rule will be in effect for 8 months.

Discussion of Comments and Changes

There were no comments received regarding the proposed change, therefore; no changes to the proposal were made and no changes have been incorporated into the Final Rule.

Regulatory Evaluation

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

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

This rule requires advance notification during the evening and night hours of operation of the bridge and on weekends. A review of the bridge log indicates that minimal requests to open the bridge during these periods have been made in the past, and there is no indication that there will be a future increase.

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities. This proposed final rule would affect the following entities, some of which may be small entities: the owners or operators of vessels who need to transit through mile 23.8 on the Belle River (on the Gulf Intracoastal Waterway Morgan City to Port Allen Alternate Route (Landside Route)) from 5 p.m. to 8 a.m. nightly and all day on weekends. The impacts to small entities will not be significant because of the limited number of openings required by these vessels. Also the bridge may be opened during non-manned hours with prior notification.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No requests for assistance were received pursuant to this rule change.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. From May 15, 2004, to January 15, 2005, § 117.424 is suspended and a new § 117.T426 is added to read as follows:

§ 117.T426 Belle River.

The draw of the S70 bridge, mile 23.8 (Landside Route) shall open on signal from 8 a.m. to 5 p.m., Monday through Friday. At all other times, the bridge will open on signal if at least four hours advance notice is given.

Dated: April 5, 2004.

R.F. Duncan,

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

[FR Doc. 04–8201 Filed 4–9–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–7645–6]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for EmergencyPlanning and Notification.

EFFECTIVE DATE: This final rule is effective April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, (202) 564–8019.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Emergency Planning and Notification, which appeared in the **Federal Register** on April 22, 1987 (52 FR 13378). The affected regulations are codified at 40 CFR part 355. The OMB Control Number currently listed for this ICR in 40 CFR part 9 is incorrect (2050–0046). The correct OMB Control Number is 2050–0092. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 13132 (64 FR 43255, August 10, 1999) or Executive Order 13175 (65 FR 67249, November 9, 2000), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a

brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 12, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 1, 2004.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection.

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e); 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by revising the OMB Control Number listed under the title Emergency Planning and Notification (part 355) to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Emergency planning and notification	
Part 355, appendix A, appendix B	2050–0092
* * * * *	

[FR Doc. 04–8228 Filed 4–9–04; 8:45 am]

BILLING CODE 6050–$$–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NC–112L–2004–1–FRL–7646–2]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 26, 2003, the EPA published in the **Federal Register** a direct final rule to approve the North Carolina Department of Environment and Natural Resource's (NC DENR) equivalency by permit program, pursuant to section 112(l) of the Clean Air Act, to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills, for the International Paper Riegelwood mill in Riegelwood, North Carolina. Today's action is taken to amend the approval of NC DENR's section 112(l) authority for hazardous air pollutants, equivalency by permit provisions, in order to extend its coverage to include the following four mills: International Paper Roanoke Rapids mill in Roanoke Rapids, North Carolina; Blue Ridge Paper Products in Canton, North Carolina; Weyerhaeuser New Bern facility in New Bern, North Carolina; and the Weyerhaeuser Plymouth facility in Plymouth, North Carolina.

DATES: This direct final rule is effective June 11, 2004 without further notice, unless EPA receives adverse comment by May 12, 2004. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: Written comments must be submitted to Lee Page, Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking NC–112L–2004–1" in the subject line on the first page of your comment. Comments may also be submitted electronically, or through hand delivery/courier by following the detailed instructions described in [Part (I)(B)(1)(i) through (iii)] of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9131. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file for this action under NC–112L–2004–1 that is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding federal Holidays.

2. Copies of the State submittal and supporting documents are also available for public inspection during normal business hours, by appointment at the North Carolina Department of Environmental and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699–1641.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on

Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

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

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking NC–112L–2004–1" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

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

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *page.lee@epa.gov*. Please include the text "Public comment on proposed rulemaking NC–112L–2004–1" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulation.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

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

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking NC–112L–2004–1" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Lee Page; Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding federal Holidays.

C. How Should I Submit CBI To the Agency?

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

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

D. What Should I Consider as I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for

Hazardous Air Pollutants from the Pulp and Paper Industry (see 63 FR 18504) which was codified in 40 CFR 63, Subpart S, "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry" (Pulp and Paper MACT I). Subsequently, on January 12, 2001, EPA promulgated the National Emission Standard for Hazardous Air Pollutants from the Pulp and Paper Industry (see 66 FR 3180) which has been codified in 40 CFR Part 63, Subpart MM, "National Emission Standards for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills" (Pulp and Paper MACT II). There are five pulp and paper mills operating in the State that are subject to Subpart S and Subpart MM.

On March 4, 2003, North Carolina Department of Environment and Natural Resources (NC DENR) requested delegation of Subpart S and Subpart MM under Section 63.94 for the International Paper Riegelwood Mill. EPA received the request on March 11, 2003. NC DENR requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of Subpart S and Subpart MM under the process outlined in 40 CFR Section 63.94. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 standards, NC DENR also requested approval of its demonstration that NC DENR has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules.

On August 26, 2003, the EPA published in the **Federal Register** a direct final rule to approve the NC DENR equivalency by permit program, pursuant to Section 112(l) of the Clean Air Act, to implement and enforce State permit terms and conditions that substitute for Subpart S and Subpart MM, for the International Paper Riegelwood Mill in Riegelwood, North Carolina.

On February 6, 2004, NC DENR requested that EPA amend the list of approved facilities to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of Subpart S and Subpart MM to include the International Paper Roanoke Rapids mill in Roanoke Rapids, North Carolina; Blue Ridge Paper Products in Canton, North Carolina; Weyerhaeuser New Bern facility in New Bern, North Carolina; and the Weyerhaeuser Plymouth facility in Plymouth, North Carolina. EPA received this request on February 12, 2004.

III. Analysis of State's Submittal

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR Part 63, Subpart E (see 65 FR 55810, dated September 14, 2000). Under these regulations, a state or local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (see 40 CFR 63.94(a) and (b)) is the "up-front approval" of the state EBP program. The second step (see 40 CFR 63.94(c) and (d)) is EPA review and approval of the state alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (see 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into a specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, Section 112(l)(5), until the completion of step three.

The purpose of step one, the "up-front approval" of the EBP program, is three fold: (1) It ensures that NC DENR meets the 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for NC DENR to replace the otherwise applicable Federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which NC DENR will be accepting delegation under the EBP option.

Under §§ 63.94(b) and 63.91, NC's request for EBP program approval was required to include the identification of the sources and the source categories for which the state is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources. There are no limitations on the number of sources in a source category for which the State can seek authority to implement and enforce alternative requirements.

IV. Final Action

After reviewing the request to expand the coverage of NC DENR's EBP program for Subpart S and Subpart MM, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. Accordingly, EPA approves NC DENR's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for the International Paper Roanoke Rapids mill, Blue Ridge Paper Products, Weyerhaeuser New Bern, and the Weyerhaeuser Plymouth mill for Subpart S and Subpart MM. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the sources and the "applicable requirement" for title V purposes remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the section 112(l) provisions should adverse comments be filed. This rule will be effective June 11, 2004 without further notice unless the Agency receives adverse comments by May 12, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 11, 2004 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule,

we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Also, this action is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 13175

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule.

C. Executive Order 13132

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state program implementing a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but simply allows the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action allows North Carolina to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

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

G. National Technology Transfer and Advancement Act

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 2, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Title 40, chapter I, part 63 of the *Code of Federal Regulations* is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended revising the paragraph (a)(33)(ii) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(33) * * *

(ii) North Carolina Department of Environment and Natural Resources (NC DENR) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Riegelwood mill, Riegelwood, North Carolina; International Paper Roanoke Rapids mill, Roanoke Rapids, North Carolina; Blue Ridge Paper Products, Canton, North Carolina; Weyerhaeuser New Bern facility, New Bern, North Carolina; and Weyerhaeuser Plymouth facility, Plymouth, North Carolina, for Subpart S of this Part—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and Subpart MM of this Part—National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirements applicable to the sources remain the Federal section 112 requirements until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 04–8222 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 1206

Grants and Contracts: Suspension and Termination and Denial of Application for Refunding; Correction Technical Amendments and Reinstatement

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service published in the **Federal Register** of March 27, 2003, a document removing obsolete regulations from 45 CFR Chapter XII. Inadvertently, part 1206 concerning procedures for suspension, termination, and denial of refunding of grants and contracts was removed. This document reinstates part 1206 in its entirety as part of 45 CFR Chapter XII and corrects the nonsubstantive errors found in the original text. It makes no changes to the original part 1206 other than substituting Corporation positions for the now obsolete ACTION agency positions.

DATES: Effective April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Britanya Rapp, Associate General Counsel, Corporation for National and Community Service, telephone: 202–606–5000, ext. 258; TDD: 800–833–3722; Internet e-mail address: *brapp@cns.gov*.

SUPPLEMENTARY INFORMATION: The ACTION agency promulgated a regulation at part 1206 addressing the termination, suspension, and denial of refunding of programs funded under the Domestic Volunteer Service Act of 1973, as amended. The Corporation published a document in the **Federal Register** of March 27, 2003, (68 FR 14901) inadvertently removing part 1206. This correction adds part 1206 and replaces the obsolete references to the ACTION agency with references to the Corporation, its departments and offices, officials, and employees.

List of Subjects in 45 CFR Part 1206

Community action programs, Grant programs—social programs.

Dated: April 6, 2004.

Frank R. Trinity,

General Counsel.

■ Accordingly, and under the authority of 42 U.S.C. 12561 and for the reasons stated in the preamble, the Corporation reinstates part 1206 in 45 CFR chapter XII as follows:

PART 1206—GRANTS AND CONTRACTS—SUSPENSION AND TERMINATION AND DENIAL OF APPLICATION FOR REFUNDING

Subpart A—Suspension and Termination of Assistance

Sec.

Subpart B—Denial of Application for Refunding

Authority: 42 U.S.C. 5052.

Subpart A—Suspension and Termination of Assistance

§ 1206.1–1 Purpose and scope.

(a) This subpart establishes rules and review procedures for the suspension and termination of assistance of National Senior Service Corps and AmeriCorps*VISTA grants of assistance provided by the Corporation for National and Community Service pursuant to sections of titles I and II of the Domestic Volunteer Service Act of 1973, 87 Stat. 394, Pub. L. 93–113, (hereinafter the DVSA) because a recipient failed to materially comply with the terms and conditions of any grant or contract providing assistance under these sections of the DVSA, including applicable laws, regulations, issued program guidelines, instructions, grant conditions or approved work programs.

(b) However, this subpart shall not apply to any administrative action of the Corporation for National and Community Service based upon any violation, or alleged violation, of title VI of the Civil Rights Act of 1964 and sections 417(a) and (b) of Pub. L. 93–113 relating to nondiscrimination. In the case of any such violation or alleged violation other provisions of this chapter shall apply.

§ 1206.1–2 Application of this part.

This subpart applies to programs authorized under titles I and II of the DVSA.

§ 1206.1–3 Definitions.

As used in this subpart—

(a) The term *Corporation* means the Corporation for National and Community Service established pursuant to 42 U.S.C. 12651 and includes each Corporation State Office and Service Center.

(b) The term *CEO* means the Chief Executive Officer of the Corporation.

(c) The term *responsible Corporation official* means the CEO, Chief Financial Officer, the Director of the National Senior Service Corps programs, the Director of the AmeriCorps*VISTA program, the appropriate Service Center

Director and any Corporation Headquarters or State office official who is authorized to make the grant of assistance in question. In addition to the foregoing officials, in the case of the suspension proceedings described in § 1206.1–4, the term "responsible Corporation official" shall also include a designee of a Corporation official who is authorized to make the grant of assistance in question.

(d) The term *assistance* means assistance under titles I and II of the DVSA in the form of grants or contracts involving Federal funds for the administration of which the Directors of the National Senior Service Corps and AmeriCorps*VISTA have primary responsibility.

(e) The term *recipient* means a public or private agency, institution or organization or a State or other political jurisdiction which has received financial assistance under titles I and II of the DVSA. The term "recipient" does not include individuals who ultimately receive benefits under any DVSA program of assistance or National Senior Service Corps volunteers or AmeriCorps*VISTA members participating in any program.

(f) The term *agency* means a public or private agency, institution, or organization or a State or other political jurisdiction with which the recipient has entered into an arrangement, contract or agreement to assist in its carrying out of the development, conduct and administration of all or part of a project assisted under titles I and II.

(g) The term *party* in the case of a termination hearing means the Corporation, the recipient concerned, and any other agency or organization which has a right or which has been granted permission by the presiding officer to participate in a hearing concerning termination of financial assistance to the recipient pursuant to § 1206.1–5(e).

(h) The term *termination* means any action permanently terminating or curtailing assistance to all or any part of a program prior to the time that such assistance is concluded by the grant or contract terms and conditions, but does not include the refusal to provide new or additional assistance.

(i) The term *suspension* means any action temporarily suspending or curtailing assistance in whole or in part, to all or any part of a program, prior to the time that such assistance is concluded by the grant or contract terms and conditions, but does not include the refusal to provide new or additional assistance.

§ 1206.1–4 Suspension.

(a) *General.* The responsible Corporation official may suspend financial assistance to a recipient in whole or in part for a material failure or threatened material failure to comply with any requirement stated in § 1206.1–1. Such suspension shall be pursuant to notice and opportunity to show cause why assistance should not be suspended as provided in paragraph (b) of this section. However, in emergency cases, where the responsible Corporation official determines summary action is appropriate, the alternative summary procedure of paragraph (c) of this section shall be followed.

(b) *Suspension on notice.* (1) Except as provided in paragraph (c) of this section, the procedure for suspension shall be on notice of intent to suspend as hereinafter provided.

(2) The responsible Corporation official shall notify the recipient by letter or by telegram that the Corporation intends to suspend assistance in whole or in part unless good cause is shown why assistance should not be suspended. In such letter or telegram the responsible Corporation official shall specify the grounds for the proposed suspension and the proposed effective date of the suspension.

(3) The responsible Corporation official shall also inform the recipient of its right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the recipient may respond and attempt to show why such suspension should not occur. The period of time within which the recipient may submit such written material or request the informal meeting shall be established by the responsible Corporation official in the notice of intent to suspend. However, in no event shall the period of time within which the recipient must submit written material or request such a meeting be less than 5 days after the notice of intent to suspend assistance has been sent. If the recipient requests a meeting, the responsible Corporation official shall fix a time and place for the meeting, which shall not be less than 5 days after the recipient's request is received by the Corporation.

(4) In lieu of the provisions of paragraph (b)(3) of this section dealing with the right of the recipient to request an informal meeting, the responsible Corporation official may on his own initiative establish a time and place for such a meeting and notify the recipient in writing or by telegram. However, in no event shall such a meeting be scheduled less than seven days after the notice of intent to suspend assistance is sent to the recipient.

(5) The responsible Corporation official may in his discretion extend the period of time or date referred to in the previous paragraphs of this section and shall notify the recipient in writing or by telegram of any such extension.

(6) At the time the responsible Corporation official sends the notification referred to in paragraphs (b)(2), (3), and (4) of this section to the recipient, he shall also send a copy of it to any agency whose activities or failures to act have substantially contributed to the proposed suspension, and shall inform such agency that it is entitled to submit written material or to participate in the informal meeting referred to in paragraphs (b)(3) and (4) of this section. In addition the responsible Corporation official may in his discretion give such notice to any other agency.

(7) Within 3 days of receipt of the notice referred to in paragraphs (b)(2), (3), and (4) of this section, the recipient shall send a copy of such notice and a copy of these regulations to all agencies which would be financially affected by the proposed suspension action. Any agency that wishes to submit written material may do so within the time stated in the notice. Any agency that wishes to participate in the informal meeting with the responsible Corporation official contemplated herein may request permission to do so from the responsible Corporation official, who may in his discretion grant or deny such permission. In acting upon any such request from an agency, the responsible Corporation official shall take into account the effect of the proposed suspension on the particular agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interests of the agency requesting such permission appear to be adequately represented by other participants.

(8) In the notice of intent to suspend assistance the responsible Corporation official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(9) The responsible Corporation official shall consider any timely material presented to him in writing, any material presented to him during the course of the informal meeting provided for in paragraphs (b)(3) and (4) of this section as well as any showing that the recipient has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the

material presented to him the responsible Corporation official concludes the recipient has failed to show cause why assistance should not be suspended, he may suspend assistance in whole or in part and under such terms and conditions as he shall specify.

(10) Notice of such suspension shall be promptly transmitted to the recipient and shall become effective upon delivery. Suspension shall not exceed 30 days unless during such period of time termination proceedings are initiated in accordance with § 1206.1–5, or unless the responsible Corporation official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(11) During a period of suspension no new expenditures shall be made and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible Corporation official. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the recipient has obligated them by contract or otherwise to an agency.

Note: Willful misapplication of funds may violate Federal criminal statutes.

(12) The responsible Corporation official may in his discretion modify the terms, conditions and nature of the suspension or rescind the suspension action at any time on his own initiative or upon a showing satisfactory to him that the recipient had adequately corrected the deficiency which led to the suspension and that repetition is not threatened. Suspensions partly or fully rescinded may, in the discretion of the responsible Corporation official be reimposed with or without further proceedings: *Provided however*, That the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1–5 or unless the responsible Corporation official and the recipient agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension of assistance shall remain in full force and effect until such proceedings have been fully concluded.

(c) *Summary suspension.* (1) The responsible Corporation official may suspend assistance without the prior notice and opportunity to show cause provided in paragraph (b) of this section if he determines in his discretion that immediate suspension is necessary because of a serious risk of:

(i) Substantial injury to or loss of project funds or property, or

(ii) Violation of a Federal, State or local criminal statute, or

(iii) Violation of section 403 of the DVSA or of Corporation rules, regulations, guidelines and instructions implementing this section of the DVSA, and that such risk is sufficiently serious to outweigh the general policy in favor of advance notice and opportunity to show cause.

(2) Notice of summary suspension shall be given to the recipient by letter or by telegram, shall become effective upon delivery to the recipient, and shall specifically advise the recipient of the effective date of the suspension and the extent, terms, and condition of any partial suspension. The notice shall also forbid the recipient to make any new expenditures or incur any new obligations in connection with the suspended portion of the program. Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the recipient's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed by a recipient solely because the recipient obligated them by contract or otherwise to an agency. (See note under paragraph (b)(11) of this section.)

(3) In the notice of summary suspension the responsible Corporation official shall advise the recipient that it may request the Corporation to provide it with an opportunity to show cause why the summary suspension should be rescinded. If the recipient requests such an opportunity, the responsible Corporation official shall immediately inform the recipient in writing of the specific grounds for the suspension and shall within 7 days after receiving such request from the recipient hold an informal meeting at which the recipient may show cause why the summary suspension should be rescinded. Notwithstanding the provisions of this paragraph, the responsible Corporation official may proceed to initiate termination proceedings at any time even though assistance to the recipient has been suspended in whole or in part. In the event that termination proceedings are initiated, the responsible Corporation official shall nevertheless afford the recipient, if it so requests, an opportunity to show cause why suspension should be rescinded pending the outcome of the termination proceedings.

(4) Copies of the notice of summary suspension shall be furnished by the recipient to agencies in the same manner as notices of intent to suspend as set forth in paragraphs (b)(6), (7), and (8) of this section. Agencies may submit written material to the responsible Corporation official or to participate in the informal meeting as in the case of intended suspension proceedings set forth in paragraphs (b)(6) and (7) of this section.

(5) The effective period of a summary suspension of assistance may not exceed 30 days unless termination proceedings are initiated in accordance with § 1206.1–5, or unless the parties agree to a continuation of summary suspension for an additional period of time, or unless the recipient, in accordance with paragraph (c)(3) of this section, requests an opportunity to show cause why the summary suspension should be rescinded.

(6) If the recipient requests an opportunity to show cause why a summary suspension action should be rescinded the suspension of assistance shall continue in effect until the recipient has been afforded such opportunity and a decision has been made. Such a decision shall be made within 5 days after the conclusion of the informal meeting referred to in paragraph (c)(3) of this section. If the responsible Corporation official concludes, after considering all material submitted to him, that the recipient has failed to show cause why the suspension should be rescinded, the responsible Corporation official may continue the suspension in effect for an additional 7 days: *Provided however*, That if termination proceedings are initiated, the summary suspension of assistance shall remain in full force and effect until all termination proceedings have been fully concluded.

§ 1206.1–5 Termination.

(a) If the responsible Corporation official believes that an alleged failure to comply with any requirement stated in § 1206.1–1 may be sufficiently serious to warrant termination of assistance, whether or not assistance has been suspended, he shall so notify the recipient by letter or telegram. The notice shall state that there appear to be grounds which warrant terminating the assistance and shall set forth the specific reasons therefore. If the reasons result in whole or substantial part from

the activities of an agency other than the grantee, the notice shall identify that agency. The notice shall also advise the recipient that the matter has been set down for hearing at a stated time and place, in accordance with § 1206.1–6. In the alternative the notice shall advise the recipient of its right to request a hearing and shall fix a period of time which shall not be less than 10 days in which the recipient may request such a hearing.

(b) Termination hearings shall be conducted in accordance with the provision of §§ 1206.1–7 and 1206.1–8. They shall be scheduled for the earliest practicable date, but not later than 30 days after a recipient has requested such a hearing in writing or by telegram. Consideration shall be given to a request by a recipient to advance or postpone the date of a hearing scheduled by the Corporation. Any such hearing shall afford the recipient a full and fair opportunity to demonstrate that it is in compliance with requirements specified in § 1206.1–1. In any termination hearing, the Corporation shall have the burden of justifying the proposed termination action. However, if the basis of the proposed termination is the failure of a recipient to take action required by law, regulation, or other requirement specified in § 1206.1–1, the recipient shall have the burden of proving that such action was timely taken.

(c) If a recipient requests the Corporation to hold a hearing in accordance with paragraph (a) of this section, it shall send a copy of its request for such a hearing to all agencies which would be financially affected by the termination of assistance and to each agency identified in the notice pursuant to paragraph (a) of this section. This material shall be sent to these agencies at the same time the recipient's request is made to the Corporation. The recipient shall promptly send to the Corporation a list of the agencies to which it has sent such material and the date on which it was sent.

(d) If the responsible Corporation official pursuant to paragraph (a) of this section informs a recipient that a proposed termination action has been set for hearing, the recipient shall within 5 days of its receipt of this notice send a copy of it to all agencies which would be financially affected by the termination and to each agency identified in the notice pursuant to paragraph (a) of this section. The recipient shall send the responsible Corporation official a list of all agencies notified and the date of notification.

(e) If the responsible Corporation official has initiated termination proceedings because of the activities of an agency, that agency may participate in the hearing as a matter of right. Any other agency, person, or organization that wishes to participate in the hearing may, in accordance with § 1206.1–7(d), request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of the Corporation and the recipient, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(f) The results of the proceeding and any subsequent measure taken by the Corporation pursuant to this part shall be fully binding upon the recipient and all agencies whether or not they actually participated in the hearing.

(g) A recipient may waive a hearing by notice to the responsible Corporation official in writing and submit written information and argument for the record. Such material shall be submitted to the responsible Corporation official within a reasonable period of time to be fixed by him upon the request of the recipient. The failure of a recipient to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of the Corporation.

(h) The responsible Corporation official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

§ 1206.1–6 Time and place of termination hearings.

The termination hearing shall be held in Washington, DC, or in the appropriate Service Center or Corporation State Office, at a time and place fixed by the responsible Corporation official unless he determines that for the convenience of the Corporation, or of the parties or their representatives, requires that another place be selected.

§ 1206.1–7 Termination hearing procedures.

(a) *General.* The termination hearing, decision, and any review shall be conducted in accordance with the rules of procedure in this section and §§ 1206.1–8 and 1206.1–9.

(b) *Presiding officer.* (1) The presiding officer at the hearing shall be the responsible Corporation official or, at the discretion of the responsible Corporation official, an independent hearing examiner designated as promptly as possible in accordance with section 3105 of title 5 of the United States Code. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(2) After the notice described in paragraph (f) of this section is filed with the presiding officer, he shall not consult any person or party on a fact in issue unless on written notice and opportunity for all parties to participate. However, in performing his functions under this part the presiding officer may use the assistance and advice of an attorney designated by the General Counsel of the Corporation: *Provided,* That the attorney designated to assist him has not represented the Corporation or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(c) *Presentation of evidence.* Both the Corporation and the recipient are entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of all facts bearing on the issues. The issues shall be those stated in the notice required to be filed by paragraph (f) of this section, those stipulated in a prehearing conference or those agreed to by the parties.

(d) *Participation.* (1) In addition to the Corporation, the recipient, and any agency which has a right to appear, the presiding officer in his discretion may permit the participation in the proceedings of such persons or organizations as he deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(2) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of suspension or proposed termination has been received by the recipient, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant

intends to contribute, and the necessity for the introduction of such evidence or arguments.

(3) The presiding officer shall permit or deny such participation and shall give notice of his decision to the applicant, the recipient, and the Corporation, and, in the case of denial, a brief statement of the reasons for his decision: *Provided however*, That the presiding officer may subsequently permit such participation if, in his opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(4) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(e) *Filing.* All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(f) *Notice.* The responsible Corporation official shall send the recipient and any other party a written notice which states the time, place, nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on as justifying termination and the Corporation requirements which it is contended the recipient has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy thereof shall be filed with the presiding officer.

(g) *Notice of intention to appear.* The recipient and any other party which has a right or has been granted permission to participate in the hearing shall give written confirmation to the Corporation of its intention to appear at the hearing 3 days before it is scheduled to occur. Failing to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(h) *Form and date of service.* All papers and documents filed or sent to party shall be signed in ink by the appropriate party or his authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person: *Provided however,* That the effective date of the notice that there appear to be grounds which warrant terminating assistance shall be the date of its delivery or attempted delivery at the recipient's last known address as reflected in the records of the Corporation.

(i) *Prehearing conferences.* Prior to the commencement of a hearing the presiding officer may, subject to the provisions of paragraph (b)(2) of this section, require the parties to meet with him or correspond with him concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(j) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcription shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(k) *Depositions.* If the presiding officer determines that the interests of justice would be served, he may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his expense, furnish all other parties with copies of the transcript.

(l) *Official notice.* Official notice may be taken of a public document, or part of a public document, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, or any other matter of established fact within the general knowledge of the Corporation. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(m) *Proposed findings and conclusions.* After the hearing has concluded, but before the presiding officer makes his decision, he shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his decision whether he has accepted or rejected them in accordance with the provisions of § 1206.1–8(a).

§ 1206.1–8 Decisions and notices regarding termination.

(a) Each decision of a presiding officer shall contain his findings of fact, and conclusions, and shall state whether he has accepted or rejected each proposed finding of fact and conclusion submitted by the parties, pursuant to § 1206.1–7(m). Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the recipient has failed to comply.

(b) The decision of the presiding officer may provide for continued suspension or termination of assistance to the recipient in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the DVSA.

(c) If the hearing is held by an independent hearing examiner rather than by the responsible Corporation official, he shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision, or such longer period of time as the presiding officer specifies, file with the responsible Corporation official his written exceptions to the initial decision and any supporting brief or statement. Upon the filing of such exceptions, the responsible Corporation official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his own written decision thereof, including the reasons therefore. The decision of the responsible Corporation official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(d) Whenever a hearing is waived, a decision shall be made by the responsible Corporation official and a written copy of the final decision of the responsible Corporation official shall be given to the recipient.

(e) The recipient may request the CEO to review a final decision by the responsible Corporation official which provides for the termination of assistance. Such a request must be made in writing within 15 days after the recipient has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the recipient requests such a review, the CEO or his designee shall consider the reasons stated by the recipient for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible Corporation official or remand the matter to the responsible Corporation official for further hearing or consideration. The decision of the responsible Corporation official will be given great weight by the CEO or his designee during the review. During the course of his review the CEO or his designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the CEO or his designee assistance shall remain suspended under the terms and conditions specified by the responsible Corporation official, unless the responsible Corporation official or the CEO or his designee otherwise determines. Every reasonable effort shall be made to complete the review by the CEO or his designee within 30 days of receipt by the CEO of the recipient's request. The CEO or his designee may however extend this period of time if he determines that additional time is necessary for an adequate review.

§ 1206.1–9 Right to counsel; travel expenses.

In all formal or informal proceedings under this subpart, the recipient and the Corporation shall have the right to be represented by counsel or other authorized representatives. If the recipient and any agency which has a right to participate in an informal meeting pursuant to § 1206.1–4 or a termination hearing pursuant to § 1206.1–7 do not have an attorney acting in that capacity as a regular member of the staff of the organization or a retainer arrangement with an attorney, the Boards of Directors of such recipient and agency will be authorized to designate an attorney to represent their organizations at any such show cause proceeding or termination hearing and to transfer sufficient funds from the Federal grant monies they have received for the project to pay the fees, travel, and per diem expenses of such attorney. The fees for such attorney shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed $100 per day without the prior express written approval of the Corporation. Travel and per diem expenses may be paid to such attorney only in accordance with the policies set forth in the federal government travel regulations. The Boards of Directors of the recipient or any agency which has a right to participate in an informal meeting pursuant to § 1206.1–4 or a termination hearing pursuant to § 1206.1–7 will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from Federal grant or contract monies. Such travel and per diem expenses shall conform to the policies set forth in the federal government travel regulations.

§ 1206.1–10 Modification of procedures by consent.

The responsible Corporation official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this subpart with the consent of the recipient and, in the case of a termination hearing, with the consent of all agencies that have a right to participate in the hearing pursuant to § 1206.1–5(e). Such consent must be in writing or be recorded in the hearing transcript.

§ 1206.1–11 Other remedies.

The procedures established by this subpart shall not preclude the Corporation from pursuing any other remedies authorized by law.

Subpart B—Denial of Application for Refunding

§ 1206.2–1 Applicability of this subpart.

This subpart applies to grantees and contractors receiving financial assistance and to sponsors who receive AmeriCorps*VISTA members under the DVSA. The procedures in this subpart do not apply to review of applications for the following:

(a) University Year for VISTA projects which have received federal funds for five years;

(b) Mini-grants;

(c) Other projects for which specific time limits with respect to federal assistance are established in the original notice of grant award or other document providing assistance, where the specified time limit has been reached; and

(d) AmeriCorps*VISTA project extensions of less than six months.

§ 1206.2–2 Purpose.

This subpart establishes rules and review procedures for the denial of a current recipient's application for refunding.

§ 1206.2–3 Definitions.

As used in this subpart—Corporation", "CEO", and "recipient" are defined in accordance with § 1206.1–3.

Financial assistance and *assistance* include the services of National Senior Service Corps volunteers and AmeriCorps*VISTA members supported in whole or in part with Corporation funds provided under the DVSA.

Program account means assistance provided by the Corporation to support a particular program activity; for example, AmeriCorps*VISTA, Foster Grandparent Program, Senior Companion Program and Retired Senior Volunteer Program.

Refunding includes renewal of an application for the assignment of National Senior Service Corps volunteers and AmeriCorps*VISTA members.

§ 1206.2–4 Procedures.

(a) The procedures set forth in paragraphs (b) through (g) of this section applies only where an application for refunding submitted by a current recipient is rejected or is reduced to 80 percent or less of the applied-for level of funding or the recipient's current level of operations, whichever is less. It is further a condition for application of these procedures that the rejection or reduction be based on circumstances related to the particular grant or contract. These procedures do not apply to reductions based on legislative requirements, or on general policy or in instances where, regardless of a recipient's current level of operations, its application for refunding is not reduced by 20 percent or more. The fact that the basis for rejecting an application may also be a basis for termination under subpart A of this part shall not prevent the use of this subpart to the exclusion of the procedures in subpart A.

(b) Before rejecting an application of a recipient for refunding the Corporation shall notify the recipient of its intention, in writing, at least 75 days before the end of the recipient's current program year or grant budget period. The notice shall inform the recipient that a tentative decision has been made to reject or reduce an application for refunding. The notice shall state the reasons for the tentative decision to which the recipient shall address itself if it wishes to make a presentation as described in paragraphs (c) and (d) of this section.

(c) If the notice of tentative decision is based on any reasons, other than those described in paragraph (d) of this section, including, but not limited to, situations in which the recipient has ineffectively managed Corporation resources or substantially failed to comply with Corporation policy and overall objectives under a contract or grant agreement with the Corporation, the recipient shall be informed in the notice, of the opportunity to submit written material and to meet informally with a Corporation official to show cause why its application for refunding should not be rejected or reduced. If the recipient requests an informal meeting, such meeting shall be held on a date specified by the Corporation. However, the meeting may not, without the consent of the recipient, be scheduled sooner than 14 days, nor more than 30 days, after the Corporation has mailed the notice to the recipient. If the recipient requests an informal meeting, the meeting shall be scheduled by the Corporation as soon as possible after receipt of the request. The official who shall conduct this meeting shall be a Corporation official who is authorized to finally approve the refunding in question, or his designee.

(d) If the notice of tentative decision is based upon a specific charge of failure to comply with the terms and conditions of the grant or contract, alleging wrongdoing on the part of the recipient, the notice shall offer the recipient an opportunity for an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such hearing officer shall be limited to conducting the hearing and offering recommendations. The Corporation will retain all authority to make the final determination as to whether the application should be finally rejected or reduced. If the recipient requests an informal hearing, such hearing shall be held at a date specified by the Corporation. However, such hearing may not, without the consent of the recipient, be scheduled sooner than 14 days nor more than 30 days after the Corporation mails the notice to the recipient.

(e) In the selection of a hearing official and the location of either an informal meeting or hearing, the Corporation, while mindful of considerations of the recipient, will take care to insure that costs are kept to a minimum. The informal meeting or hearing shall be held in the city or county in which the recipient is located, in the appropriate Service Center or Corporation State Office, or another appropriate location. Within the limits stated in the preceding sentence, the decision as to where the meeting shall be held will be made by the Corporation, after weighing the convenience factors of the recipient. For the convenience of the recipient, the Corporation will pay the reasonable travel expenses for up to two representatives of the recipient, if requested.

(f) The recipient shall be informed of the final Corporation decision on refunding and the basis for the decision by the deciding official.

(g) If the recipient's budget period expires prior to the final decision by the deciding official, the recipient's authority to continue program operations shall be extended until such decision is made and communicated to the recipient. If a National Senior Service Corps volunteer's or AmeriCorps*VISTA member's term of service expires after receipt by a sponsor of a tentative decision not to refund a project, the period of service of the volunteer or member may be similarly extended. No volunteers or members may be reenrolled for a full 12-month term, or new volunteers or members enrolled for a period of service while a tentative decision not to refund is pending. If program operations are so extended, the Corporation and the recipient shall provide, subject to the availability of funds, operating funds at the same levels as in the previous budget period to continue program operations.

§ 1206.2–5 Right to counsel.

In all formal or informal proceedings under this subpart, the recipient and the Corporation shall have the right to be represented by counsel or other authorized representatives, at their own expense.

[FR Doc. 04–8208 Filed 4–9–04; 8:45 am]
BILLING CODE 6050–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 040504B]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2004 A season total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective April 7, 2004, until 2400 hours, Alaska local time (A.l.t.), December 31, 2004.

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

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

The 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC allocated to vessels using jig gear in the BSAI for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., April 30, 2004, as 1,595 metric tons (mt).

As of April 1, 2004, the Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,545 mt of the A season apportionment of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(A) and § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(1), NMFS apportions 1,545 mt of Pacific cod from the A season apportionment of jig gear to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004) are revised as follows: 50 mt to the A season apportionment for vessels using jig gear and 2,961 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and

opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear and therefore would cause disruption to the industry by requiring unnecessary closures, disruption within the fishing industry, and the potential for regulatory discards when the current allocation is projected to be reached on April 24, 2004. This reallocation will relieve a restriction on the industry and allow for the orderly conduct and efficient operation of this fishery.

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

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

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

Dated: April 6, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–8233 Filed 4–7–04; 2:22 pm]

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Proposed Rules

Federal Register
Vol. 69, No. 70
Monday, April 12, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 926

[Docket No. FV01–926–1 PR]

Proposed Data Collection, Reporting, and Recordkeeping Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new part 926 in the Code of Federal Regulations which would require persons engaged in the handling or importation of fresh cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) not subject to the reporting requirements of the Federal cranberry marketing order (order) to report sales, acquisition, and inventory information to the Cranberry Marketing Committee (Committee), and to maintain adequate records on such activities. The establishment of the proposed data collection, reporting, and recordkeeping requirements for entities not subject to the order is authorized under an amendment to section 8(d) of the Agricultural Marketing Agreement Act of 1937. The additional information is needed by the Committee to make more informed recommendations to USDA for regulations authorized under the cranberry marketing order. This rule also announces the Agricultural Marketing Service's intention to request approval of the new data collection and reporting requirements by the Office of Management and Budget.

DATES: Comments must be received by June 11, 2004. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by June 11, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov* or *www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is proposed pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], and as further amended October 22, 1999, by Public Law 106–78, 113 Stat. 1171, hereinafter referred to as the "Act".

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This proposed action is necessary to implement authority on cranberry data collection consistent with a 1999 amendment to section 8(d) of the Act. If a cranberry order is in effect, the amendment authorizes the Secretary to require persons engaged in the handling or importation of fresh cranberries or cranberry products (including producer-handlers, second handlers, processors, brokers and importers) to provide to the USDA certain information including information on sales, acquisitions, and inventories of fresh cranberries or cranberry products. Under the provisions of proposed Part 926, such persons would include handlers, producer-handlers, processors, brokers, and importers. Under the proposal, the Committee would collect such information.

According to the Committee, the number of end users of cranberries and cranberry products has increased in recent years. This has increased the number of entities in the marketing chain acquiring, selling, and maintaining inventories of cranberries and cranberry products produced domestically and outside the United States. Significant quantities of cranberries and cranberry products are now being marketed by handlers, producer-handlers, processors, importers, brokers, and others not subject to the reporting requirements of the cranberry marketing order (7 CFR Part 929). The cranberry marketing order authorizes the Committee to obtain information on sales, acquisitions, and inventories of cranberries and cranberry products from handlers regulated under the order. Such handlers are those who can, freeze, or dehydrate cranberries produced within the production area, or who sell, consign, deliver, transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States and Canada.

Prior to the 1999 amendment of the Act, the Committee and USDA did not have the authority to obtain information from entities not subject to the reporting requirements of the order. The 1999

amendment provides authority for USDA to expand the Committee's information gathering capability. With more complete information, the Committee would be able to make better-informed regulation recommendations to USDA. The Committee would also publish periodic reports aggregating the data on cranberry and cranberry products for use by all members of the industry.

Prior to the mid-1990's, the majority of cranberry inventories were held by handlers subject to the order, and the Committee was able to account for practically all of the cranberry and cranberry product inventory under the order. Under § 929.9 of the order, the term handler is defined as any person who handles cranberries. Handle means to sell, consign, deliver or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area and any point outside thereof in the United States or Canada (7 CFR 929.10). However, with increased domestic production and imports of cranberries, the number of entities not regulated under the Federal cranberry marketing order has expanded to include handlers, producer-handlers, processors, brokers, and importers who are not subject to the mandatory reporting requirements of the cranberry marketing order. Therefore, the Committee does not have complete information on sales, acquisitions and inventories of cranberries. Allowing the Committee to collect this information will help it make better informed regulation recommendations to USDA.

Section 929.46 of the cranberry marketing order requires the Committee to develop a marketing policy each year prior to May 1. Currently, in its marketing policy discussions, the Committee projects expected supply and market conditions for an upcoming season, based on information provided by growers and, particularly, handlers who are regulated under the order. These projections include an estimate of the marketable quantity (defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season). The Committee believes that its marketing policy is limited in some respects because it does not have the ability to include sales, acquisitions, and inventory reports from all segments of the cranberry industry.

Increased production, stagnant demand, and high inventory levels have compounded the problem of unreported inventories. With increased production and stagnant markets, the industry is producing far more cranberries than needed for current market needs. This situation has led to higher inventory levels. However, the Committee's inability to obtain needed information on cranberry sales, acquisitions, and inventories from entities not regulated under the marketing order has prevented it from obtaining complete information from all segments of the industry. With understated sales, acquisition, and inventory information, the Committee has been limited somewhat in making recommendations under the marketing order.

The ability to closely monitor levels of sales, acquisitions, and inventory is critical to the Committee in making more thorough recommendations. The 1999 amendment to the Act provides a means for collecting this information.

Section 8(d)(3) of the amended Act specifies that if an order is in effect with respect to cranberries, USDA may require persons engaged in the handling or importation of cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) to provide such information as USDA considers necessary to effectuate the declared policy of the Act (which is to promote orderly marketing conditions and improve returns to producers), including information on acquisitions, inventories, and dispositions of cranberries and cranberry products. The amendment allows USDA to delegate to the Committee the authority to collect sales, acquisition, and inventory data from persons, other than regulated handlers under the marketing order, engaged in the handling or importation of cranberries. Under this proposal, the Committee would collect such information. Typically, marketing order committees collect information and require record keeping to ensure that USDA can verify handler reports. Additionally, the Committee also compiles collected information in its aggregate form to use when discussing cranberry supplies, inventories, and market strategies during its marketing policy discussions. This proposed rule would assist the Committee in making more informed marketing recommendations.

A new part 926 would be added to the regulations to authorize the Committee to collect data from such entities. New part 926 would define terms and establish rules and regulations relative to the reporting and recordkeeping requirements necessary to effectuate the declared policy of the Act.

Several examples are listed below as to how data collection currently is conducted under the marketing order and how it would operate under the new data collection process. For instance, a grower harvests and delivers cranberries to a handler regulated under the cranberry marketing order. The regulated handler sells the cranberries to a processor. The regulated handler reports to the Committee the name, address, and amount of cranberries sold to the processor on a Handler Inventory Report—Supplement Form (HIR–SUP), and that completes the current marketing order data collection process. Under the proposed new data collection process, the Committee, noting information used from marketing order reports to identify newly regulated entities, would send a report form (Handler/Processor Cranberry Inventory Report Form; HPCIR A–D) to the processor. The processor would complete the form by indicating names, sources, and amounts of domestic/foreign barrels of cranberries acquired, domestic/foreign sales, and beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) and submit the report form to the Committee.

In another example, a regulated handler sells cranberries to a broker. The broker sells the cranberries to three processors. The Committee would receive the initial information (barrels acquired, sold, and in inventory) from the regulated handler and that ends the current marketing order data collection process. Under the proposed data collection process, the Committee would also contact and send a report form (Importer Cranberry Inventory Report; Form ICIR A–D) to the broker to track the cranberries to the three processors. This form would be filed by a broker and provide the Committee with names, sources, and amounts of cranberry barrels acquired, amount sold to and received by the broker, processor and handler, and the beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) held by the broker. After receiving the broker's report, the Committee would send a Handler/Processor Cranberry Inventory Report Form to each of the three processors to complete and return to the Committee.

In a third example, a non-regulated handler acquires cranberries (imports or domestically produced cranberries from a non-marketing order production area). The non-regulated handler is outside the scope of the marketing order and thus, not required to report to the Committee under the current marketing order reporting process. However, through the information supplied from other producer-handlers, importers,

processors and brokers, the Committee might be able to identify the non-regulated handler and send him/her a Handler/Processor Cranberry Inventory Report Form. The non-regulated handler would complete the form by indicating names, sources, and amounts of domestic/foreign barrels of cranberries acquired, foreign/domestic sales, and beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) and submit the report form to the Committee.

In the last example, a broker imports cranberries into the United States. The broker is outside the scope of the marketing order and not a regulated handler. Thus, there is no mandatory reporting or recordkeeping requirements that he/she would have to meet. Under the proposed data collection requirements, the importer would be required to submit quarterly reports (on an Importer Cranberry Inventory Report Form CIR A–D) to the Committee. This form is to be filed by an importer to provide the Committee with names, sources and amounts of cranberry barrels imported, amounts sold to and received by the broker, processor and handler, and the beginning and ending inventories of cranberries (in freezers and in processed form, including concentrate) held by the importer. Once that information is obtained, the Committee can contact the individuals/firms receiving the imported cranberries and have them report on the distribution.

All of these reports would be on the same reporting cycle (4 times a year or quarterly) as regulated handlers under the marketing order. Handlers, producer-handlers, processors, brokers, and importers would report any/all cranberry transactions that occurred during each of the reporting cycles. The purpose of this action is to provide the Committee with the ability to account for cranberries in the marketing pipeline after they have been sold by the regulated handler or if imported, brought into the United States.

All cranberries and cranberry products would be covered. This would include fresh cranberries, frozen cranberries, and cranberry concentrate. Currently, if a handler regulated under the order has juice, sauce or other finished cranberry products in inventory, the handler is required to determine the barrel equivalency of cranberries contained in those products and report this as inventory. Handlers, producer-handlers, processors, brokers, and importers would be required to do the same.

Data collection requirements would not apply once fresh cranberries or cranberry products reached retail markets. For example, a regulated handler (handler A), sells concentrate to processor B. Processor B uses the concentrate to bottle private label juice. The product is shipped to a wholesale/retail distribution center. The Committee would receive an initial report from handler A and subsequently from processor B. Processor B would continue to file reports for each cycle that the concentrate and cranberry products remained in his/her possession. The reporting requirement would extend up to, but not include, the retailer level.

Failure on the part of handlers, producer-handlers, processors, brokers, and importers to comply with the proposed data collection and recordkeeping requirements could lead to enforcement action, including the levying of penalties provided under 8c(14) of Act against the violating person or entity. False representation to an agency of the United States in any matter, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.201] as those having annual receipts less than $5,000,000, and small agricultural producers are those with annual receipts of less than $750,000. There are about 20 handlers currently regulated under marketing order No. 929. In addition, there are about 1,250 producers of cranberries in the production area. Based on recent years' price and sales levels, AMS finds that nearly all of the cranberry producers and some of the handlers are considered small under the SBA definition.

In 2003, a total of 39,400 acres were harvested with an average U.S. yield per acre of 155.1 barrels. Grower prices in 2003 averaged $31.80 per barrel. Average total annual grower receipts for 2003 are estimated at $155,203 per grower. Of the 1,250 cranberry producers in the marketing order production area, between 86 and 95 percent are estimated to have sales equal to or less than $750,000. Few growers are estimated to have sales that would have exceeded this threshold in recent years.

Under the marketing order, five handlers handle over 97 percent of the cranberry crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop in the marketing order production area is marketed by about a dozen producer-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these producer-handlers, all would be considered small businesses.

Cranberries are produced in 10 States under Marketing Order No. 929, but the vast majority of farms and production is concentrated in Massachusetts, New Jersey, Oregon, Washington, and Wisconsin. Average farm size for cranberry production is very small. The average across all producing States is about 33 acres. Wisconsin's average is twice the U.S. average at 66.5 acres, and New Jersey averages 83 acres. Average farm size is below the U.S. average for Massachusetts (25 acres), Oregon (17 acres) and Washington (14 acres).

Small cranberry growers dominate in all States: 84 percent of growers in Massachusetts harvest 10,000 or fewer barrels of cranberries, while another 3.8 percent harvest fewer than 25,000 barrels. In New Jersey, 62 percent of growers harvest less than 10,000 barrels, and 10 percent harvest between 10,000 and 25,000 barrels. More than half of Wisconsin growers raise less than 10,000 barrels, while another 29 percent produce between 10,000 and 25,000 barrels. Similar production patterns exist in Washington and Oregon. Over 90 percent of the cranberry crop is processed, with the remainder sold as fresh fruit.

According to the National Agricultural Statistics Service (NASS), the 2003 overall U.S. cranberry crop totaled 6.1 million barrels (1 barrel equals 100 pounds of cranberries). Total barrels of cranberry imports acquired were 1.06 million pounds. The U.S. 2003 preliminary price for fresh and processed cranberries was $50.90 and $30.60 per barrel respectively.

Under Part 926, as proposed, the Committee estimates that there are approximately 130 handlers, producer-handlers, processors, brokers, and importers who would be subject to the data collection requirements. Taking into account the profile of the size of the industry under the marketing order, we estimate that most of these entities would be considered small under the

SBA criteria. In order to gather the most accurate information possible, this proposal specifically invites comments on the number and size of those entities. Comments should be sent to USDA in care of the Docket Clerk at the previously mentioned address.

Public Law 106–78, enacted October 22, 1999, amended section 608(d) of the Act to authorize USDA to require persons engaged in the handling of cranberries or cranberry products (including handlers, producer-handlers, processors, brokers, and importers) not subject to the order to maintain adequate records and report sales, acquisitions, and inventory information. The data collection and reporting requirements would help the Committee make more informed recommendations to USDA for regulations authorized under the cranberry marketing order.

This proposed rule would implement the reporting and recordkeeping requirements authorized by the amendment to the Act. Under the regulations, handlers, producer-handlers, processors, brokers, and importers would be required to submit reports four times annually regarding sales, acquisitions, movement for further processing and disposition of cranberries and cranberry products. It is estimated that it would take each person or entity approximately 20 minutes to complete each form. One of these forms, (Importer Cranberry Inventory Report Form; Form ICIR A–D) directs importers and brokers to indicate the name, address, variety acquired, amount sold to and received by brokers, processors, and handlers, and the beginning and ending inventories of cranberries held by the importer. The second form, (Handler/Processor Cranberry Inventory Report Form; Form HPCIR A–D) directs handlers, producer-handlers, and processors to indicate the name, address, variety acquired, domestic/foreign sales, acquisitions, and beginning and ending inventories.

These forms were designed to capture the type of information the Committee needs on inventory and sales data for the entire cranberry industry. If all of the entities complete each form, it is estimated that the total annual burden on the respondents would be 1 hour and 20 minutes or a total of 174.66 hours. The regulations would also require the retention of information for a total of three years. Such reporting and recordkeeping requirements, including the two new forms, will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35] and will not be implemented until they have been approved.

For the purposes of checking and verifying reports filed under the regulations hereinafter proposed, provisions are included which would allow USDA or the Committee, through duly authorized agents, to have access to any premises where cranberries and cranberry products may be held. Authorized agents, at any time during regular business hours, would be permitted to inspect any cranberries and cranberry products held and any and all records with respect to the acquisition, holding or disposition of any cranberries and cranberry products which may be held or which may have been disposed of by that entity. All reports and records furnished or submitted by handlers, producer-handlers, processors, brokers, and importers to the Committee which include data or information constituting a trade secret or disclosing the trade position or financial condition, or business operations from whom received, would be in the custody and control of the authorized agents of the Committee, who would disclose such information to no person other than USDA.

Failure on the part of handlers, producer-handlers, processors, brokers, and importers to comply with the proposed data collection and recordkeeping requirements could lead to enforcement action, including the levying of fines against the violating person or entity. Any violation of this regulation would be subject to a penalty levied under 8c(14) of the Act. False representation to an agency of the United States in any matter, knowing it to be false, is a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

The proposed reporting requirements should help the entire cranberry industry. While this proposed rule would increase reporting and recordkeeping requirements on affected entities, the benefits of this proposal, however, could be substantial. By implementing this proposed rule, the Committee would have access to more complete acquisition, sales, and inventory data and be able to make recommendations based on more detailed information. This, in turn, could lead to more effective marketing decisions and higher returns for producers and non-regulated entities.

The Committee discussed alternatives to this action, including continuing to ask those entities not subject to the marketing order to voluntarily submit inventory data to the Committee. This has not been successful. To make well informed regulatory decisions, the Committee needs complete inventory, sales and acquisition information from handlers, producer-handlers, processors, brokers, and importers who handle cranberries and cranberry products produced in the United States and outside the United States. This proposed rule would establish reporting and recordkeeping requirements.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. While the proposed data collection and reporting requirements are similar to those reporting requirements regulated handlers must comply with under the cranberry marketing order, this action is necessary to assist the Committee in its volume regulation recommendations.

Finally, interested persons are invited to submit information on the economic and informational impacts of this action on small and large businesses.

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

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal. All written comments timely received will be considered before a final rule is issued on this matter.

This action requires a collection of information. These information collection requirements are discussed in the following section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is seeking approval for a new information collection request for proposed data collection and reporting requirements applicable to cranberries not subject to the cranberry marketing order. The new requirements would be established in 7 CFR Part 926.

Title: Data Collection Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order, 7 CFR Part 926.

OMB Number: 0581–New.

Type of Request: New collection.

Abstract: A Federal marketing order for cranberries (M.O. 929) regulates the handling of cranberries grown in 10 States and is applicable to regulated handlers under the order. Public Law 106–78, enacted October 22, 1999, amended section 8(d) of the Act. If a cranberry order is in effect, the

amendment authorizes the Secretary to require persons engaged in the handling or importation of cranberries and cranberry products not subject to the reporting requirements of the Federal cranberry marketing order to maintain adequate records and report information on sales, acquisitions, and inventory information to USDA or the Committee. Such persons would include handlers, producer-handlers, processors, brokers, and importers. The Cranberry Marketing Order Committee would collect this information. The data collection and reporting requirements would help the Committee make more informed recommendations to USDA for regulations authorized under the cranberry marketing order. The forms for OMB No. 0581–NEW proposed in the information collection rulemaking are as follows:

Importer Cranberry Inventory Report Form, (ICIR A–D)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Cranberry importers and brokers who acquire and sell cranberries and cranberry products, and maintain inventories of cranberries and products. The information would cover the 12-month period beginning September 1 and ending August 31.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 8 hours.

Handler/Processor Cranberry Inventory Report Form (HPCIR A–D)

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Handlers, producer-handlers, and processors not subject to the cranberry marketing order who produce, handle, acquire, sell and maintain beginning and ending inventories of cranberries and cranberry products. The information would cover the 12-month period beginning September 1 and ending August 31.

Estimated Number of Respondents: 125.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 166.66 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality , utility, and clarity of the information collected; and (4) ways to minimize the burden collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-NEW and the proposed data collection and reporting requirements applicable to cranberries not subject to the cranberry marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

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

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects in 7 CFR Part 926

Cranberries and cranberry products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Chapter IX of Title 7 of the Code of Federal Regulations be amended by adding Part 926 to read as follows:

PART 926—DATA COLLECTION REQUIREMENTS APPLICABLE TO CRANBERRIES NOT SUBJECT TO THE CRANBERRY MARKETING ORDER [7 CFR PART 929]

Sec.

Authority: 7 U.S.C. 601–674.

§ 926.1 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in her/his stead.

§ 926.2 Act.

Act means Public Act No. 10, 73d Congress [May 12, 1933], as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs.1–19, 48 Stat.31, as amended; 7 U.S.C. 601 *et seq.*).

§ 926.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 926.4 Cranberries.

Cranberries means all varieties of the fruit Vaccinium Macrocarpon and Vaccinium oxycoccus, known as cranberries.

§ 926.5 Fiscal period.

Fiscal period is synonymous with fiscal year and crop year and means the 12-month period beginning September 1 and ending August 31 of the following year.

§ 926.6 Committee.

Committee means the Cranberry Marketing Committee, which is hereby authorized by USDA to collect information on sales, acquisitions, and inventories of cranberries and cranberry products under this part. The Committee is established pursuant to the Federal cranberry marketing order regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York (7 CFR part 929).

§ 926.7 Producer.

Producer is synonymous with grower and means any person who produces cranberries for market and has a proprietary interest therein.

§ 926.8 Handler.

Handler means any person who handles cranberries and is not subject to the reporting requirements of 7 CFR part 929.

§ 926.9 Handle.

Handle means to can, freeze, dehydrate, acquire, sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh or processed cranberries produced

within or outside the United States or in any other way to place fresh or processed cranberries into the current of commerce within or outside the United States. This term includes all initial and subsequent handling of cranberries or processed cranberries up to, but not including, the retail level.

§ 926.10 Acquire.

Acquire means to obtain cranberries by any means whatsoever for the purpose of handling cranberries.

§ 926.11 Processed cranberries or cranberry products.

Processed cranberries or cranberry products means cranberries which have been converted from fresh cranberries into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process.

§ 926.12 Producer-handler.

Producer-handler means any person who is a producer of cranberries for market and handles such cranberries.

§ 926.13 Processor.

Processor means any person who receives or acquires fresh or frozen cranberries or cranberries in the form of concentrate from handlers, producer-handlers, importers, brokers or other processors and uses such cranberries or concentrate, with or without other ingredients, in the production of a product for market.

§ 926.14 Broker.

Broker means any person who acts as an agent of the buyer or seller and negotiates the sale or purchase of cranberries or cranberry products.

§ 926.15 Importer.

Importer means any person who causes cranberries or cranberry products produced outside the United States to be brought into the United States with the intent of entering the cranberries or cranberry products into the current of commerce.

§ 926.16 Reports.

(a) Each handler, producer-handler, processor, broker, and importer engaged in handling or importing cranberries or cranberry products who is not subject to the reporting requirements of the Federal cranberry marketing order, (7 CFR part 926) shall, in accordance with § 926.17, file promptly with the Committee reports of sales, acquisitions, and inventory information on fresh cranberries and cranberry products using forms supplied by the Committee.

(b) Upon the request of the Committee, with the approval of the Secretary, each handler, producer-handler, processor, broker, and importer engaged in handling or importing cranberries or cranberry products who is not subject to the Federal cranberry marketing order (7 CFR part 926) shall furnish to the Committee such other information with respect to fresh cranberries and cranberry products acquired and disposed of by such entity as may be necessary to meet the objectives of the Act.

§ 926.17 Reporting requirements.

Handlers, producer-handlers, importers, processors, and brokers not subject to the Federal cranberry marketing order (7 CFR part 926) shall be required to submit four times annually, for each fiscal period reports regarding sales, acquisitions, movement for further processing, and dispositions of fresh cranberries and cranberry products using forms supplied by the Committee. An Importer Cranberry Inventory Report Form shall be required to be completed by importers and brokers. This report shall indicate the name, address, variety acquired, the amount sold to and received by brokers, processors, and handlers, and the beginning and ending inventories of cranberries held by the importer for each applicable fiscal period. A Handler/Processor Cranberry Inventory Report Form shall be completed by handlers, producer-handlers, and processors and shall indicate the name, address, variety acquired, domestic/foreign sales, acquisitions, and beginning and ending inventories.

§ 926.18 Records.

Each handler, producer-handler, processor, broker, and importer shall maintain such records of all fresh cranberries and cranberry products acquired, imported, handled, withheld from handling, and otherwise disposed of during the fiscal period to substantiate the required reports. All such records shall be maintained for not less than three years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Committee may direct.

§ 926.19 Confidential information.

All reports and records furnished or submitted pursuant to this part which include data or information constituting a trade secret or disclosing the trade position or financial condition, or business operations from whom received, shall be in the custody and control of the authorized agents of the Committee, who shall disclose such information to no person other than the Secretary.

§ 926.20 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying records and reports required to be filed by handlers, producer-handlers, processors, brokers, and importers, USDA or the Committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cranberries and cranberry products are received, acquired, stored, handled, and otherwise disposed of and, at any time during reasonable business hours, shall be permitted to inspect such handler, producer-handler, processor, broker, and importer premises, and any and all records of such handlers, producer-handlers, processors, brokers, and importers. The Committee's authorized agents shall be the manager of the Committee and other staff under the supervision of the Committee manager.

§ 926.21 Suspension or termination.

The provisions of this part shall be suspended or terminated whenever there is no longer a Federal cranberry marketing order in effect.

Dated: April 6, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–8212 Filed 4–9–04; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1187]

Fair Credit Reporting

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation V that implements the Fair Credit Reporting Act (FCRA or Act), 15 U.S.C. 1681 *et seq.* The Board would add a model form to Regulation V that financial institutions may use to comply with the notice requirement relating to furnishing negative information contained in section 217 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). Section 217 of the FACT Act amends the FCRA to provide that if any financial institution (1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and (2) furnishes negative information to such an agency regarding credit

extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. Section 217 defines the term "financial institution" to have the same meaning as in the Gramm-Leach-Bliley Act (GLB Act), 15 U.S.C. 6801 *et seq.*, which generally is "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956." 15 U.S.C. 6809(3). The Board's model form could be used by all financial institutions, as defined by section 217.

DATES: Comments must be received by May 9, 2004.

ADDRESSES: Comments should refer to Docket No. R–1187 and may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*, by e-mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at 202/452–3819 or 202/452–3102. Rules proposed by the Board and other Federal agencies may also be viewed and commented on at *www.regulations.gov*.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy, Senior Attorney; David A. Stein, Counsel; Minh-Duc T. Le or Ky Tran-Trong, Senior Attorneys; Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; Thomas E. Scanlon, Counsel, Legal Division, (202) 452–3594, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2003, the President signed into law the FACT Act, which amends the FCRA. Pub. L. 108–159, 117 Stat. 1952. In general, the FACT Act enhances the ability of consumers to combat identity theft, increases the accuracy of consumer reports, and allows consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, the FACT Act creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

Section 217 of the FACT Act requires that if any financial institution (1) extends credit and regularly and in the ordinary course of business furnishes information to a nationwide consumer reporting agency, and (2) furnishes negative information to such an agency regarding credit extended to a customer, the institution must provide a clear and conspicuous notice about furnishing negative information, in writing, to the customer. Section 217 defines the term "negative information" to mean information concerning a customer's delinquencies, late payments, insolvency, or any form of default.

Section 217 specifies that an institution must provide the required notice to the customer prior to, or no later than 30 days after, furnishing the negative information to a nationwide consumer reporting agency. After providing the notice, the institution may submit additional negative information to a nationwide consumer reporting agency with respect to the same transaction, extension of credit, account, or customer without providing additional notice to the customer. If a financial institution has provided a customer with a notice prior to the furnishing of negative information, the institution is not required to furnish negative information about the customer to a nationwide consumer reporting agency. A financial institution generally may provide the notice about furnishing negative information on or with any notice of default, any billing statement, or any other materials provided to the customer, so long as the notice is clear and conspicuous. Section 217 specifically provides, however, that the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)). Section 217 also provides certain safe harbors for institutions concerning their efforts to comply with the notice requirement.

Section 217 requires the Board to publish, after notice and comment, a concise model form not to exceed 30 words in length that financial institutions may, but are not required to, use to comply with the notice requirement. The model form must be issued in final form within 6 months of the date of enactment of the FACT Act, or June 4, 2004. In addition, section 217 provides that a financial institution shall not be liable for failure to perform the duties required by this section if, at the time of the failure, the institution maintained reasonable policies and procedures to comply with the section or the institution reasonably believed that the institution was prohibited by law from contacting the customer.

Under section 217, the term "financial institution" is defined broadly to have the same meaning as in section 509 of the GLB Act, which generally defines financial institution to mean "any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956," whether or not affiliated with a bank. 15 U.S.C. 6809(3). Thus, the term "financial institution" includes not only institutions regulated by the Board and other federal banking agencies, but also includes other financial entities, such as merchant creditors and debt collectors that extend credit and report negative information. 16 CFR 313.3(k), 65 FR 33646, 33655 (May 24, 2000).

In this rulemaking, the Board is proposing a model form that financial institutions may use to comply with the notice requirement under section 217. In addition, the Board proposes to amend Regulation V to specify that although the regulation generally applies only to the financial institutions that the Board regulates, the model form relating to furnishing negative information may be used by all financial institutions, as that term is defined by section 217.

II. Section by Section

Section 222.1 Purpose, Scope, and Effective Dates

Proposed paragraph 222.1(b)(2) describes the scope of the Board's Regulation V, which implements the FCRA. Generally, the Board's Regulation V covers the institutions under the Board's jurisdiction. 15 U.S.C. 1681s(e). Nonetheless, the Board's proposed paragraph (b)(2) specifies that the Board's proposed model form in Appendix B relating to furnishing of negative information may be used by all financial institutions (as that term is defined in section 509 of the GLB Act)

to comply with the notice requirement contained in section 217 of the FACT Act.

Appendix B—Model Notice of Furnishing Negative Information

The Board is proposing in Appendix B a model form that financial institutions may use to comply with the requirement to provide notice about furnishing negative information to a consumer reporting agency under section 217 of the FACT Act. Because a financial institution is allowed to send the notice relating to furnishing negative information prior to, or within 30 days after, it furnishes negative information, the proposed model form contains alternative language that a financial institution may use, depending on when the notice is given.

III. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

IV. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation V. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be prepared and will consider comments received during the public comment period.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The control number will be obtained from OMB after the public comment period has ended.

The collection of information that is proposed by this rulemaking is found in section 217 of the FACT Act, Pub. L. 108–159, 117 Stat. 1952. This information is mandatory for financial institutions. The respondents are financial institutions as defined as in the privacy provisions of the GLB Act. The term "financial institution" includes not only institutions regulated by the Board and other federal banking agencies, but also includes other financial entities, such as merchant creditors and debt collectors that extend credit and report negative information.

The proposed revisions to the FCRA would provide financial institutions with a general model form (provided in Appendix B) that they may use to comply with the notice requirement under section 217 of the FACT Act relating to furnishing negative information. It is expected that providing a notice to consumers would not significantly burden the financial institutions; the standardized, machine-generated notice is generally mailed to consumers. Financial institutions would face a one-time burden to reprogram and update systems to include the new notice requirement. With respect to financial institutions, approximately 30,000 furnish information to consumer reporting agencies. The estimated time to update systems is approximately 8 hours (one business day); therefore, the total annual burden is estimated to be 240,000 hours. This total annual burden represents approximately 5 percent of the total Federal Reserve System paperwork burden.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments are invited on: a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Long, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100—to be obtained), Washington, DC 20503.

List of Subjects in 12 CFR Part 222

Banks, banking, Holding companies, state member banks.

For the reasons set forth in the preamble, the Board proposes to amend Regulation V, 12 CFR part 222, as set forth below:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681s; Secs. 3 and 217, Pub. L. 108–159; 117 Stat. 1953, 1986–88.

2. Section 222.1 is revised by adding a new paragraph (b) to read as follows:

Subpart A—General Provisions

§ 222.1 Purpose, scope, and effective dates.

* * * * *

(b) *Scope.*

(1) [Reserved]

(2) *Institutions covered.*

(i) Except as otherwise provided in paragraph (b)(2), these regulations apply to banks that are members of the Federal Reserve System (other than national banks), branches and Agencies of foreign banks (other than Federal branches, Federal Agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, and 611 *et seq.*), and bank holding companies and affiliates of such holding companies.

(ii) Financial institutions, as that term is defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809), may use the model form in Appendix B of this part to comply with the notice requirement in section 623(a)(7) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(7)).

* * * * *

3. Part 222 is revised by adding a new Appendix B to read as follows:

Appendix A—[Reserved]

Appendix B—Model Notice of Furnishing Negative Information

We [may provide]/[have provided] information to credit bureaus about an insolvency, delinquency, late payment, or default on your account to include in your credit report.

By order of the Board of Governors of the Federal Reserve System, April 6, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–8194 Filed 4–9–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA24

Corporate Governance

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed amendments.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing for comment amendments to its corporate governance regulation to enhance the minimum corporate governance standards applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

DATES: Written comments on the proposed amendments must be received by June 11, 2004.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2550–AA24, by any of the following methods:

- U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA24, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- Hand Delivered/Courier: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2550–AA24, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- E-mail: *RegComments@OFHEO.gov*. Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail at *RegComments@OFHEO.gov*. Please include RIN 2550–AA24 in the subject line of the message.

Instructions: OFHEO requests that comments to the proposed amendments include the reference RIN 2550–AA24. OFHEO further requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft(®) Word or in portable document format (PDF) on 3.5" disk. Please see the section, **SUPPLEMENTARY INFORMATION,** below, for additional information on the posting and viewing of comments.

FOR FURTHER INFORMATION CONTACT: Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Comments

OFHEO invites comments on all aspects of the proposed amendments, including legal and policy considerations, and will take all comments into consideration before issuing the final amendments.

All comments received will be posted without change to *http://www.ofheo.gov*, including any personal information provided. Copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–6924.

Background

Title XIII of the Housing and Community Development Act of 1992, Public Law 102–550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises or government sponsored enterprises) are adequately capitalized and operate safely and in compliance with applicable laws, rules, and regulations.

In furtherance of its supervisory responsibilities, in 2002, OFHEO published the final corporate governance regulation, taking into consideration comments filed in response to an earlier proposed regulation.[1] The corporate governance regulation sets forth minimum standards with respect to corporate governance practices and procedures of the Enterprises. It establishes a framework for corporate governance addressing applicable law, requirements and responsibilities of the board of directors and board committees, conflict-of-interest standards, and indemnification.

As a result of findings and recommendations contained in the *Report of the Special Examination of Freddie Mac*[2] (*Report of Special Examination*), as well as developments in law, supervision, and industry standards, OFHEO is undertaking to amend the corporate governance regulation within this framework. On June 7, 2003, the Director of OFHEO ordered a special examination of the events leading to the public announcement by Freddie Mac of an audit of prior year financial statements and the termination, resignation, and retirement of three principal executive officers of Freddie Mac.

The *Report of Special Examination* found that "[t]he accounting and management problems of Freddie Mac were largely the product of a corporate culture that demanded steady but rapid growth in profits and focused on management of credit and interest rate risks but neglected key elements of the infrastructure of the enterprise needed to support growth."[3] *The Report of Special Examination*, among other things, made specific recommendations with respect to best practices in corporate governance that Freddie Mac should follow and that OFHEO should require.[4] For example, included are recommendations that functions of the chief executive officer and the chairperson of the board of directors should be separated; board members should become more actively involved in the oversight of the Enterprise; adequate and appropriate information should be provided to the board of directors; financial incentives for board members, executive officers, and employees should be developed based on long-term goals, not short-term earnings; strict term limits should be placed on board members; firms that audit the Enterprises, not merely the audit partners, should be changed periodically; and formal compliance and risk management programs should be established. A Consent Order, issued by OFHEO to Freddie Mac on December 9, 2003, required Freddie Mac to implement certain corporate governance best practices that were recommended in the Report of Special Examination, as well as other remedial steps.[5]

The lessons learned by OFHEO through the special examination

[1] 12 CFR part 1710, 67 FR 38361 (June 4, 2002).

[2] OFHEO, *Report of the Special Examination of Freddie Mac* (Dec. 2003) (Report of Special Examination), which may be found at *http://www.ofheo.gov/media/pdf/specialreport122003.pdf*.

[3] *Id.*, at 4 (footnote omitted).

[4] *Id.*, at 163—171.

[5] OFHEO Order No. 2003–02, "Consent Order, In the Matter of the Federal Home Loan Mortgage Corporation" (Dec. 9, 2003) (Consent Order), which may be found at *http://www.ofheo.gov/media/pdf/consentorder12903.pdf*.

provided new insights as to the appropriate best practices for both Enterprises. Thus, OFHEO is proposing to add prudential requirements that would have general applicability to its corporate governance regulation consistent with the practices recommended or required by the *Report of Special Examination* or the Consent Order.

OFHEO notes that the Enterprises are privately owned but federally chartered companies. Created by Congress to facilitate liquidity and stability in mortgage markets and to advance affordable housing, they receive in exchange special benefits from their Government sponsorship. Since their creation, the Enterprises have grown to become two of the largest financial companies in the world, yet the Enterprises are highly leveraged. Between them, Fannie Mae and Freddie Mac control a majority share of the conforming mortgage market. Given their Federal charters, public mission, and the size and significance of their operations in capital markets and the banking system, OFHEO has determined that Fannie Mae and Freddie Mac should adhere to certain policies that may not be applicable to all companies but should nevertheless apply to them.

With respect to recent developments, the New York Stock Exchange (NYSE) has issued amendments to its corporate governance rules that are applicable to companies listed on the NYSE, including the Enterprises.[6] In addition, Congress passed the Sarbanes-Oxley Act of 2002 (SOA),[7] which contains corporate governance requirements, and the U.S. Securities and Exchange Commission (Commission) has issued regulations to implement the SOA. Fannie Mae has voluntarily registered its common stock with the Commission effective March 31, 2003; Freddie Mac has announced its intention to register.[8]

Since registration, Fannie Mae files periodic financial disclosures with the Commission as required by the Securities Exchange Act of 1934 and is subject to the requirements of the SOA and implementing rules and regulations of the Commission.[9] Upon registration, Freddie Mac will be subject to the same requirements. OFHEO intends to ensure that such requirements and implementing rules and regulations are or remain applicable to the Enterprises even if Freddie Mac does not register with the Commission or if one or both Enterprises deregister. In connection with any conduct regulated by the Commission, OFHEO would look to any rules, regulations, and interpretations issued by the Commission and its requirements. OFHEO may initiate an enforcement action in the area of the corporate governance in response to a violation of its corporate governance regulation, including behavior that violates laws or requirements set forth therein.

The proposed amendments to strengthen corporate governance of the Enterprises will support the supervisory program of OFHEO. Strengthened corporate governance will help to ensure the continued safe and sound operation of the Enterprises.

Section-by-Section Analysis

Section 1710.11 Board of Directors

OFHEO is proposing a section that would add requirements and consolidate existing requirements relating to the board of directors of an Enterprise. One requirement would require an Enterprise to prohibit the chairperson of the board from also serving as chief executive officer of the Enterprise. Separating the functions of chairperson and chief executive officer is prudent for safe and sound operations because it would strengthen board independence and oversight of management on behalf of shareholders consistent with the public mission of the Enterprises. Separating the role of chief executive officer would similarly clarify the role and responsibility of the individual charged with leading the management team.[10] OFHEO recognizes that this is a different standard than is required of many other private corporations but it is appropriate for the Enterprises, not only because of their government sponsorship and dominance within their market, but also in light of the recent experience at Freddie Mac. In that case, separation of the two roles could have caused the board to provide stronger independent guidance to management and identify problems sooner. A separation of the chairperson and chief executive officer functions would be in the best interest of the companies and would enhance the effectiveness of changes being proposed for the board of directors to meet its obligations. This reasonable step will assist both in the perception and reality that these specialized institutions maintain the highest standards of corporate governance. The effective date of this requirement would be January 1, 2007.

Another new requirement would limit the service of a board member to no more than 10 years or past the age of 72, whichever comes first. OFHEO believes that a limit on years of service and age would promote the highest level of functioning of the board of directors. This approach has been undertaken by the Enterprises in various forms and has acceptance in a number of corporate governance programs.[11] OFHEO invites comments on alternative age limits or term of service limits.

OFHEO requires conformance with certain rules of the NYSE in its current corporate governance regulation. OFHEO is proposing that a majority of the board members of an Enterprise be independent under the rules of the NYSE.[12] Notably, OFHEO makes no distinction between those board members who are elected by shareholders and those who are appointed by the President. Thus, if one or more vacancies exist on a board among either elected or appointed shareholders, a majority of seated board members is required. Under the final NSYE rule Section 303A.02:

> (a) No board member qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly, or as a partner, shareholder, or officer of an organization that has a relationship with the company). Companies must disclose these determinations.
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> * * * * *
>
> (b) In addition:

[6] Final NYSE Corporate Governance Rules (Nov. 4, 2003), Section 303A. The NYSE final Corporate Governance Rules may be found at *http://www.nyse.com*. Note that except for final NYSE rule Section 303A.08, which became effective June 30, 2003, listed companies have until the earliest of their first annual meeting after January 15, 2004, or October 31, 2004, to comply with the new rules. The Enterprises are companies listed on the NYSE. As listed companies, the rules of the NYSE, including those addressing corporate governance, are applicable to the Enterprises.

[7] Pub. L. 107–204 (Jul. 30, 2002).

[8] *See http://www.fanniemae.com/ir/sec/index.jtml?s=SEC+filings* for Fannie Mae and *http://www.freddiemac.com/news/archives/investors/2003/restatement_112103.html* for Freddie Mac.

[9] The existing corporate governance regulation provides that the corporate governance practices and procedures of the Enterprises must comply with their respective chartering act *and other Federal law, rules, and regulations*, and that they must be consistent with the safe and sound operations of the Enterprise. 12 CFR 1710.10(a), 67 FR 38361, 38370 (Jun. 4, 2002).

[10] *See Report of Special Examination, supra*, note 2, at 164. The concept of a non-executive chairman has support in recent discussions on improvements to corporate governance. For example, see General Accounting Office, Testimony of Comptroller General Walker before Senate Banking Committee, *Government-Sponsored Enterprises: A Framework for Strengthening GSE Governance and Oversight*, GAO–04–269T (February 10, 2004) (calling for separation of Chairman and CEO positions at Fannie Mae and Freddie Mac).

[11] *Report of Special Examination, supra*, note 2, at 166. An age limit and term limit will work well in tandem and have been part of Enterprise bylaws in one form or another.

[12] Final NYSE rule Section 303A.

(i) A director who is an employee, or whose immediate family member is an executive officer, of the company is not independent until three years after the end of such employment relationship.

* * * * *

(ii) A director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.

* * * * *

(iii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the listed company is not "independent" until three years after the end of affiliation or the employment or auditing relationship.

(iv) A director who is employed or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee is not "independent" until three years after the end of such service or the employment relationship.

(v) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of $1 million, or 2% of such other company's consolidated gross revenues, is not "independent" until three years after falling below such threshold.

OFHEO is proposing to incorporate the NYSE rule by reference because the rule adequately covers what constitutes independence. As expressly provided by proposed § 1710.30, discussed below, OFHEO would have the authority to provide for a different definition of the term "independent board member" or to provide additional guidance covering general or specific circumstances, if necessary in light of the special characteristics of the two Enterprises, including but not limited to circumstances where a board member has prior affiliation with an accounting firm currently serving as auditor of the Enterprise.

In addition, the proposed section would address board meetings. It would require that the board of directors of an Enterprise meet at least twice a quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines. Meetings must be frequent enough to ensure that the board of directors can exercise adequate oversight of management. OFHEO determined in its review that the meetings of the board of directors of Freddie Mac were too infrequent to address the issues presented by a company of its size and complexity and also were less frequent than those of other public companies. To meet the responsibilities of directors in their oversight of a major financial firm, additional meetings are merited.[13]

The proposed section would also require that the non-management directors of an Enterprise meet at regularly scheduled executive sessions without management participation in order to promote open discussion.[14] The proposed section would consolidate without substantive change the existing requirement of the current corporate governance regulation with respect to the constitution of a quorum of the board of directors and the prohibition against a board member voting by proxy.

Furthermore, the proposed section would require that management of an Enterprise must provide board members with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.[15]

Finally, the proposed section would require, at least annually, the board of directors to review, with appropriate professional assistance, requirements of laws, regulations, rules, and guidelines that are applicable to its activities and duties.[16]

Section 1710.12 Committees of Board of Directors

OFHEO is proposing to add a requirement to § 1710.11, redesignated as § 1710.12, that a committee of the board of directors of an Enterprise meet as frequently as necessary to carry out its obligations and duties and to exercise adequate oversight of management.[17]

The current corporate governance regulation requires that an Enterprise establish audit and compensation committees of the board of directors. OFHEO is proposing to add the requirement that an Enterprise establish a nominating/corporate governance committee consistent with the final NYSE rules.[18]

The amended section would continue to require that committees of the board of directors comply with NYSE rules.[19] The NYSE rules address, among other things, the independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and, funding for the independent auditor and any outside advisors engaged by the audit committee.

The amended section would also require that audit committees comply with the requirements set forth in section 301 of the SOA, which address, among other things, audit committee responsibilities, independence, establishment of complaint procedures, and authority to engage advisers, as well as adequate funding of the committee. The reference to the SOA and the final NYSE rules would not restrict the authority of OFHEO to mandate additional requirements by regulation, guideline, or order.

Section 1710.13 Compensation of Board Members, Executive Officers, and Employees

OFHEO is proposing to amend § 1710.12, redesignated as § 1710.13, by adding language that would prohibit compensation in excess of what is appropriate for these government sponsored enterprises, in addition to what is reasonable (as the section currently reads) and consistent with their long-term goals. The addition of this language is intended to underscore the impropriety of compensation incentives that excessively focus the attention of management and employees on short-term earnings performance. Incentives focused primarily on short-term earnings may lead to improper conduct at an Enterprise, as OFHEO discovered in its investigation of Freddie Mac.[20] Financial incentives at the Enterprises should foster a management culture in which effective consideration is given to operational stability and legal and regulatory compliance.[21] As noted above, OFHEO

[13] *See Report of Special Examination, supra*, note 2, at 166.

[14] *See* final NYSE rule Section 303A.03.

[15] *See Report of Special Examination, supra*, note 2, at 166.

[16] *See* Consent Order, *supra*, note 5, at Art. II, Para. 10.

[17] *See Report of Special Examination, supra*, note 2, at 166.

[18] Final NYSE rule Section 303A.04.

[19] *See* final NYSE rules Section 303A.06 and .07. The final NYSE rule Section 303A.06 requires with respect to the audit committee that listed companies must have an audit committee that satisfies the requirements of Rule 10A–3 under the Securities Exchange Act of 1934.

[20] *See Report of Special Examination, supra*, note 2, at 164.

[21] Consent Order, *supra*, note 5, at Art. 2, Para. 14.

has determined, in light of its experience with Freddie Mac and given the Federal charters, public mission, and size and role in capital markets of the Enterprises, that Fannie Mae and Freddie Mac should be required to adhere to certain policies that may not be applicable to all companies but should nevertheless apply to them. The proposed compensation requirement in no way detracts from the obligations of board members and management to meet their responsibilities shareholders, but reflects the attention that needs to be paid as well to other important considerations in directing the course and conduct of an Enterprise.

A new paragraph would require the chief executive officer and chief financial officer to reimburse the Enterprise if the Enterprise is required to prepare an accounting restatement due to the material noncompliance of the Enterprise, as a result of misconduct, with any financial reporting requirement. Reimbursement would be made in accordance with section 304 of the SOA. Section 304 would require reimbursement of (1) any bonus or other incentive-based, equity or option-based compensation received by such person from the Enterprise during the 12-month period following the first public issuance of the financial document embodying such financial reporting requirement; and (2) any profits realized from the sale or disposition of securities of the Enterprise that such person owned or controlled during that 12-month period.

The provisions of the proposed paragraph would in no manner limit the authority of OFHEO to take any appropriate enforcement action against an Enterprise or any of its board members or executive officers.

Section 1710.14 Code of Conduct and Ethics

OFHEO is proposing to amend § 1710.14 by revising the section heading to read "Code of Conduct and Ethics," and by referencing the standards set forth under section 406 of the SOA. Section 406 would provide that the code of conduct and ethics include standards as are reasonably necessary to promote (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer of the report, and (3) compliance with applicable governmental rules and regulations. In conducting its supervisory examination process, OFHEO would ensure the adequacy of the code of conduct and ethics of an Enterprise.

In addition, the proposal would require that, at least every three years, an Enterprise must review the adequacy of its code of conduct and ethics to ensure that it is consistent with best practices.

Section 1710.15 Conduct and Responsibilities of Board of Directors

Section 1710.15 of the current corporate governance regulation establishes minimum standards for the conduct and responsibilities of the board of directors of an Enterprise. OFHEO is proposing to amend § 1710.15 to add a requirement with respect to the conduct and responsibilities of the board of directors. The proposal would require that the board of directors must remain reasonably informed of the condition, activities, and operations of the Enterprise. The proposal would also describe the responsibility of the board of directors to have in place policies and procedures to assure its oversight of corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance, and corporate performance to include prudent plans for growth and allocation of adequate resources to manage operations risk.[22]

Finally, the proposal would add a paragraph expressly addressing the oversight responsibility related to extensions of credit to board members and executive officers, consistent with the proposed § 1710.16, discussed below. In conducting its supervisory examination process, OFHEO would ensure that adequate policies and procedures are in place.

Section 1710.16 Prohibition of Extensions of Credit to Board Members and Executive Officers

OFHEO is proposing to add § 1710.16, which would limit extensions of credit to board members and other insiders as provided by section 402 of the SOA. Section 402 of the SOA would prohibit an Enterprise from directly or indirectly, including through any subsidiary, extending credit or arranging for the extension of credit in the form of a personal loan to or for any board member or executive officer of the Enterprise. The proposed section would conform OFHEO's regulation to that of other financial service regulators in addressing extensions of credit by companies they supervise.

[22] *See Special Report of Examination, supra*, note 2, at 165–168.

Section 1710.17 Certification of Disclosures by Chief Executive Officer and Chief Financial Officer

OFHEO is proposing to add § 1710.17, which would require compliance with sections 302 of the SOA that mandates certain certifications of quarterly and annual reports by the chief executive officer and chief financial officer of an Enterprise. The proposed section would conform OFHEO's supervisory regime to those of other financial regulators. The proposal would assure review, endorsement, and undertaking of responsibility by individuals required to certify public disclosures. It would not limit OFHEO from requiring certifications by additional parties or additional disclosures.

Section 1710.18 Change of External Audit Partner and Audit Firm

OFHEO is proposing to add § 1710.18, which would prohibit an Enterprise from accepting audit services from an external auditor if either the lead (or coordinating) external audit partner, who has primary responsibility for the external audit of the Enterprise, or the external audit partner, who has primary responsibility for reviewing the external audit, has performed audit services for the Enterprise in each of the five previous fiscal years. This prohibition is consistent with Section 203 of the SOA that makes it unlawful for a registered public accounting firm to provide audit services to a public company by such audit partners in excess of five previous fiscal years.

OFHEO is also proposing a requirement that, at least every ten years, an Enterprise must change its external audit firm. Public companies are currently required to rotate their audit partners, but not the audit firm. In light of its experience with Freddie Mac, OFHEO has determined that Fannie Mae and Freddie Mac should be required to adhere to certain policies that may not be applicable to all companies but should nevertheless apply to them. Given the importance of having the most impartial oversight and review of accounting and other matters, OFHEO is proposing that the Enterprises should secure a different external audit firm on a periodic basis.

To allow a transition, OFHEO would require that Fannie Mae change its external auditor no later than January 1, 2006, and thereafter no less frequently than every ten years; and that Freddie Mac change its external auditor no later than January 1, 2009, and thereafter no less frequently than every ten years.

Section 1710.19 Compliance and Risk Management Programs

Proposed § 1710.19 would require an Enterprise to establish and maintain a compliance program headed by a person who reports directly to the chief executive officer. The program would be required to ensure compliance with all applicable laws, rules, regulations, and guidelines, and adherence to best practices; establish written internal controls and disclosure controls and procedures; and provide for periodic meetings of the board of directors to ensure the board is able to assess adherence to and adequacy of current policies and procedures of the Enterprise regarding compliance and adjust such policies and procedures, as required.

In addition, the proposed section would require an Enterprise to establish and maintain a risk management program, headed by a person who would manage the overall risk oversight function of the Enterprise. The program would also be required to provide for periodic meetings of the board of directors to ensure the board is able to assess adherence to and adequacy of current policies and procedures of the Enterprise regarding risk management and adjust such policies and procedures, as required. For example, in order to assure that the board of directors may assess adherence to compliance and risk management policies, periodic meetings may be established between management personnel heading such programs and the audit committee and other relevant committees of the board of directors of the Enterprise.

The establishment and maintenance of compliance and risk management programs are essential for the continued safe and sound operations of the Enterprises.[23] The establishment of such programs will assist the board of directors in managing their responsibilities to oversee the adequacy of policies and procedures for compliance and risk management.

Finally, the proposed section would provide that if an Enterprise deregisters or does not register its common stock with the Commission, the Enterprise must continue to comply with sections 301, 302, 404, 402, and 406 of the SOA, subject to such additional requirements as provided by § 1710.30. It would also require that a registered Enterprise maintain its registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to certain requirements of the SOA, as provided above.

[23] *See Special Report of Examination,* Recommended Actions, Nos. 9 and 10, *supra,* note 2, at 165–168, and Consent Order, *supra,* note 5.

Subpart D—Modification of Certain Provisions

Section 1710.30 Modification of Certain Provisions

OFHEO is proposing to move provisions of its existing regulation and to maintain similar treatment for new provisions in § 1710.30 to make clear that OFHEO, in referencing other sources for corporate governance standards, may modify such standards to meet its statutory responsibilities. References to standards of Federal or state law (including the Revised Model Corporation Act), or NYSE rules in §§ 1710.10,[24] 1710.11, 1710.12, 1710.17, and 1710.19 do not limit the ability of OFHEO to modify such standards as necessary with notice to the Enterprises.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The proposed amendments to the corporate governance regulation are not classified as an economically significant rule under Executive Order 12866 because they would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. This proposed regulation, however, has been submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the states, on the relationship or distribution of power between the Federal Government and the states, or on the distribution of power and responsibilities among various levels of government. The Enterprises are federally chartered corporations supervised by OFHEO. The corporate governance regulation and the proposed amendments thereto set forth minimum corporate governance standards with which the Enterprises must comply for Federal supervisory purposes. The corporate governance regulation requires that an Enterprise elect a body of state corporate law or the Revised Model Corporation Act to follow in terms of its corporate practices and procedures. The corporate governance regulation and the proposed amendments thereto do not affect in any manner the powers and authorities of any state with respect to the Enterprises or alter the distribution of power and responsibilities between Federal and state levels of government. Therefore, OFHEO has determined that the corporate governance regulation and the proposed amendments thereto, if adopted, have no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

[24] Section 1710.10 provides generally that an Enterprise must follow the corporate governance practices and procedures of the law of the jurisdiction in which the principal office of the Enterprise is located, Delawre General Corporation Law, or the Revised Model Business Corporation Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed amendments to the corporate governance regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the corporate governance regulation and the proposed amendments thereto, if adopted, are not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Government Sponsored Enterprises.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to amend 12 CFR part 1710 to subchapter C of chapter XXVII to read as follows:

PART 1710—CORPORATE GOVERNANCE

1. The authority citation for part 1710 continues to read as follows:

Authority: 12 U.S.C. 4513(a) and 4513(b)(1).

§ 1710.13 [Removed]

2. Remove § 1710.13.

§§ 1710.11 and 1710.12 [Redesignated]

3. Redesignate §§ 1710.11 and 1710.12 as new §§ 1710.12 and 1710.13, respectively;

4. Add a new § 1710.11 to read as follows:

§ 1710.11 Board of directors.

(a) *Membership.*

(1) *Chairperson and chief executive officer.* Effective January 1, 2007, the chairperson of the board of directors of an Enterprise may not also serve as the chief executive officer of the Enterprise.

(2) *Limits on service of board members.* No director of an Enterprise may serve on the board of directors for more than 10 years or past the age of 72, whichever comes first.

(3) *Independence of board members.* A majority of seated members of the board of directors of an Enterprise shall be independent board members, as defined under rules set forth by the NYSE.

(b) *Meetings, quorum and proxies, information, and annual review.*

(1) *Frequency of meetings.* The board of directors of an Enterprise shall meet at least twice a quarter to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(2) *Non-management board member meetings.* Non-management directors of an Enterprise shall meet at regularly scheduled executive sessions without management participation.

(3) *Quorum of board of directors; proxies not permissible.* For the transaction of business, a quorum of the board of directors of an Enterprise is at least a majority of the seated board of directors and a board member may not vote by proxy.

(4) *Information.* Management of an Enterprise shall provide a board member of the Enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

(5) *Annual review.* At least annually, the board of directors of an Enterprise shall review, with appropriate professional assistance, the requirements of laws, regulations, rules, and guidelines that are applicable to its activities and duties.

5. Amend newly designated § 1710.12 by revising paragraph (b) and by adding new paragraph (c) to read as follows:

§ 1710.12 Committees of board of directors.

* * * * *

(b) *Frequency of meetings.* A committee of the board of directors of an Enterprise shall meet with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.

(c) *Required committees.* An Enterprise shall provide for the establishment of, however styled, the following committees of the board of directors, which committees shall be in compliance with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under section 301 of the Sarbanes-Oxley Act of 2002, Public Law 107–204 (Jul. 30, 2002), as from time to time amended (SOA), with respect to the audit committee, and under rules issued by the NYSE, as from time to time amended (NYSE rules):

(1) Audit committee;

(2) Compensation committee; and

(3) Nominating/corporate governance committee.

6. Amend newly designated § 1710.13 by revising newly designated paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 1710.13 Compensation of board members, executive officers, and employees.

(a) *General.* Compensation of board members, executive officers, and employees of an Enterprise shall not be in excess of that which is reasonable and appropriate, shall be commensurate with the duties and responsibilities of such persons, shall be consistent with the long-term goals of the Enterprise, shall not focus solely on earnings performance, but shall take into account operational stability and legal and regulatory compliance as well, and shall be undertaken in a manner that complies with applicable laws, rules, and regulations.

(b) *Disgorgement.* If an Enterprise is required to prepare an accounting restatement due to the material noncompliance of the Enterprise, as a result of misconduct, with any financial reporting requirement under law or regulation, the chief executive officer and chief financial officer of the Enterprise shall reimburse the Enterprise as provided under section 304 of the SOA.

7. Amend § 1710.14 by revising the section heading, revising newly designated paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 1710.14 Code of conduct and ethics.

(a) *General.* An Enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the Enterprise to discharge their duties and responsibilities, on behalf of the Enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the SOA.

(b) *Review.* Not less than once every three years, an Enterprise shall review the adequacy of its code of conduct and ethics to ensure that it is consistent with best practices.

8. Amend § 1710.15 by revising paragraph (b) to read as follows:

§ 1710.15 Conduct and responsibilities of board of directors.

* * * * *

(b) *Conduct and responsibilities.* The board of directors of an Enterprise is responsible for directing the conduct and affairs of the Enterprise in furtherance of the safe and sound operation of the Enterprise and shall remain reasonably informed of the condition, activities, and operations of the Enterprise. The responsibilities of the board of directors include having in place adequate policies and procedures to assure its oversight of, among other matters, the following:

(1) Corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance and corporate performance, including but not limited to prudent plans for growth and allocation of adequate resources to manage operations risk;

(2) Hiring and retention of qualified senior executive officers and succession planning for such senior executive officers;

(3) Compensation programs of the Enterprise;

(4) Integrity of accounting and financial reporting systems of the Enterprise, including independent audits and systems of internal control;

(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors;

(6) Extensions of credit to board members and executive officers; and

(7) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns

of Federal regulators in a timely and appropriate manner.

* * * * *

9. Add new § 1710.16 to read as follows:

§ 1710.16 Prohibition of extensions of credit to board members and executive officers.

An Enterprise may not directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit, or renew an extension of credit, in the form of a personal loan to or for any board member or executive officer of the Enterprise, as provided by section 402 of the SOA.

10. Add new § 1710.17 to read as follows:

§ 1710.17 Certification of disclosures by chief executive officer and chief financial officer.

The chief executive officer and the chief financial officer of an Enterprise shall read each quarterly report and annual report issued by the Enterprise and such reports shall include certifications by such officers as required by section 302 of the SOA.

11. Add new § 1710.18 to read as follows:

§ 1710.18 Change of external audit partner and audit firm.

(a) *Change of external audit partner.* An Enterprise may not accept audit services from an external auditor if either the lead (or coordinating) external audit partner who has primary responsibility for the external audit of the Enterprise or the external audit partner who has primary responsibility for reviewing the external audit has performed audit services for the Enterprise in each of the five previous fiscal years.

(b) *Change of external audit firm.* The Federal National Mortgage Association shall change its external auditor no later than January 1, 2006, and thereafter no less frequently than every ten years; and the Federal Home Loan Mortgage Corporation shall change its external auditor no later than January 1, 2009, and thereafter no less frequently than every ten years.

12. Add new § 1710.19 to read as follows:

§ 1710.19 Compliance and risk management programs; compliance with other laws.

(a) *Compliance program.* An Enterprise shall establish and maintain a compliance program, headed by a person who reports directly to the chief executive officer of the Enterprise, that shall—

(1) Ensure that the Enterprise complies with all applicable laws, rules, regulations, and guidelines, and adheres to best practices;

(2) Establish written internal controls and disclosure controls and procedures;

(3) Provide for periodic meetings of the board of directors to ensure the board is able to assess adherence to and adequacy of current policies and procedures of the Enterprise regarding compliance and adjust such policies and procedures, as required.

(b) *Risk management program.* An Enterprise shall establish and maintain a risk management program, headed by a person who reports directly to the chief executive officer of the Enterprise, that shall—

(1) Manage the overall risk oversight function of the Enterprise;

(2) Provide for periodic meetings of the board of directors to ensure the board is able to assess adherence to and adequacy of current policies and procedures of the Enterprise regarding risk management and adjust such policies and procedures, as required.

(c) *Compliance with other laws.*

(1) If an Enterprise deregisters or does not register its common stock with the U.S. Securities and Exchange Commission (Commission) under the Securities Exchange Act of 1934, the Enterprise shall continue to comply with sections 301, 302, 304, 402, and 406 of the SOA, subject to such requirements as provided by § 1710.30 of this part.

(2) An Enterprise that has its common stock registered with the Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of sections 301, 302, 304, 402, and 406 of the SOA, subject to such requirements as provided by § 1710.30 of this part.

13. Add new subpart D to read as follows:

Subpart D—Modification of Certain Provisions

§ 1710.30 Modification of certain provisions.

In connection with standards of Federal or state law (including the Revised Model Corporation Act) or NYSE rules that are made applicable to an Enterprise by §§ 1710.10, 1710.11, 1710.12, 1710.17, and 1710.19 of this part, the Director, in his or her sole discretion, may modify such standards upon written notice to the Enterprise.

Dated: April 7, 2004.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 04–8236 Filed 4–9–04; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–02–AD]

RIN 2120–AA64

Airworthiness Directives; deHavilland Inc. Models DHC–2 Mk. I and DHC–2 Mk. II Airplanes and Bombardier Inc. Model (Otter) DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all deHavilland Inc. Models DHC–2 Mk. I and DHC–2 Mk. II airplanes and for all Bombardier Inc. Model (Otter) DHC–3 airplanes powered by radial engines. This proposed AD would require you to visually inspect the firewall ignition plugs and receptacles for proper lockwire security and replace or modify as appropriate. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. We are issuing this proposed AD to prevent loss of ignition systems during flight caused by improper lockwire security, which could result in engine failure. This failure could lead to a forced landing of the airplane.

DATES: We must receive any comments on this proposed AD by May 7, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2004–CE–02–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Bombardier Aerospace Regional

Aircraft, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; facsimile: (416) 375–4538.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarbhpreet Singh Sawhney, Aerospace Engineer, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7340; facsimile: (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–02–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What events have caused this proposed AD? Transport Canada, which is the airworthiness authority for Canada, recently notified FAA that an unsafe condition may exist on all deHavilland DHC–2 Mk. I and DHC–2 Mk. II airplanes and all Bombardier (Otter) DHC–3 airplanes powered by radial engines. Transport Canada reports that a DHC–3 airplane lost both ignition systems during flight.

The lockwire hole in the ignition connector plug on the firewall broke and the plug vibrated loose. Both magnetos then grounded through a spring-loaded center pin in the plug (a maintenance safety feature).

The DHC–2 Mk. I and DHC–2 Mk. II airplanes have a similar ignition system.

What are the consequences if the condition is not corrected? If not detected and corrected, failure of the lockwire hole could result in engine failure. This failure could lead to a forced landing of the airplane.

Is there service information that applies to this subject? Bombardier has issued deHavilland Beaver Alert Service Bulletin Number A2/53, Revision A, dated August 30, 2001; and deHavilland Otter Alert Service Bulletin Number A3/53, Revision A, dated August 30, 2001.

What are the provisions of this service information? These service bulletins include procedures for:

- Inspecting the ignition plugs and receptacles on the fore and aft side of the firewall for security;
- Replacing any plugs or receptacles with damaged lockwire holes; and
- Replacing any damaged lockwire.

What action did Transport Canada take? Transport Canada classified these service bulletin as mandatory and issued Canadian AD Number CF–2001–36, dated October 31, 2001, and Canadian AD Number CF–2001–37, dated October 31, 2001, to ensure the continued airworthiness of these airplanes in Canada.

Did Transport Canada inform the United States under the bilateral airworthiness agreement? These deHavilland DHC–2 Mk. I and DHC–2 Mk. II airplanes, and Bombardier (Otter) DHC–3 airplanes 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.

Under this bilateral airworthiness agreement, Transport Canada has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined Transport Canada's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other deHavilland DHC–2 Mk. I and DHC–2 Mk. II airplanes, and Bombardier (Otter) DHC–3 airplanes powered by radial engines of the same type design that are registered in the United States, we are proposing AD action to prevent loss of ignition systems during flight caused by improper lockwire security, which could result in engine failure. This failure could lead to a forced landing of the airplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 242 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not applicable	$130	$130 × 242 = $31,460.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need these replacements:

Labor cost	Parts cost	Total cost per replacement part
2 workhours × $65 per hour = $130	Connector plug and firewall receptacle = $152 each. Lockwire = minimal cost.	$130 + $152 = $282.

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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 summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–02–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

deHavilland Inc. and Bombardier Inc.: Docket No. 2004–CE–02–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 7, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
deHavilland DHC–2 Mk. I.	All.
deHavilland DHC–2 Mk. II.	All.
Bombardier (Otter) DHC–3.	All serial numbers powered by radial engines.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. We are issuing this AD to prevent loss of ignition systems during flight caused by improper lockwire security, which could result in engine failure. This failure could lead to a forced landing of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the following: (i) ignition plugs and receptacles on the fore and aft side of the firewall for security; (ii) ignition plug lockwire to ensure it is intact and the holes in the plugs and in the receptacles are not broken out or cracked.	Initially inspect within the next 100 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS.	Follow deHavilland Beaver Alert Service Bulletin Number A2/53, Revision A, dated August 30, 2001; and deHavilland Otter Alert Service Bulletin Number A3/53, Revision A, dated August 30, 2001, as applicable.
(2) If during any inspection required in paragraph (e)(1)(i) and (e)(1)(ii) of this AD: (i) the lockwire holes are found damaged, replace plug and/or receptacle with the parts of the same part numbers; and (ii) the lockwire is damaged, replace the lockwire.	Prior to further flight after any inspection required by paragraphs (e)(1)(i) and (e)(1)(ii) of this AD.	Follow deHavilland Beaver Alert Service Bulletin Number A2/53, Revision A, dated August 30, 2001; and deHavilland Otter Alert Service Bulletin Number A3/53, Revision A, dated August 30, 2001, as applicable.
(3) When the plugs or receptacles are replaced, do an operational check of the magnetos and correct as appropriate.	Prior to further flight after any replacement required by paragraph (e)(2)(i) of this AD.	Follow the applicable maintenance manual procedures.

Note: We recommend you insert de Havilland Inc. Temporary Revision No. 2–24, dated August 24, 2001, and Temporary Revision No. 14, dated August 24, 2001, into the applicable maintenance manual.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, New York Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Sarbhpreet Singh Sawhney, Aerospace Engineer, New York ACO, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7340; facsimile: (516) 794–5531.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Bombardier Aerospace Regional Aircraft, Garratt Boulevard, Downsview, Ontario, Canada

M3K 1Y5; facsimile: (416) 375–4538. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) Canadian AD Number CF–2001–36, dated October 31, 2001, and Canadian AD Number CF–2001–37, dated October 31, 2001, also address the subject of this AD.

Issued in Kansas City, Missouri, on April 5, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8221 Filed 4–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–65–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–800B Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Glaser-Dirks Flugzeugbau GmbH (DG Flugzeugbau) Model DG–800B sailplanes equipped with engine SOLO 2625 or Mid-West AE 50T. This proposed AD would require you to modify the coolant pump and fuel pump electrical circuits, replace the non-resettable circuit breaker with a resettable circuit breaker, and (for a version of the Mikuni carburetor) secure the choke butterfly valve axis. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent fuel pump electrical failure if a non-resettable circuit breaker trips. This could result in power loss with the inability to restart the fuel pump during a critical phase of flight (for example, takeoff under own power).

DATES: We must receive any comments on this proposed AD by May 24, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–65–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–65–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: 011–49 7257–890; facsimile: 011–49 7257–8922.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–65–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–65–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on DG Flugzeugbau Model DG–800B sailplanes. The LBA reports both electrical circuits of the fuel pump and the coolant pump (on engine SOLO 2625 or Mid-West AE 50T) are protected by a non-resettable digital engine indicator (DEI) circuit breaker. The pumps will stop running if the non-resettable circuit breaker activates.

What Are the Consequences if the Condition Is Not Corrected?

If a non-resettable circuit breaker trips, this could result in power loss with the inability to restart the fuel pump during a critical phase of flight (for example, takeoff under own power).

Is There Service Information That Applies to This Subject?

DG Flugzeugbau has issued:

—Technical Note No. 873/26, dated November 12, 2001; and

—Technical Note No. 873/27, dated November 29, 2001.

What Are the Provisions of This Service Information?

The service bulletins include procedures for:

—Modifying the coolant pump and fuel pump electrical circuits;

—Replacing the non-resettable circuit breaker with a resettable circuit breaker; and

—Securing the choke butterfly valve axis for a version of the Mikuni carburetor.

What Action Did the LBA Take?

The LBA classified these service bulletins as mandatory and issued German AD Number 2002–083, dated April 4, 2002, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA Inform the United States Under the Bilateral Airworthiness Agreement?

These DG Flugzeugbau Model DG–800B sailplanes are manufactured in Germany 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.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other DG Flugzeugbau Model DG–800B sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent fuel pump electrical failure if a non-resettable circuit breaker trips. This could result in power loss with the inability to restart the fuel pump during a critical phase of flight (for example, takeoff under own power).

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Sailplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 25 sailplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
6 workhours at $65 per hour = $390	$100	$490	25 × $490 = $12,250.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed AD:

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 summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–65–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Glaser-Dirks Flugzeugbau GmbH: Docket No. 2003–CE–65–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 24, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects all Model DG–800B sailplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with engine SOLO 2625 or Mid-West AE 50T.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent fuel pump electrical failure if a non-resettable circuit breaker trips. This could result in power loss with the inability to restart the fuel pump during a critical phase of flight (for example, takeoff under own power).

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Modify the coolant pump and fuel pump electrical circuits.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already done.	*For sailplanes with engine SOLO 2625:* Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001; *For sailplanes with engine Mid-West AE 50T:* Follow DG Flugzeugbau GmbH Technical Note No. 873/27, dated November 29, 2001.

Actions	Compliance	Procedures
(2) Remove the non-resettable digital engine indicator (DEI) circuit breaker (4-ampere) and replace with a resettable 5-ampere circuit breaker.	Before further flight after the modification of the coolant pump and fuel pump electrical circuits required by paragraph (e)(1) of this AD.	*For sailplanes with engine SOLO 2625:* Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001; *For sailplanes with engine Mid-West AE 50T:* Follow DG Flugzeugbau GmbH Technical Note No. 873/27, dated November 29, 2001.
(3) *For sailplanes with engine SOLO 2625 (New version Mikuni carburetor):* Secure the choke butterfly valve axis.	Before further flight after the modification of the coolant pump and fuel pump electrical circuits required by paragraph (e)(1) of this AD and the removal and replacement required by paragraph (e)(2) of this AD.	*For sailplanes with engine SOLO 2625:* Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001.
(4) Do not install any engine SOLO 2625 or Mid-West AE 50T unless the modifications required by paragraphs (e)(1), (e)(2), and (e)(3) have been done.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: 011–49 7257–890; facsimile: 011–49 7257–8922. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) German AD Number 2002–083, dated April 4, 2002, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on April 5, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8220 Filed 4–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 200

The Open and Non-Discriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking and announcement of public meetings.

SUMMARY: The MMS requests comments and any suggestions to assist us in potentially amending our regulations regarding how the Department of the Interior (DOI) should ensure that pipelines transporting oil or gas under permits, licenses, easements, or rights-of-way on or across the Outer Continental Shelf (OCS) "provide open and non-discriminatory access to both owner and non-owner shippers" as required under section 5(f) of the Outer Continental Shelf Lands Act (OCSLA). The MMS is the bureau in the DOI charged with fulfilling the Secretary of the Interior's (Secretary) responsibility under the OCSLA. We encourage the public and other interested parties to participate in planned public meetings and to provide comments and suggestions to help us clearly define changes to the appropriate MMS programs and regulations that may be necessary. The MMS is committed to making changes that reflect the Secretary's "4C's" philosophy of "consultation, cooperation, and communication all in the service of conservation." The MMS is issuing this Advance Notice of Proposed Rulemaking to give the public and interested parties an opportunity to provide input to the MMS regarding what actions or processes the public and interested parties believe the Secretary should initiate to ensure that pipelines provide open and non-discriminatory access.

DATES: You must submit your comments by June 11, 2004. The MMS may not necessarily consider or include in the Administrative Record for any proposed rule comments that MMS receives after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**). See the **SUPPLEMENTARY INFORMATION** section for the dates of the public meetings.

ADDRESSES: By mail: Director, Minerals Management Service, Attention: Policy and Management Improvement, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240–0001. By personal or messenger delivery: 1849 C Street NW., Room 4223, Washington, DC 20240–0001. The MMS is currently connected to the internet and able to receive e-mails. However, before e-mailing your comments during the comment period to ensure the MMS is connected, please contact Mr. Martin Grieshaber at 303–275–7118.

FOR FURTHER INFORMATION CONTACT: Martin Grieshaber at 303–275–7118 for information relating to the purpose of the meetings, the issues raised in this document, or for information relating to the rulemaking process. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the above individual.

SUPPLEMENTARY INFORMATION: Comments, including names and street addresses of respondents, will be available for public review on request to Martin Grieshaber at the above

telephone number. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. However, we will not consider anonymous comments. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. If you wish to submit confidential or proprietary information that the MMS may consider in determining the extent of the potential issues covered by this notice without that information being available for public review, you must state this prominently on the pages you believe to contain such proprietary or confidential information. Such requests will be honored to the extent allowed by law.

I. Public Comment Procedures

Your written comments should:

1. Be specific;

2. Explain the reason for your comments and suggestions;

3. Address the issues outlined in this notice; and,

4. Where possible, refer to the specific provision, section or paragraph of statutory law, case law or existing regulations which you are addressing.

The comments and recommendations that are most useful and have greater likelihood of influencing decisions on the content of a possible future proposed rule are:

1. Comments and recommendations supported by quantitative information or studies.

2. Comments that include citations to and analyses of the applicable laws and regulations.

We are particularly interested in receiving comments and suggestions about the topics identified in Section II, "Description of Information Requested," and Section III, "Definitions and Other Topics."

We will hold meetings during which the public will be able to comment on the scope, proposed action, and possible alternatives the MMS should consider. The purpose of the meetings is to gather comments and input from a variety of stakeholders and the public.

Any resulting program changes will assist the MMS in fulfilling its responsibility of assuring open and non-discriminatory access to pipelines in the OCS. Our goals are to:

1. Manage the development of mineral resources found under the OCS within the jurisdiction of the DOI;

2. Develop and implement effective and fair MMS business practices; and

3. Protect the environment while assuring the Nation's OCS resources are produced efficiently and equitably.

The meetings will be held on the following dates at the specified locations and times:

Location	Date and time	Address of meeting	Contact person
Houston, Texas	4/27/04, 9 a.m	InterContinental Hotel, 2222 West Loop South, Houston, TX 77027.	Martin C. Grieshaber, 303–275–7118.
Washington, DC	5/11/04, 9 a.m.	U.S. Department of the Interior, Yates Auditorium, First Floor, 1849 C Street, NW., Washington, DC 20240–0001.	Martin C. Grieshaber, 303–275–7118.
New Orleans, Louisiana	5/14/04, 9 a.m.	Minerals Management Service, Room 111, 1201 Elmwood Park Blvd., New Orleans, LA 70123.	Martin C. Grieshaber, 303–275–7118.

Due to increased security requirements, attendees at the Washington and New Orleans meetings will need a picture ID in order to be admitted to the meeting. Additionally, for security reasons, we request that the New Orleans meeting attendees contact Cathy Moser at 504–736–2690 at least 48 hours prior to the meeting.

The sites for the public meetings are accessible to individuals with physical impairments. If you need a special accommodation to participate in one or all of the meetings (*e.g.*, interpreting service, assistive listening device, or materials in alternative format), please notify the contact person listed in this notice no later than 2 weeks prior to the scheduled meeting. Although we will make every effort to accommodate requests received, it may not be possible to satisfy every request.

If you plan to present a statement at the meetings, we will ask you to sign in before the meeting starts and identify yourself clearly for the record. Your speaking time at the meeting(s) will be determined based upon the number of persons wishing to speak and the approximate time available for the session. You will be provided at least 3 minutes to speak.

If you do not wish to speak at the meetings but you have views, questions, or concerns with regard to the MMS's responsibilities under OCSLA related to open and non-discriminatory access to pipelines, you may submit written statements at the meeting for inclusion in the public record. You may also submit written comments and suggestions regardless of whether you attend or speak at a public meeting. See the **ADDRESSES** section of this document for where to submit comments.

II. Description of Information Requested

On October 10, 2003, the U.S. Court of Appeals for the District of Columbia Circuit, in *Williams Cos.* v. *FERC,* 345 F.3d 910 (D.C. Cir. 2003), affirmed the district court decision which found that sections 5(e) and (f) of the OCSLA, 43 U.S.C. 1334 (e) and (f), grant the Federal Energy Regulatory Commission (FERC) only limited authority to enforce open access rules on the OCS. (Specifically, FERC's role is essentially limited to what are commonly known as "ratable take" orders and capacity expansion orders.) According to the circuit court's decision, FERC's authority does not include the regulatory oversight described in FERC Orders 639 and 639A. As a result, the FERC regulations issued under 18 CFR Part 330 are not valid, and, therefore, not enforceable.[1] The court stated that OCSLA section 5(f) "simply requires the Secretary of the Interior to condition grants of rights-of-way on the holder's agreeing to non-discriminatory transportation duties."

[1] The FERC regulations that the court held invalid required owners of OCS gas pipelines to file information indicating the rates the pipelines charged, the conditions of the service they provided, and whether they were affiliated with any of the shippers using their pipelines. The FERC regulations addressed OCS natural gas facilities that perform production or "gathering" functions, and do not fall within the FERC's jurisdiction under the Natural Gas Act (NGA) of 1938. (The term "gathering" has different meanings with respect to OCS pipelines, depending on whether it is used in the context of MMS royalty valuation regulations, or if it is used with reference to the NGA.) The FERC withdrew its regulations on March 17, 2004. 69 FR 12539–12540.

345 F.3d at 913. The court further said, "Without some explicit provision to the contrary (as exists for quantification of the ratable take duty), Congress presumably intended that enforcement would be at the hands of the obligee of the conditions [*i.e.*, a person transporting oil or gas through the pipeline], the Secretary of the Interior (or possibly other persons that the conditions might specify)." *Id.* At 913–914.

The MMS has authority to regulate open and non-discriminatory access to pipelines operating under rights-of-way on the OCS, and is interested in hearing what you think "open and non-discriminatory access" means. Comments and suggestions from any party are welcomed and encouraged. The MMS is particularly interested in receiving responses from entities that have a right-of-way grant for one or more pipelines regulated by the MMS under OCSLA, entities that ship production through these pipelines, and purchasers and end-users of production shipped through these pipelines.

The MMS is interested in determining the scope, magnitude, and seriousness of any instances where access or discrimination problems were encountered by service providers or shippers of natural gas, both for lines that do not operate under the jurisdiction of the NGA and those that do. (We are also interested in whether the lack of NGA-regulatory oversight has had or may have potential positive or negative impacts). The MMS also is interested in the circumstances under which a service provider would deny service to a shipper. We solicit comments from any party that feels it has been denied open and non-discriminatory access to pipelines on the OCS, and suggestions for actions that could have been taken or should be taken to prevent this from happening.

A record of access issues that arise between shippers and service providers would help the MMS to gain a better perspective on the need for a regulatory framework to ensure open and non-discriminatory pipeline access. The MMS is giving consideration to establishing a hotline which could be used by both shippers and service providers to report concerns and perceived instances of open and non-discriminatory access violations. A hotline could be one way for MMS to document relevant complaints that occur.

The MMS would like comments regarding the types of complaints that it might receive if it did establish a hotline. The MMS would like input concerning the advantages and disadvantages of resolving the complaints through an informal negotiation or a more rigorous dispute resolution process. The MMS would appreciate a discussion regarding the possible structure of either an informal or formal complaint resolution process. In the event the complaint escalated into a more formal dispute, the MMS would like comments on what the resolution process could look like and how it might differ from an informal complaint resolution process. The MMS also would like comments on whether interested parties would be more likely to participate in one type of complaint resolution process over another and what circumstances might affect this decision.

Beyond questions of documenting complaints and methods for resolving disputes, the MMS would like comments concerning what factual information or data would be necessary to make a determination that open access has been denied or that discrimination has occurred, what mechanisms MMS could use to gather such information, and the extent to which the information should be made public. The MMS is interested in comments regarding whether this mandate can be accomplished in the absence of information collection and the dissemination of some or all of the information.

III. Definitions and Other Topics

The MMS is committed to carrying out the Secretary's objectives and the requirements established by the OCSLA. We encourage the public to participate in the planned public meetings and to provide comments and suggestions to help us determine where changes are needed in the regulations. We are requesting input for defining terms used in this notice, and comments on other topics which are not identified in this notice but should be considered in a proposed rule. These include, but are not limited to, the following:

A. *Definitions:* We are considering revising or creating definitions of the following terms:

Non-discriminatory access
Open access
Pipelines subject to OCSLA
Service provider
Shipper

B. *Other specific topics that may be addressed at the meetings:* The MMS is interested in receiving comments on any other issues relevant to the DOI's mandate under the OCSLA to assure "open and non-discriminatory access" to pipelines on the OCS.

Dated: March 29, 2004.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. 04–8247 Filed 4–7–04; 3:28 pm]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NC–112L–2004–1–FRL–7646–3]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 26, 2003, the EPA published in the **Federal Register** a direct final rule to approve the North Carolina Department of Environment and Natural Resources (NC DENR) equivalency by permit program, pursuant to section 112(l) of the Clean Air Act, to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-chemical Pulp Mills, for the International Paper Riegelwood mill in Riegelwood, North Carolina. Today's action is taken to amend the approval of NC DENR's section 112(l) authority for hazardous air pollutants, equivalency by permit provisions, in order to extend its coverage to include the following four mills: International Paper Roanoke Rapids mill in Roanoke Rapids, North Carolina; Blue Ridge Paper Products in Canton, North Carolina; Weyerhaeuser New Bern facility in New Bern, North Carolina; and the Weyerhaeuser Plymouth facility in Plymouth, North Carolina. In the Rules section of this **Federal Register**, EPA is granting NC DENR the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions for the additional four North Carolina mills, after EPA has approved the state's alternative requirements. A detailed rationale for this approval is set forth in the final rule amendment. If no significant, material, and adverse comments are received in response to this rule, no further activity is

contemplated. If EPA receives adverse comments, the final rule amendment will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 12, 2004.

ADDRESSES: Comments may be submitted by mail to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the final rule amendment, **SUPPLEMENTARY INFORMATION** section [Part (I)(B)(1)(i) though (iii)] which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9141. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the final rule amendment which is published in the Rules Section of this **Federal Register**.

Dated: April 2, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–8223 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[WT Docket No. 01–289; FCC 03–238]

Aviation Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission solicits comment on proposed rules that are intended to accommodate technological advances, facilitate operational flexibility, and promote spectral efficiency in the Aviation Radio Service.

DATES: Submit comments on or before July 12, 2004, and reply comments are due on or before August 10, 2004.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Further Notice of Proposed Rulemaking (FNPRM) in WT Docket No. 01–289, FCC 03–238, adopted on October 6, 2003, and released on October 16, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. The FNPRM solicits comment on whether the Commission should: (i) Authorize use of Universal Access Transceiver technology on the 978 MHz frequency; (ii) permit licensees to utilize any emission type of their choosing in aeronautical spectrum that is not shared with other services, subject to certain conditions, and eliminate all requirements specific to data rates and modulation types, in order to accommodate new technologies such as Inmarsat's 64 kbps service; (iii) enable the use of non-geostationary satellite networks for Aeronautical Mobile Satellite (Route) Service (AMS(R)S); (iv) broaden AMS(R)S regulations so that they take account of the satellite systems of both Inmarsat and other operators; (v) adopt additional technical requirements for AMS(R)S; (vi) identify new uses for the frequencies formerly reserved for the Civil Air Patrol; (vii) remove the radionavigation allocation in the 14000–14200 MHz band; (viii) expand the availability of air traffic control spectrum for ground control communications; (ix) streamline the listing of HF band frequencies in Part 87 frequency tables; (x) codify the terms of a waiver permitting certification and use of a back-up safety device designed to supplement conventional 121.5 MHz Emergency Locator Transmitters (ELTs); (xi) codify the terms of a waiver authorizing a special station identification format to be used by aircraft being operated by maintenance personnel from one location in an airport to another location in the airport; and (xii) terminate the assignment of FCC control numbers to ultralight aircraft.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 12, 2004 and reply comments on or before August 10, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

4. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H.

Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the U.S. Postal Service, by an overnight courier or hand and message-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

5. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Jeffrey Tobias, Wireless Telecommunications Bureau, 445 12th St., SW., Room 4–A366, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 01–289), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Qualex International, Inc., 445 12th St., SW., Room CY–B402, Washington, DC 20054.

C. Paperwork Reduction Act

6. This FNPRM does not contain any new or modified information collection.

II. Initial Regulatory Flexibility Analysis

7. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the rules proposed or discussed in the FNPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the FNPRM in WT Docket No. 01–289, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

A. Need for, and Objectives of, the Proposed Rules

The proposed rules in the FNPRM are intended to further streamline, consolidate and clarify the Commission's part 87 rules; remove unnecessary or duplicative requirements; address new international requirements; and promote flexibility and efficiency in the use of aviation radio equipment in a manner that will further aviation safety. In the FNPRM, we request comment specifically on whether we should: (i) Accommodate use of Universal Access Transceiver technology on the frequency 978 MHz; (ii) eliminate all requirements specific to data rates and modulation types to accommodate new technologies, such as Inmarsat's new 64 kbps service; (iii) enable the use of non-geostationary satellite networks for AMS(R)S; (iv) broaden the AMS(R)S regulations to take account of satellite systems other than Inmarsat's; (v) adopt additional technical requirements for AMS(R)S; (vi) identify new uses for the frequencies formerly reserved for the Civil Air Patrol; (vii) remove the radionavigation allocation at 14000–14400 MHz; (viii) streamline the listing of HF band frequencies in part 87 frequency tables; (ix) expand the availability of air traffic control spectrum for ground control communications; (x) codify the terms of a waiver that has permitted the certification of a back-up safety device designed to supplement conventional 121.5 MHz Emergency Locator Transmitters (ELTs); and (xi) codify the terms of a waiver that authorizes a special station identification format to be used only by aircraft being operated by maintenance personnel from one location in an airport to another location in an airport.

B. Legal Basis for Proposed Rules

8. The proposed action is authorized under sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions, or entities. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA, and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

10. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this IRFA, therefore, the applicable definition of a small entity is that under SBA rules applicable to "Cellular and Other Wireless Telecommunications." This definition provides that a "small entity" for purposes of public coast station licensees, a subgroup of marine radio users, consists of all such firms having 1,500 or fewer employees. According to Census bureau data for 1997, there were 977 firms, total, in the category of "Cellular and other Wireless Telecommunications," that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus under this size standard, the majority of firms can be considered small.

11. The proposed amendments may also affect small businesses that manufacture aviation radio equipment. The Commission has not developed a definition of small entities applicable specifically to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of a small entity is the definition under SBA rules for manufacturers of "Radio and Television Broadcasting and Wireless Communications Equipment." This NAICS category, however, is broad, and specific figures are not available as to how many of these establishments

manufacture RF equipment for aviation use. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. The FNPRM seeks comment on a number of possible rule changes that may affect reporting, recordkeeping and other compliance requirements. However, we believe that, with the exception of possible rule changes imposing additional technical requirements for certain aircraft earth stations, all of the possible rule changes discussed in the FNPRM are deregulatory in the sense that they do not impose new requirements on licensees or equipment manufacturers, but instead enhance the ability of licensees and manufacturers to provide and use new services and equipment on a permissive basis, and therefore will benefit small entities as well as the aviation community as a whole.

13. We invite comment on our tentative conclusion that the following possible rule changes will not have a negative impact on small entities, or for that matter any entities, because they would facilitate flexible use of the spectrum by licensees and/or design flexibility for manufacturers of avionics equipment, and do not impose new compliance costs on any entity: (i) Accommodating use of Universal Access Transceiver technology on the frequency 978 MHz; (ii) eliminating all requirements specific to data rates and modulation types; (iii) enabling the use of non-geostationary satellite networks for AMS(R)S; (iv) broadening the AMS(R)S regulations to take account of satellite systems other than Inmarsat's; (v) authorizing use of the 1990–2025 MHz band for AMS(R)S; (vi) reallocating the frequencies formerly reserved for the Civil Air Patrol; (vii) removing the radionavigation allocation at 14000–14400 MHz; (viii) streamlining the listing of HF band frequencies in part 87 frequency tables; (ix) expanding the number of air traffic control frequencies available for ground control communications; (x) permitting certification of back-up safety devices designed to supplement conventional 121.5 MHz Emergency Locator Transmitters (ELTs); and (xi) authorizing a special station identification format to be used by aircraft that are being operated by maintenance personnel from one location in an airport to another location in an airport. To the extent that commenters believe that any of the above possible rule changes would impose a new reporting, recordkeeping, or compliance burden on small entities, we ask that they describe the nature of that burden in some detail and, if possible, quantify the costs to small entities.

14. We tentatively conclude that any compliance burden stemming from new technical requirements for aircraft earth stations used in the provision of AMS(R)S will fall not on small entities but on large entities, such as mobile satellite system operators, airlines, and large manufacturers. We invite comment on this tentative conclusion. Commenters should identify with particularity those small entities that may be affected by these requirements, and, if possible, quantify the costs of any such requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

16. We hereby request comment on whether we can employ any of the above approaches to lessen compliance burdens on small entities if we adopt new technical requirements for aircraft earth stations. To the extent commenters believe that other of the discussed rule changes would also impose a compliance burden on small entities, we ask that they address whether any of the above approaches to reduce that burden is appropriate.

17. We hereby invite interested parties to address any or all of these regulatory alternatives and to suggest additional alternatives to minimize any significant economic impact on small entities. Any significant alternative presented in the comments will be considered.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

III. Ordering Clauses

18. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rule Making including the Initial Regulatory Flexibility Analyses to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 87

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 87 as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.107 is amended by removing paragraph (a)(2), redesignate paragraphs (a)(3) through (a)(5) as paragraphs (a)(2) through (a)(4), and revise newly designated paragraph (a)(2) to read as follows:

§ 87.107 Station identification.

(a) * * *

(2) The type of aircraft followed by the characters of the registration marking ("N" number) of the aircraft, omitting the prefix letter "N." When communication is initiated by a ground station, an aircraft station may use the type of aircraft followed by the last three characters of the registration marking. Notwithstanding any other provision of this section, an aircraft being moved by maintenance personnel from one

location in an airport to another location in that airport may be identified by a station identification consisting of the name of the company owning or operating the aircraft, followed by the word "Maintenance" and additional alphanumeric characters of the licensee's choosing.

* * * * *

3. Section 87.137 is amended by adding an entry to the table in alphabetical order and by adding footnote 17 to read as follows:

§ 87.137 Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz)		
		Below 50 MHz	Above 50 MHz	Frequency deviation
* * * *		*	*	*
F1D [17]	1M70F1D		1800 kHz	312.5 kHz.
* * * *		*	*	*

* * * * * * * *

[17] Authorized only for Universal Access Transceiver use at 978 MHz.

* * * * * * * *

4. Section 87.139 is amended by adding paragraph (l) to read as follows:

§ 87.139 Emission limitations.

* * * * *

(l)(1) For Universal Access Transceiver transmitters, the average emissions measured in a 100 kHz bandwidth must be attenuated below the maximum emission level by at least:

Frequency (MHz)	Attenuation (dB)
+/− 0.5	0
+/− 1.0	18
+/− 2.25	50
+/− 3.25	60

The mask shall be defined by drawing straight lines through the above points on log semi-paper.

(2) Universal Access Transceiver transmitters with an output power of 5 Watts or more must limit their emissions by at least 43 + 1-log (P) dB on any frequency removed from the assigned frequency by more than 250% of the occupied bandwidth. Occupied bandwidth is defined as 99% of the signal power measured with a bandwidth of 100 kHz. P in the above equation is the average transmitter power measured in Watts.

(3) Universal Access Transceiver transmitters with less than 5 Watts of output power must limit their emissions by at least 40 dB relative to the carrier peak on any frequency removed from the assigned frequency by more than 250% of the occupied bandwidth. Occupied bandwidth is defined as 99% of the signal power measured with a bandwidth of 100 kHz.

5. Section 87.141 is amended by adding paragraph (k) to read as follows:

§ 87.141 Modulation requirements.

* * * * *

(k) Universal Access Transceiver transmitters must use F1D modulation without phase discontinuities.

6. Section 87.173 is amended by revising the table in paragraph (b) to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

Frequency or frequency band	Subpart	Class of station	Remarks
90–110 kHz	Q	RL	LORAN "C".
190–285 kHz	Q	RLB	Radiobeacons.
200–285 kHz	O	FAC	Air traffic control.
325–405 kHz	O	FAC	Air traffic control.
325–435 kHz	Q	RLB	Radiobeacons.
410.0 kHz	F	MA	International direction-finding for use outside of United States.
457.0 kHz	F	MA	Working frequency for aircraft on over-water flights.
500.0 kHz	F	MA	International calling and distress frequency for ships and aircraft on over-water flights.
510–535 kHz	Q	RLB	Radiobeacons.
2182.0 kHz	F	MA	International distress and calling.
2371.0 kHz			[Reserved].
2374.0 kHz			[Reserved].
2648.0 kHz	I	AX	Alaska station.
2850.0–3025.0 kHz	I	MA, FAE	International HF.
2851.0 kHz	I, J	MA, FAE, FAT	International HF; Flight test.
2866.0 kHz	I	MA, FAE	Domestic HF (Alaska).
2875.0 kHz	I	MA, FAE	Domestic HF.
2878.0 kHz	I	MA1, FAE	Domestic HF; International HF.
2911.0 kHz	I	MA, FAE	Domestic HF.
2956.0 kHz	I	MA, FAE	Domestic HF.
3004.0 kHz	I, J	MA, FAE, FAT	International HF; Flight test.
3019.0 kHz	I	MA1, FAE	Domestic HF; International HF.
3023.0 kHz	F, M, O	MA1, FAR, FAC	Search and rescue communications.
3281.0 kHz	K	MA, FAS	Lighter-than-air craft and aeronautical stations serving lighter-than-air craft.

Frequency or frequency band	Subpart	Class of station	Remarks
3400.0–3500.0 kHz	I	MA, FAE	International HF.
3434.0 kHz	I	MA1, FAE	Domestic HF.
3443.0 kHz	J	MA, FAT	
3449.0 kHz	I	MA, FAE	Domestic HF.
3470.0 kHz	I	MA, FAE	Domestic HF; International HF.
4125.0 kHz	F	MA	Distress and safety with ships and coast stations.
4466.0 kHz			[Reserved].
4469.0 kHz			[Reserved].
4506.0 kHz			[Reserved].
4509.0 kHz			[Reserved].
4550.0 kHz	I	AX	Gulf of Mexico.
4582.0 kHz			[Reserved].
4585.0 kHz			[Reserved].
4601.0 kHz			[Reserved].
4604.0 kHz			[Reserved].
4627.0 kHz			[Reserved].
4630.0 kHz			[Reserved].
4645.0 kHz	I	AX	Alaska.
4650.0–4700.0 kHz	I	MA, FAE	International HF.
4672.0 kHz	I	MA1, FAE	Domestic HF.
4947.5 kHz	I	AX	Alaska.
5036.0 kHz	I	AX	Gulf of Mexico.
5122.5 kHz	I	AX	Alaska.
5167.5 kHz	I	FA	Alaska emergency.
5310.0 kHz	I	AX	Alaska.
5451.0 kHz	J	MA, FAT	Flight test.
5463.0 kHz	I	MA1, FAE	Domestic HF.
5469.0 kHz	J	MA, FAT	Flight test.
5472.0 kHz	I	MA, FAE	Domestic HF.
5450.0–5680.0 kHz	I	MA, FAE	International HF.
5484.0 kHz	I	MA, FAE	Domestic HF.
5490.0 kHz	I	MA, FAE	Domestic HF.
5496.0 kHz	I	MA, FAE	Domestic HF.
5508.0 kHz	I	MA1, FAE	Domestic HF.
5571.0 kHz	J	MA, FAT	Flight test.
5631.0 kHz	I	MA, FAE	Domestic HF.
5680.0 kHz	F, M, O	MA1, FAC, FAR	Search and rescue communications.
5887.5 kHz	I	AX	Alaska.
6525.0–6685.0 kHz	I	MA, FAE	International HF.
6550.0 kHz	J	MA, FAT	Flight Test.
6580.0 kHz	I	MA, FAE	Domestic HF.
6604.0 kHz	I	MA, FAE	Domestic HF.
8015.0 kHz	I	AX	Alaska.
8364.0 kHz	F	MA	Search and rescue communications.
8815.0–8965.0 kHz	I	MA, FAE	International HF.
8822.0 kHz	J	MA, FAT	Flight Test.
8855.0 kHz	I	MA, FAE	Domestic HF; international HF.
8876.0 kHz	I	MA, FAE	Domestic HF.
10005.0–10100.0 kHz	I	MA, FAE	International HF.
10045.0 kHz	J	MA, FAT	Flight Test.
10066.0 kHz	I	MA, FAE	Domestic HF; international HF.
11275.0–11400.0 kHz	J	MA, FAE	International HF.
11288.0 kHz	J	MA, FAT	Flight Test.
11306.0 kHz	J	MA, FAT	Flight Test.
11357.0 kHz	I	MA, FAE	Domestic HF.
11363.0 kHz	I	MA, FAE	Domestic HF.
13260.0–13360.0 kHz	I	MA, FAE	International HF.
13312.0 kHz	I, J	MA, FAE, FAT	International HF; Flight Test.
17900.0–17970.0 kHz	I	MA, FAE	International HF.
17964.0 kHz	J	MA, FAT	Flight Test.
21924.0–22000.0 kHz	I	MA, FAE	International HF.
21931.0 kHz	J	MA, FAT	Flight Test.
72.020–75.980 MHz	P	FA, AXO	Operational fixed; 20 kHz spacing.
75.000 MHz	Q	RLA	Marker beacon.
108.000 MHz	Q	RLT	
108.000–117.950 MHz	Q	RLO	VHF omni-range.
108.000–117.975 MHz	Q	DGP	Differential GPS.
108.050 MHz	Q	RLT	
108.100–111.950 MHz	Q	RLL	ILS Localizer.
108.100 MHz	Q	RLT	
108.150 MHz	Q	RLT	
118.000–121.400 MHz	O	MA, FAC, FAW, GCO, RCO, RPC.	25 kHz channel spacing.

Frequency or frequency band	Subpart	Class of station	Remarks
121.500 MHz	G, H, I, J, K, M, O	MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP.	Emergency and distress.
121.600–121.925 MHz	O, L, Q	MA, FAC, MOU, RLT, GCO, RCO, RPC.	25 kHz channel spacing.
121.950 MHz	K	FAS	
121.975 MHz	F	MA2, FAW, FAC, MOU.	Air traffic control operations.
122.000 MHz	F	MA, FAC, MOU	Air carrier and private aircraft enroute flight advisory service provided by FAA.
122.025 MHz	F	MA2, FAW, FAC, MOU MA, FAC, MOU.	Air traffic control operations.
122.050 MHz	F	MA, FAC, MOU	Air traffic control operations.
D122.075 MHz	F	MA2, FAW, FAC, MOU.	Air traffic control operations.
122.100 MHz	F, O	MA, FAC, MOU	Air traffic control operations.
122.125–122.675 MHz	F	MA2, FAC, MOU	Air traffic control operations; 25 kHz spacing.
122.700 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.725 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.750 MHz	F	MA2	Private fixed wing aircraft air- to-air communications.
122.775 MHz	K	MA, FAS	
122.800 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.825 MHz	I	MA, FAE	Domestic VHF.
122.850 MHz	H, K	MA, FAM, FAS	
122.875 MHz	I	MA, FAE	Domestic VHF.
122.900 MHz	F, H, L, M	MA, FAR, FAM, MOU	
122.925 MHz	H	MA2, FAM	
122.950 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
122.975 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.000 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.025 MHz	F	MA2	Helicopter air-to-air communications; Air traffic control operations.
123.050 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.075 MHz	G, L	MA, FAU, MOU	Unicom at airports with no control tower; Aeronautical utility stations.
123.100 MHz	M, O	MA, FAC, FAR	
123.125 MHz	J	MA, FAT	Itinerant.
123.150 MHz	J	MA, FAT	Itinerant.
123.175 MHz	J	MA, FAT	Itinerant.
123.200 MHz	J	MA, FAT	
123.225 MHz	J	MA, FAT	
123.250 MHz	J	MA, FAT	
123.275 MHz	J	MA, FAT	
123.300 MHz	K	MA, FAS	
123.325 MHz	J	MA, FAT	
123.350 MHz	J	MA, FAT	
123.375 MHz	J	MA, FAT	
123.400 MHz	J	MA, FAT	Itinerant.
123.425 MHz	J	MA, FAT	
123.450 MHz	J	MA, FAT	
123.475 MHz	J	MA, FAT	
123.500 MHz	K	MA, FAS	
123.525 MHz	J	MA, FAT	
123.550 MHz	J	MA, FAT	
123.575 MHz	J	MA, FAT	
123.6–128.8 MHz	O	MA, FAC, FAW, GCO, RCO, RPC.	25 kHz channel spacing.
128.825–132.000 MHz	I	MA, FAE	Domestic VHF; 25 kHz channel spacing.
132.025–135.975 MHz	O	MA, FAC, MHz FAW, GCO, RCO, RPC.	25 kHz channel spacing.
136.000–136.400 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations; 25 kHz channel spacing.
136.425 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations.

Frequency or frequency band	Subpart	Class of station	Remarks
136.450 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations.
136.475 MHz	O, S	MA, FAC, FAW, GCO, RCO, RPC.	Air traffic control operations.
136.500–136.875 MHz	I	MA, FAE	Domestic VHF; 25 kHz channel spacing.
136.900 MHz	I	MA, FAE	International and domestic VHF.
136.925 MHz	I	MA, FAE	International and domestic VHF.
136.950 MHz	I	MA, FAE	International and domestic VHF.
136.975 MHz	I	MA, FAE	International and domestic VHF.
156.300 MHz	F	MA	For communications with ship stations under specific conditions.
156.375 MHz	F	MA	For communications with ship stations under specific conditions; Not authorized in New Orleans Vessel traffic service area.
156.400 MHz	F	MA	For communications with ship stations under specific conditions.
156.425 MHz	F	MA	For communications with ship stations under specific conditions.
156.450 MHz	F	MA	For communications with ship stations under specific conditions.
156.625 MHz	F	MA	For communications with ship stations under specific conditions.
156.800 MHz	F	MA	Distress, safety and calling frequency; For communications with ship stations under specific conditions.
156.900 MHz	F	MA	For communications with ship stations under specific conditions.
157.425 MHz	F	MA	For communications with commercial fishing vessels under specific conditions except in Great Lakes and St. Lawrence Seaway Areas.
243.000 MHz	F	MA	Emergency and distress frequency for use of survival craft and emergency locator transmitters.
328.600–335.400 MHz	Q	RLG	ILS glide path.
334.550 MHz	Q	RLT	
334.700 MHz	Q	RLT	
406–406.1 MHz	F, G, H, I, J, K, M, O	MA, FAU, FAE, FAT, FAS, FAC, FAM, FAP.	Emergency and distress.
960–1215 MHz	F, Q	MA, RL, RNV	Electronic aids to air navigation.
978.000 MHz	Q	RLT	
979.000 MHz	Q	RLT	
1030.000 MHz	Q	RLT	
1104.000 MHz	Q	RLT	
1300–1350 MHz	F, Q	MA, RLS	Surveillance radars and transponders.
1435–1535 MHz	F, J	MA, FAT	Aeronautical telemetry and telecommand operations.
1559–1610 MHz	Q	DGP	Differential GPS.
1559–1626.5 MHz	F, Q	MA, RL	Aeronautical radionavigation.
1646.5–1660.5 MHz	F	TJ	Aeronautical Mobile-Satellite (R).
2310–2390 MHz	J	MA, FAT	Aeronautical telemetry and telecommand operations.
2700–2900 MHz	Q	RLS, RLD	Airport surveillance and weather radar.
4200–4400 MHz	F	MA	Radio altimeters.
5000–5250 MHz	Q	MA, RLW	Microwave landing systems.
5031.000 MHz	Q	RLT	
5350–5470 MHz	F	MA	Airborne radars and associated airborne beacons.
8750–8850 MHz	F	MA	Airborne doppler radar.
9000–9200 MHz	Q	RLS, RLD	Land-based radar.
9300–9500 MHz	F, Q	MA	Airborne radars and associated airborne beacons.
13250–13400 MHz	F	MA	Airborne doppler radar.
15400–15700 MHz	Q	RL	Aeronautical radionavigation.
24750–25050 MHz	F, Q	MA, RL	Aeronautical radionavigation.
32300–33400 MHz	F, Q	MA, RL	Aeronautical radionavigation.

7. Section 87.187 is amended by revising paragraph (x) and adding paragraph (ee) to read as follows:

§ 87.187 Frequencies.

* * * * *

(x) The frequency bands 24250–24450 MH, 24650–24750 MHz and 32300–

33400 MHz are available for airborne radionavigation devices.

* * * * *

(ee) The frequency 978 MHz is authorized for Universal Access Transceiver data transmission.

8. Section 87.263 is amended by revising introductory paragraphs (d) and (e) and adding paragraph (g) to read as follows:

§ 87.263 Frequencies.

* * * * *

(d) *International HF Service.* High frequencies for enroute stations serving international flight operations on the Major World Air Route Areas (MWARAs), as defined in the international Radio Regulations and the ICAO Assignment Plan, may be authorized in accordance with Appendix S27 to the Radio Regulations.

* * * * *

(e) *Long distance operational control.* Long distance operational control frequencies provide communications between aeronautical enroute stations and aircraft stations anywhere in the world for control of the regularity and efficiency of flight and safety of aircraft. World-wide frequencies are not assigned by administrations for MWARA and Regional and Domestic Air Route Area (RDARA). Long distance operational control frequencies will be authorized in accordance with Appendix S27 of the international Radio Regulations.

* * * * *

(g) The frequency 978 MHz is authorized for Universal Access Transceiver data transmission.

9. Section 87.345 is amended by adding paragraph (f) to read as follows:

§ 87.345 Scope of service.

* * * * *

(f) Transmissions by aeronautical utility mobile stations for Universal Access Transceiver service are authorized.

10. Section 87.349 is amended by adding paragraph (e) to read as follows:

§ 87.349 Frequencies.

* * * * *

(e) The frequency 978.0 MHz is authorized for Universal Access Transceiver data transmission.

11. Section 87.375 is amended by adding paragraph (e) to read as follows:

§ 87.375 Frequencies.

* * * * *

(e) The frequency 978.0 MHz is authorized for Universal Access Transceiver data transmission.

12. Section 87.417 is amended by adding paragraph (c) to read as follows:

§ 87.417 Scope of service.

* * * * *

(c) The frequency 978.0 MHz is authorized for Universal Access Transceiver data transmission.

13. Section 87.421 is amended by revising paragraph (c) to read as follows:

§ 87.421 Frequencies.

* * * * *

(c) Frequencies in the bands 118.000–121.400 MHz, 121.600–121.925 MHz, 123.600–128.800 MHz, and 132.025–135.975 MHz are available to control towers and RCOs for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage. Channel spacing is 25 kHz.

* * * * *

14. Section 87.475 is amended by adding paragraphs (b)(9) through (b)(15) and revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 87.475 Frequencies.

(b) * * *

(9) 2700–2900 MHz: Non-Government land-based radars may be licensed. U.S. Government coordination is required. Applicants must demonstrate a need for the service which the Government is not prepared to render.

(10) 5000–5250 MHz: This band is to be used for the operation of the international standard system (microwave landing system).

(11) 9000–9200 MHz: This band is available to land-based radars. Stations operating in this band may receive interference from stations operating in the radiolocation service.

(12) 14,000–14,400 MHz: This band is available for use in the aeronautical radionavigation service.

(13) 15,400–15,700 MHz: This band is available for use of land stations associated with airborne electronic aids to air navigation.

(14) 24,250–25,250, 31.800–33.400 MHz: In these bands, land-based radionavigation aids are permitted where they operate with airborne radionavigation devices.

(15) 978.0 MHz is authorized for Universal Access Transceiver service.

(c) *Frequencies available for radionavigation land test stations.* (1) The frequencies set forth in § 87.187(c), (e) through (j), (r), (t), and (ee) and § 87.475(b)(6) through (10) and (12) may be assigned to radionavigation land test stations for the testing of aircraft transmitting equipment that normally operates on these frequencies and for the testing of land-based receiving equipment that operates with airborne radionavigation equipment.

(2) The frequencies available for assignment to radionavigation land test stations for the testing of airborne receiving equipment are 108.000 and 108.050 MHz for VHF omni-range; 108.100 and 108.150 MHz for localizer; 334.550 and 334.700 MHz for glide slope; 978 and 979 MHz (X channel)/1104 MHz (Y channel) for DME; 978 MHz for Universal Access Transceiver; 1030 MHz for air traffic control radar beacon transponders; and 5031.0 MHz for microwave landing systems. Additionally, the frequencies in paragraph (b) of this section may be assigned to radionavigation land test stations after coordination with the FAA. The following conditions apply:

(i) The maximum power authorized on the frequencies 108.150 and 334.550 MHz is 1 milliwatt. The maximum power authorized on all other frequencies is one watt.

(ii) The pulse repetition rate (PRR) of the 1030 MHz ATC radar beacon test set will be 235 pulses per second (pps) ±5pps.

(iii) The assignment of 108.000 MHz is subject to the condition that no interference will be caused to the reception of FM broadcasting stations and stations using the frequency are not protected against interference from FM broadcasting stations.

* * * * *

[FR Doc. 04–8121 Filed 4–9–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[I.D. 040604C]

International Fisheries; Atlantic Highly Migratory Species

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

ACTION: Notice of public hearings.

SUMMARY: NMFS will hold six public hearings to receive public comment regarding proposed regulations to establish the Highly Migratory Species International Trade Permit and implement reporting requirements associated with the international trade of bluefin tuna, bigeye tuna, southern bluefin tuna, and swordfish. The proposed rule for this action was published in the **Federal Register** on March 29, 2004.

DATES: The public hearings will be held in April and May 2004. For specific dates and times, see **SUPPLEMENTARY INFORMATION**. Comments on the proposed rule must be received no later than 5 p.m. on May 10, 2004.

ADDRESSES: The public hearings will be held in Miami, FL; New York City, NY; Honolulu, HI; Piti, Guam; and Long Beach, CA. For specific locations, see **SUPPLEMENTARY INFORMATION**. Written comments should be mailed to Dianne Stephan, Highly Migratory Species Management Division, NMFS, One Blackburn Drive, Gloucester, MA, 01930. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *NeroHMSTrade@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Nero HMS Trade Rule.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan (Atlantic coast or other), 978–281–9397; Raymond Clarke (Western Pacific), 808–973–2935; David Hamm (Guam) 808–983–5330, Lori Robinson (Gulf coast), 228–769–8964; or Patricia J. Donley (West coast), 562–980–4033.

SUPPLEMENTARY INFORMATION: The proposed regulations would implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to track the international trade of swordfish and bigeye tuna, would implement the recommendation of the Inter-American Tropical Tuna Commission (IATTC) to track the international trade of bigeye tuna, would require dealers to comply with the southern bluefin tuna statistical document program adopted by the Commission for the Conservation of Southern Bluefin Tuna, and would expand the current bluefin tuna statistical document program to include the re-export of bluefin tuna. The Atlantic Tuna Conventions Act of 1975 (16 U.S.C. 971 *et seq.*) authorizes the promulgation of regulations as may be necessary and appropriate to implement ICCAT recommendations. The Tuna Conventions Act of 1950 (16 U.S.C. 951 *et seq.*) authorizes rulemaking to carry out IATTC recommendations. A complete description of the proposed regulatory measures, as well as the purpose and need for the proposed actions, is contained in the proposed rule (March 29, 2004, 69 FR 16211) and is not repeated here.

Schedule of Public Hearings

The dates, times, and locations of the meetings are scheduled as follows:

1. Wednesday, April 21, 2004 - Miami, FL, 1–3 p.m.

Embassy Suites Hotel, 3974 NW South River Drive, Miami, FL

2. Thursday, April 22, 2004 - New York City, NY, 9:30–11:30 a.m.

Holiday Inn Wall Street, 15 Gold Street, New York City, NY

3. Thursday, April 29, 2004 - Honolulu, HI, 1–3 p.m.

NOAA Fisheries Pacific Islands Regional Office, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI

4. Tuesday, May 4, 2004 - Piti, Guam, 1–3 p.m.

Port Authority of Guam, 1026 Cabras Highway, Piti, Guam

5. Thursday, May 6, 2004 - Long Beach, CA, 9–11 a.m. and 1–3 p.m.

NOAA Fisheries, Southwest Regional Office, Glen M. Anderson Federal Building, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dianne Stephan, (978) 281–9397, at least 7 days prior to the hearing in question.

Dated: April 6, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–8234 Filed 4–7–04; 2:22 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 70
Monday, April 12, 2004

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for the Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service requests public comment on the information collection related to the Summer Food Service Program, OMB number 0584–0280.

DATES: Comments on this notice must be received or postmarked by June 11, 2004.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of 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 and requests for copies of this information collection may be sent to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

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

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Title: Summer Food Service Program.
OMB Number: 0584–0280.
Expiration Date: 7/31/2004.
Type of Request: Revision of a currently approved collection.

Abstract: Section 13 of the National School Lunch Act (NSLA), as amended, 42 U.S.C. 1761, authorizes the Summer Food Service Program. The Summer Food Service Program provides assistance to States to initiate and maintain nonprofit food service programs for needy children during the summer months and at other approved times. The food service to be provided under the Summer Food Service Program is intended to serve as a substitute for the National School Lunch Program and the School Breakfast Program during times when school is not in session. Under the program, a sponsor receives reimbursement for serving nutritious, well-balanced meals to eligible children at food service sites. Subsection 13(m) of the NSLA directs that "States and service institutions participating in programs under this section shall keep accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations hereunder. Such accounts and records* shall be available at any reasonable time for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary." Pursuant to this provision, the Food and Nutrition Service has issued part 225 of title 7 of the Code of Federal Regulations to implement the Summer Food Service Program.

*Note: Previously, this information collection contained reporting and recordkeeping requirements related to information collected on Forms: FNS–19–1, 19–2, 80, 81, 81–1, 189, and 688. These forms are being transferred to a separate information collection, titled "Regional Office Administered Program Forms for the Summer Food Service Program."

Respondents: State agencies, sponsors, camps and other sites, and households.

Estimated Number of Respondents: 52 State agencies, 3589 sponsors, 3187 camps and other sites, and 127,757 households. Total: *134,585.*

Reporting:
Total Annual Responses: 425,750;
Total Annual Burden: 226,704;
Average Time per Response: .81 hour.

Recordkeeping:
Total Annual Responses: 277,723;
Total Annual Burden: 22,809;
Average Time per Response: .08 hour.

Estimated Total Annual Burden:
Reporting burden: 226,704;
Recordkeeping burden: 22,809;
Total annual burden hours: 249,513.

Dated: April 5, 2004.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 04–8211 Filed 4–9–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice—Availability of appealable decisions; legal notice for availability for comment of decisions that may be appealable.

SUMMARY: Responsible Officials in the Rocky Mountain Region will publish notices of availability for comment and notices of decisions that may be subject to administrative appeal under 36 CFR part 215. These notices will be published in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 215.5, 215.6, and 215.7, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for the purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215

shall begin April 12, 2004, and continue until further notice.

ADDRESSES: Rocky Mountain Region, ATTN: Regional Appeals Manager, PO Box 25127, Lakewood, CO 80225–0127.

FOR FURTHER INFORMATION CONTACT: Diana Menapace, 303–275–5156.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. As provided in 36 CFR 215.15, the time frame for appeal shall be based on the date of publication of a notice for decision in the primary newspaper.

Notice by Regional Forester of Availability for Comment and Decisions: *The Denver Post*, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, South Dakota, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published the day after in the *Rocky Mountain News*, published daily in Denver, Denver County, Colorado. For those Regional Forester decisions affecting a particular unit, the day after notice will also be published in the newspaper specific to that unit.

Arapaho and Roosevelt National Forests, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:
The Denver Post, published daily in Denver, Denver County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:
Canyon Lakes District: *Coloradoan*, published daily in Fort Collins, Larimer County, Colorado.
Pawnee District: *Greeley Tribune*, published daily in Greeley, Weld County, Colorado.
Boulder District: *Daily Camera*, published daily in Boulder, Boulder County, Colorado.
Clear Creek District: *Clear Creek Courant*, published weekly in Idaho Springs, Clear Creek County, Colorado.
Sulphur District: *Sky High News*, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:
Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:
Grand Valley District: *Grand Junction Daily Sentinel*, published daily in Grand Junction, Mesa County, Colorado.
Paonia District: *Delta County Independent*, published weekly in Delta, Delta County, Colorado.
Gunnison Districts: *Gunnison Country Times*, published weekly in Gunnison, Gunnison County, Colorado.
Norwood District: *Telluride Daily Planet*, published daily in Telluride, San Miguel County, Colorado.
Ouray District: *Montrose Daily Press*, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Notice by Forest Supervisor of Availability for Comment and Decisions:
Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:
San Carlos District: *Pueblo Chieftain*, published daily in Pueblo, Pueblo County, Colorado.
Comanche District: *Plainsman Herald*, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *La Junta Tribune Democrat*, published daily in La Junta, Otero County, Colorado, and in the *Ag Journal*, published weekly in La Junta, Otero County, Colorado.
Cimarron District: *Tri-State News*, published weekly in Elkhart, Morton County, Kansas.
South Platte District: *News Press*, published weekly in Castle Rock, Douglas County, Colorado.
Leadville District: *Herald Democrat*, published weekly in Leadville, Lake County, Colorado.
Salida District: *The Mountain Mail*, published daily in Salida, Chaffee County, Colorado.
South Park District: *Fairplay Flume*, published weekly in Fairplay, Park County, Colorado.
Pikes Peak District: *The Gazette*, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:
Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:
Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:
Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

Notice by District Rangers of Availability for Comment and Decisions:
Hahns Peak-Bears Ears District: *Steamboat Pilot*, published weekly in Steamboat Springs, Routt County Colorado.
Yampa District: *Steamboat Pilot*, published weekly in Steamboat Springs, Routt County, Colorado.
Parks District: *Jackson County Star*, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:
Durango Herald, published daily in Durango, La Plata County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:
Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions:
The Glenwood Springs Post Independent, published Monday through Sunday in Glenwood Springs, Garfield County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions:

Aspen District: *Aspen Times*, published weekly in Aspen, Pitkin County, Colorado.
Blanco District: *Rio Blanco Herald Times*, published weekly in Meeker, Rio Blanco County, Colorado.
Dillon District: *Summit County Journal*, published daily in Frisco, Summit County, Colorado.
Eagle District: *Eagle Valley Enterprise*, published weekly in Eagle, Eagle County, Colorado.
Holy Cross District: *Vail Trail*, published weekly in Vail, Eagle County, Colorado.
Rifle District: *Citizen Telegram*, published weekly in Rifle, Garfield County, Colorado.
Sopris District: *Valley Journal*, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Notice by Forest Supervisor of Availability for Comment and Decisions:
The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.
The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.
Notice by District Rangers of Availability for Comment and Decisions:
Bessey District/Charles E. Bessey Tree Nursery: *The North Platte Telegraph*, published daily in North Platte, Lincoln County, Nebraska.
Pine Ridge District: *The Chadron Record*, published weekly in Chadron, Dawes County, Nebraska.
Samuel R. McKelvie National Forest: *The Valentine Midland News*, published weekly in Valentine, Cherry County, Nebraska.
Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal*, published daily in Rapid City, Pennington County, South Dakota.
Fort Pierre National Grassland: *The Capital Journal*, published Monday thru Friday in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and Eastern Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:
The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.
Notice by District Rangers of Availability for Comment and Decisions:
The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:
Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.
Notice by District Rangers of Availability for Comment and Decisions:
Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Medicine Bow National Forests and Thunder Basin National Grassland, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:
Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.
Notice by District Rangers of Availability for Comment and Decisions:
Laramie District: *Laramie Daily Boomerang*, published daily in Laramie, Albany County, Wyoming.
Douglas District: *Casper Star-Tribune*, published daily in Casper, Natrona County, Wyoming.
Brush Creek—Hayden District: *Rawlins Daily Times*, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions:
Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.
Notice by District Rangers of Availability for Comment and Decisions:
Clarks Fork District: *Powell Tribune*, published twice weekly in Powell, Park County, Wyoming.
Wapiti and Greybull Districts: *Cody Enterprise*, published twice weekly in Cody, Park County, Wyoming.
Wind River District: *The Dubois Frontier*, published weekly in Dubois, Fremont County, Wyoming.
Washakie District: *Lander Journal*, published weekly in Lander, Fremont County, Wyoming.

Dated: March 29, 2004.

Richard C. Stem,

Deputy Regional Forester, Resources, Rocky Mountain Region.

[FR Doc. 04–8143 Filed 4–9–04; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICVULTURE

Forest Service

Big Butte Springs Timber Sales, Rogue River-Siskiyou National Forest, Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The purpose of the Environmental Impact Statement (EIS) is to analyze and disclose the environmental impacts of a site-specific proposal to implement vegetation density management treatments, plant trees, construct, reconstruct, and decommission roads, implement connected wildlife project, and conduct prescribed burns. The activities are proposed in the Big Butte Springs Watershed located on National Forest System Lands administered by the Rogue River-Siskiyou National Forest, Butte Falls Ranger District, Jackson County, Oregon. The proposed action will tier to and be designed under the Final Environmental Impact Statement for the Rogue River National Forest Land and Resource Management Plan (1990), as amended by the Record of Decision for the Northwest Forest Plan (1994), which provides guidance for land management activities. The Forest Service will give notice of the full environmental analysis and decision making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Issues and comments concerning the scope, implementation, and analysis of the Proposed Action must be received by May 15, 2004. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for review by July 2004. The comment period for the Draft EIS will be 45 days from the date that the EPA publishes the notice of availability in the **Federal Register**. The Final EIS is scheduled for completion by November 2004.

ADDRESSES: Submit written comments regarding the Proposed Action to Joel King, District Ranger, Prospect Ranger District, 47201 Hwy 62, Prospect, Oregon 97536.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Proposed Action and EIS to Don Boucher, Interdisciplinary Team Leader, Prospect Ranger District, 47201 Highway 62, Prospect, Oregon 97536, phone: (541) 560–3400, fax: (541) 560–3444, e-mail: *comments_pacificnorthwest_rogueriver_buttefalls_prospect@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Big Butte Timber Sales project will take place within the upper portion of the Big Butte Springs Watershed. This sub-watershed is also referred to as the Medford Watershed because it supplies domestic water to the city of Medford, Oregon and surrounding communities. Only National Forest System Lands would be treated. The legal description of the area being considered is: T 35 S, R 3 E, sections 13, 22–36; T 35 S, R 4 E, sections 7–34; T 36 S, R 3 E, sections 1–17, 21–28, 35 & 36; T 36 S, R 4 E, sections 3–8, 16–21, & 27–33; Willamette Meridian, Jackson County, Oregon.

Proposed Action

The Forest Service is proposing to implement activities that include, in part, multiple timber sales involving approximately 8,800 acres of harvest units. Silvicultural prescriptions include: density management of overstocked stands of trees in existing plantations (approximately 4,300 acres); small group selection or even-aged management of existing shelterwood stands of trees (approximately 1,900 acres); individual tree removal to treat insect and/or disease infected trees (approximately 2,100 acres); and density management of small diameter (6 to 9 inches) trees for forest health and stand development (approximately 500 acres). Other projects include road decommissioning (approximately 13 miles), prescribed fire for wildlife habitat improvement and wildlife improvement projects. Minor amounts of new road construction or reconstruction may be necessary to access harvest units. These activities are proposed on Matrix lands associated with the Northwest Forest Plan. Incidental treatments, not including timber harvest, are proposed within Riparian Reserves. The Big Butte Springs Watershed is not a Tier 1 Key Watershed. No activities are planned within any inventoried roadless areas.

Purpose and Need

The purpose and need for the proposed action is to plan timber sales and associated road and vegetation management activities to implement management direction from the Rogue River National Forest Land and Resource Management Plan and the Northwest Forest Plan and to manage for ecosystem objectives. Specific needs of the proposed actions are to: (1) Improve forest health by managing high risk insect and disease areas to encourage more resilient forest vegetation conditions; (2) manage stand densities, species composition, and stand structure in overstocked sapling, pole, and mature stands; (3) manage, maintain, or restore current soil and water quality conditions degraded as a result of past management activities within the Big Butte Springs Municipal Watershed; (4) manage, maintain, and/or restore current big game winter range conditions; (5) manage, maintain, and/or restore snag and coarse down wood material conditions in areas that are deficient; and (6) provide a sustainable yield of commercial timber and other commodities, in concert with land management allocation and direction.

The Forest Service will also consider issues with the proposed action, and develop additional alternatives to the proposed action that respond to significant issues.

Public participation will be important during the analysis. Reviewers may refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1501.7. The Agency will be seeking written issues with the proposed action from Federal, State, and local agencies, any affected Indian tribes, and other individuals who may be interested in or affected by the proposed action. This input will be used to develop additional alternatives.

Public Participation in Subsequent Environmental Review

This notice of intent initiates the scoping process under NEPA, which will guide the development of the draft EIS.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, whose who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the requester for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give Reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a Draft EIS must structure their participation in the environmental review process of the proposal so that it is specific, meaningful, and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Power Corp.* v. *NRDC, 435 U.S. 519.533 (1978).* Also, environmental objections that cold be raised at the Draft EIS stage, but that are not raised until after the completion of the Final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments to the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the inadequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45 day comment period ends on the Draft EIS, comments will be considered and analyzed by the Agency in preparing the Final EIS. In the Final EIS, the Forest Service is required to respond to the comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and

policies considered in making the decision regarding the proposal.

The Forest Service Responsible Official is Scott D. Conroy, Rogue River-Siskiyou National Forest Supervisor. The Responsible Official will consider the Final EIS, applicable laws, regulations, policies, and analysis files in making a decision. The Responsible Official will document the decision and rationale in the Record of Decision. The decision will be subject to appeal by the general public under regulation 36 CFR part 215.

Dated: April 5, 2004.

V. Grilley,

Deputy Forest Supervisor.

[FR Doc. 04–8195 Filed 4–9–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa, Kansas, Missouri, Nebraska, and Oklahoma State Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa, Kansas, Missouri, Nebraska, and Oklahoma Advisory Committees will convene at 1:30 p.m. (c.s.t.) and recess at 4:45 p.m. on Wednesday, May 26, 2004, and re-convene at 9 a.m. and adjourn at 4 p.m. on Thursday, May 27, 2004, at the Four Points by Sheraton, One East 45th Street, Kansas City, MO 64111. The purpose of the meeting is to discuss strategic planning for FY 2004–05 and conduct the "Midwest Civil Rights Listening Tour" briefing session.

Persons desiring additional information, or planning a presentation to the Committees should contact Farella Robinson, Civil Rights Analyst of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 29, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–8197 Filed 4–9–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Notice of Postponement of Preliminary Antidumping Duty Determination

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

ACTION: Notice of postponement of preliminary antidumping duty determination in an antidumping investigation.

SUMMARY: The Department of Commerce is postponing the preliminary determination in the antidumping investigation of hand trucks and certain parts thereof from the People's Republic of China from April 21, 2004 until no later than May 17, 2004. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534, or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Sections 733(b)(1)(A) and 735(a)(1) of the Tariff Act of 1930, as amended ("the Act"), require the Department of Commerce ("Department") to issue the preliminary determination in an antidumping investigation within 140 days after the date on which the Department initiates an investigation, and a final determination within 75 days after the date of its preliminary determination. However, if it is not practicable to complete the investigation within the time period, sections 733(c)(1) and 735(a)(2) of the Act allow the Department to extend these deadlines to a maximum of 190 days and 135 days, respectively.

Background

On December 9, 2003, the Department published in the **Federal Register** the notice of initiation of the antidumping investigation on hand trucks and certain parts thereof from the People's Republic of China ("PRC"). (*See Notice of Initiation of Antidumping Duty Investigation: Hand Trucks and Certain Parts Thereof From the People's Republic of China*, 68 FR 68591). The preliminary determination is currently due no later than April 21, 2004.

Extension of Time Limits for Preliminary Determination

Under section 733(c)(1)(B) of the Act, the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if the Department concludes that the parties concerned are cooperating and determines that: (i) The case is extraordinarily complicated by reason of (I) the number and complexity of the transactions to be investigated or adjustments to be considered, (II) the novelty of the issues presented, or (III) the number of firms whose activities must be investigated, and (ii) additional time is necessary to make the preliminary determination.

We have concluded that the statutory criteria for postponing the preliminary determination have been met. Specifically, the parties concerned are cooperating in this investigation. Furthermore, additional time is necessary to complete the preliminary determination due to the large variety of factor of production inputs and the need to develop surrogate value information for these inputs. Also, additional time is needed to address novel issues that have been raised in this investigation.

Pursuant to section 733(c)(1)(B) of the Act, we have determined that this investigation is "extraordinarily complicated" and additional time is necessary. We are, therefore, postponing the preliminary determination by 26 days to May 17, 2004.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: April 6, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–8244 Filed 4–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review

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

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

SUMMARY: On October 7, 2003, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 2001–2002 administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from the Republic of Korea (Korea). This review covers a collapsed entity that consists of Changwon Specialty Steel Co., Ltd. (Changwon), Dongbang Special Steel Co., Ltd. (Dongbang), and Pohang Iron and Steel Co., Ltd. (POSCO) (collectively the respondent). The period of review (POR) is September 1, 2001, through August 31, 2002.

We provided interested parties with an opportunity to comment on the preliminary results of review. After analyzing the comments received, we made changes to the preliminary margin calculations. Therefore, the final weighted-average dumping margin for the companies under review differs from the margin published in the preliminary results of review. The final weighted-average dumping margin is listed below in the section entitled "Final Results of Review.

EFFECTIVE DATE: April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan or Howard Smith, Office of AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2003, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 2001–2002 administrative review of the antidumping duty order on SSWR from Korea. *See Stainless Steel Wire Rod From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 57879 (Preliminary Results). On November 7, 2003, and November 14, 2003, respectively, the respondent and the petitioners, Carpenter Technology Corp. and Empire Specialty Steel, submitted case and rebuttal briefs. No party requested a hearing.

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 Order

For purposes of the order, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the order. SF20T and K–M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T	
Carbon	0.05 max.
Manganese	2.00 max.
Phosphorous	0.05 max.
Sulfur	0.15 max.
Silicon	1.00 max.
Chromium	19.00/21.00.
Molybdenum	1.50/2.50.
Lead-added	(0.10/0.30).
Tellurium-added	(0.03 min).

K–M35FL	
Carbon	0.015 max.
Silicon	0.70/1.00.
Manganese	0.40 max.
Phosphorous	0.04 max.
Sulfur	0.03 max.
Nickel	0.30 max.
Chromium	12.50/14.00.
Lead	0.10/0.30.
Aluminum	0.20/0.35.

The products subject to the order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Duty Absorption

In the *Preliminary Results*, the Department found that the collapsed entity POSCO/Changwon/Dongbang absorbed antidumping duties on all U.S. sales made through its affiliated importer. No parties commented on this preliminary decision. For the final results of review, we continue to find that POSCO/Changwon/Dongbang absorbed antidumping duties.

Analysis of Comments Received

Section 201 Duties

As noted in the *Preliminary Results*, because the Department has not previously addressed the appropriateness of deducting section 201 duties from export price (EP) and constructed export price (CEP), on September 9, 2003, the Department published a request for public comments on this issue. *See Notice of Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties*, 68 FR 53104 (Sep. 9, 2003). In response to this request, the Department received comments from numerous parties. In addition, the petitioners and respondent submitted comments on the record of the instant review regarding the appropriateness of deducting section 201 duties from EP and CEP.

The petitioners argue that the statute requires deduction from U.S. price of increased customs duties as a result of the President's section 201 determination. The petitioners maintain that section 772(c) of the Act instructs that EP and CEP should be reduced by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and *United States import duties*, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States * * * (772(c)(2)(A)) (19 U.S.C. 1677a(c)(2)(A))" (emphasis added). The petitioners contend that because this provision requires the Department to deduct "any" United States import duties that are incident to the transactions, and does not explicitly or implicitly exempt section 201 duties, the Department must deduct section 201 duties from EP and CEP in the margin calculation. The petitioners state that the Department enjoys no *Chevron* deference in this regard as section 201 duties are plainly "United States import duties." *See Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984).

Moreover, the petitioners maintain that even though the Department has never directly addressed the issue of

how to treat section 201 duties in any final determination, there is precedent supporting the deduction of section 201 duties from U.S. price in the margin calculation. The petitioners note that in *Softwood Lumber From Canada,* the Department deducted from U.S. price the quota-based fee on lumber that was imposed under the Softwood Lumber Agreement (SLA). *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Softwood Lumber From Canada,* 66 FR 56062, 56067 (Nov. 6, 2001) (*Softwood Lumber From Canada*). According to the petitioners, this quota-based fee operates much the same as the 201 duties operate in this case. Further, the petitioners claim that section 201 duties are as much United States import tariffs as the "special tariff" that the Department deducted from the U.S. price in *Fuel Ethanol from Brazil. See Notice of Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil,* 51 FR 5572 (Feb. 14, 1986) (*Fuel Ethanol from Brazil*) (in which the Department deducted from U.S. price additional duties over the existing *ad valorem* tariff for a particular type of ethyl alcohol).

Additionally, the petitioners state that past and current U.S. administrations have considered section 201 duties to simply be an increase in the normally applicable *ad valorem* customs duties. Thus, according to the petitioners, failing to deduct section 201 duties from U.S. price will directly contradict the characterization of these duties by several Administrations that have imposed the duties.

Furthermore, the petitioners note that the 2003 Harmonized Tariff Schedule (HTS) treats section 201 duties as a temporary modification to the regular customs duties. Consistent with the description of section 201 duties in the *Presidential Proclamation No. 7529,* 67 FR 10553 (Mar. 5, 2002) (*Presidential Proclamation*) and the head notes to the chapter, HTS Chapter 99 first identifies the existing (*i.e.*, normal) tariff rate for each product covered by the safeguard action and then simply notes an increase of 15 percent (*e.g.*, the duty stated in HTS Chapter 72 plus 15 percent). Thus, the petitioners claim that for U.S. Customs and Border Protection's (CBP) purposes, section 201 duties, while temporary in duration, are like any other applicable duty assessed upon importation, such as the Most Favored Nation (MFN) [1] duty rate or harbor maintenance fees. Also, the petitioners note that CBP regulations are instructive on this point and they clearly spell out the difference between regular and "special duties." Specifically, the petitioners point out that 19 CFR 159, subpart D, includes a category entitled "special duties," which include antidumping and countervailing duties while it does not include section 201 duties. Therefore, the petitioners conclude that for purposes of customs law, section 201 duties are regular duties. The petitioners also note that there is nothing in the antidumping statute or the Department's regulations that indicate that duties under section 201 should be treated any differently than *ad valorem* duties with respect to the Department's margin calculations.

In addition, the petitioners contend that there is no legal support for considering section 201 duties to be like antidumping (AD) duties, which are not deducted from U.S. price in margin calculations. As explained in *Federal Mogul* v. *United States,* 813 F. Supp. 856 (Ct. Int'l Trade 1993), there is a clear distinction between import duties that can be accurately determined and which are deducted from U.S. price in determining the dumping margin, and AD duties deposits which are estimated amounts that may not bear any relationship to the actual duties owed. Further, the petitioners assert that by making this distinction between AD duties and other import duties, the Department intended for all other import duties, where deposits of the actual normal import duties owed can be accurately determined, to be deducted from U.S. price. The petitioners argue that in both *Hoogovens Staal* v. *United States,* 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998) and *Bethlehem Steel* v. *United States,* 27 F. Supp. 2d 201, 208 (Ct. Int'l Trade 1998), the Court justified the agency's policy of not deducting AD duties on the basis that such duties were unique because they reflected estimates of the level of price discrimination.

Furthermore, the petitioners assert that the deduction of section 201 duties from U.S. price does not constitute double counting, which is another reason that has been given for the Department's policy against deducting from U.S. price. Specifically, petitioners argue that section 201 duties are imposed to offset injury resulting from import competition while AD duties are imposed to offset the amount of price discrimination between relevant markets.

Lastly, the petitioners argue that the deduction of section 201 duties from U.S. price is required to maintain the effectiveness of both the section 201 relief and the antidumping duty order. If foreign producers and their affiliated importers absorb section 201 duties by effectively lowering their U.S. prices and these duties have not been subtracted from U.S. price, the petitioners contend that the amount of dumping will be understated and the domestic industry will not benefit by the section 201 relief. Alternatively, the petitioners argue that the failure to deduct section 201 duties from U.S. price would result in an unfair comparison of U.S. price and normal value because the U.S. price would contain a duty that is not part of normal value. Therefore, the petitioners argue, the failure to subtract section 201 duties from U.S. price in margin calculations will either negate the section 201 relief or replace the relief granted under the antidumping duty provisions with the section 201 relief. The petitioners contend that there is nothing in the *Presidential Proclamation* that authorizes such a result. For all of the above reasons, the petitioners contend that the Department should deduct section 201 duties from U.S. price in calculating dumping margins.

The respondent maintains that United States import duties do not include section 201 duties.[2] Although the respondent acknowledges that neither the statute, the Department's regulations, nor the legislative history defines the term "United States import duties," it maintains that this term is clearly not all-inclusive, given the Department's longstanding policy of not deducting AD duties (absent a determination of duty reimbursement) and countervailing (CV) duties from U.S. price. According to the respondent, the Department's treatment of AD duties and CV duties as duties that are separate from other customs duties has effectively created two categories of import duties: Normal customs duties and special customs duties. The respondent notes that the Department's policy of not subtracting special customs duties from U.S. price has been

[1] As of 1998, Most Favored-Nation (MFN) status was changed to Normal Trade Relations (NTR) status.

[2] Although the respondent commented on the issue of whether section 201 duties should be subtracted from U.S. price in calculating dumping margins, it noted that this issue has been recently commented on by interested parties. Thus, the respondent urges the Department to wait until it has reviewed these comments and made a decision on the issue before reaching a conclusion in the present case. The petitioners point out that the issue in question is squarely before the Department in this case and the Department is obligated to reach its decision in this matter on the merits of the issue in this case. However, the petitioners state that the Department has had sufficient time to analyze the interested party comments it has received on this issue prior to the final results in this case and it should do so.

upheld by the CIT because such deductions "would reduce the U.S. price—and increase the margin—artificially" (*Hoogovens Staal* v. *United States*, 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998)); *see also AK Steel Corp.* v. *United States*, 988 F. Supp. 594 (Ct. Int'l Trade 1998) (making an additional deduction from USP for the same AD duties that correct this price discrimination would result in double counting * * * ").

Further, the respondent argues that Section 201 duties are not normal customs duties, but are "special" customs duties because: (1) Like AD and CV duties, they are specifically imposed to protect domestic industries against certain imports in accordance with the World Trade Organization (WTO) agreements; (2) they are not merely an extra cost or expense to the importer; (3) the mere inclusion of section 201 duties in the HTS does not render them "normal" customs duties; (4) the placement of Section 201 duties in Chapter 99 of the HTS demonstrates that they are special customs duties—Congress establishes normal customs duties which are published in Chapters 1 through 98 of the HTS, and delegates its power to the executive branch to impose special customs duties, such as antidumping, countervailing and section 201 duties; and (5) CBP does not consider section 201 duties to be normal import duties—they refer to them as a "special duty for targeted steel products," and "new additional duties" that are "cumulative on top of normal duties, antidumping/countervailing duties * * *"[3]

Additionally, the respondent argues that the decisions in *Softwood Lumber from Canada* and *Fuel Ethanol from Brazil* do not support a conclusion that section 201 duties should be deducted from U.S. price. The respondent claims that in *Softwood Lumber from Canada*, the quota-based fee that the Department deducted from U.S. price was an export tax that Canadian exporters had agreed to pay if their exports exceeded certain quantities pursuant to the SLA—not a U.S. import duty imposed by the U.S. government. The respondent further claims that the rationale the Department applied in *Fuel Ethanol from Brazil* does not apply to section 201 duties because (1) the tariff in *Fuel Ethanol from Brazil* was added to the HTS by Congress whereas the section 201 duties are imposed by the U.S. President, and (2) section 201 duties are imposed to counter injury to the domestic industry due to increased imports whereas the tariff in *Fuel Ethanol from Brazil* was imposed to offset a federal excise tax subsidy that domestic producers received for fuel-grade ethanol.

Moreover, the respondent argues that the deduction of section 201 duties from U.S. price will result in an illegal double safeguard remedy for the domestic industry. According to the respondent, the deduction of section 201 duties will increase the amount of AD duties owed by the amount of the section 201 duties paid, and will inappropriately amplify the remedial impact on the domestic industry. The respondent claims that courts have been unwilling to support a deduction in an antidumping calculation that would double the effect of import relief or artificially inflate the calculated margins. The respondent further claims, that the law does not intend for the Department to create dumping margins artificially through the deduction of other special protective tariffs and it is contrary to good trade policy for the Department to do so.

In addition, the respondent contends that it is not necessary to deduct section 201 duties to achieve a fair comparison with normal value. The respondent claims that the petitioners' argument assumes that an increase in one cost element necessarily translates into a dollar-for-dollar change in the selling price. However, the respondent maintains that this is not true and notes that an additional cost, such as a section 201 duty, may simply result in a lower profit margin on the sale. Thus, the respondent points out, the Department does not automatically deduct all business expenses from the gross unit price.

Finally, the respondent claims that deduction of section 201 duties from U.S. price further increases the impact of section 754 of the Act (19 U.S.C. 1671), the "Byrd Amendment." Specifically, the respondent contends that if the Department subtracts section 201 duties from U.S. price it will increase the amount of AD duties owed, and distributed under the "Byrd Amendment." The respondent states that "the distribution of duties collected pursuant to section 201 is inconsistent with both the statute and the United States WTO obligations." Also, the respondent claims that like the "Byrd Amendment," the deduction of section 201 duties from U.S. price "is a non-permissible specific action against dumping" contrary to Article 18.1 of the WTO's Antidumping Agreement, because it increases the remedy to U.S. industries through higher dumping margins and provides foreign producers and exporters with a further incentive to reduce their exports to the United States.

The Department has addressed whether it is appropriate to deduct section 201 duties from EP and CEP in Appendix I to this notice. *See* Appendix I.

Other Comments

With the exception of the issue regarding section 201 duties addressed above, all issues raised in the case and rebuttal briefs by parties to this proceeding are listed in the Appendix to this notice and addressed in the "Issues and Decision Memorandum" (Decision Memorandum), dated April 5, 2004, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this administrative review and the corresponding recommendations in the public Decision Memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

After analyzing the comments received, we made changes to the preliminary margin calculations. Also, we have corrected certain ministerial errors in our preliminary margin calculations. A summary of these adjustments follows:

1. We changed the matching hierarchy for certain steel grades. *See* Comment 1 of the Decision Memorandum.

2. We excluded from Dongbang's reported home market indirect selling expenses certain expenses related to third-country operations. *See* Comment 6 of the Decision Memorandum.

3. We excluded Changwon's loss on inventory valuation from the general and administrative (G&A) expenses used to calculate the G&A expense ratio. *See* Comment 7 of the Decision Memorandum.

4. We excluded Dongbang's valuation loss on using the equity method from the G&A expenses used to calculate the G&A expense ratio. *See* Comment 8 of the Decision Memorandum.

5. For Dongbang, we calculated home market imputed credit expense on both its home market sales prices and the freight revenue earned on the sales. *See* Comment 9 of the Decision Memorandum.

6. We corrected a ministerial error involving home market direct selling

[3] *See* U.S. Bureau of Customs and Border Protection, "Steel 201 Questions and Answers" (Mar.29, 2002), available at *http://www.customs.ustreas.gov.*

expenses. *See* Comment 10 of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period September 1, 2001, through August 31, 2002:

Manufacturer/Exporter	Margin (percent)
POSCO/Changwon/Dongbang ...	1.67

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), the Department calculated an importer (or where necessary, customer)–specific assessment rate for merchandise subject to this review. For Changwon's sales, since Changwon reported the entered values and importer for its sales, we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. For Dongbang's reported sales, since Dongbang did not report the entered value or importers for its sales, we have calculated customer-specific per-unit assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each customer and dividing this amount by the total quantity of those sales. To determine whether the per-unit duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent *ad valorem*), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer-specific *ad valorem* ratios based on the export prices. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review whenever any customer-specific or importer-specific assessment rate calculated in the final results of this review is above *de minimis*. The Department will issue appraisement instructions directly to the CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSWR from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be rate of 5.77 percent, which is the "all others" rate established in the LTFV investigation (*see Stainless Steel Wire Rod From Korea: Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision*, 66 FR 41550 (August 8, 2001)). These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also 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. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) (1) of the Act.

Dated: April 5, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I—Proposed Treatment of Section 201 Duties as a Cost

Background

Section 772(c)(2)(A) of the Tariff Act of 1930, as amended, requires that in calculating dumping margins, the Department must deduct from prices in the United States any "United States import duties" or other selling expenses included in those prices.[4] The issue has been raised whether this provision requires the Department to deduct duties imposed under Section 201 of the Trade Act of 1974 ("201 duties") from U.S. prices in calculating dumping margins.[5]

The only time the Department has addressed the issue is in *Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*.[6] In that proceeding, Commerce declined to adjust U.S. prices by the amount of 201 duties, finding the impact of such an adjustment to be insignificant.[7] However, Commerce stated that the question of whether to treat 201 duties as a cost merited public notice and comment. Accordingly, the Department solicited comments on the issue.[8]

The Department received extensive comments and has considered them at great length. On the basis of that consideration, it has determined not to deduct 201 duties from U.S. prices in calculating dumping margins. The reasons for this decision are set forth below.

Comments in Support of Deducting Section 201 Duties

Many commenters note that section 772(c) of the Act requires that initially reported U.S. prices be reduced by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States* * *". They contend that the term "United States import duties" includes 201 duties, so that the Department must deduct 201 duties from U.S. prices. The commenters state that the Department enjoys no *Chevron*[9] deference in this regard, as 201

[4] 19 U.S.C. 1677a(c)(2)(A). This statutory deduction existed prior to the passage of the Uruguay Round Agreements Act (URAA), and the URAA did not modify it in any respect.

[5] *Antidumping Proceedings: Treotment of Section 201 Duties ond Countervailing Duties*, 68 FR 53104 (Sept. 9, 2003).

[6] *See Recommendation Memorondum from Gary Tovermon to Bernord Correou, Carbon ond Certain Alloy Steel Wire Rod from Trinidod ond Tobogo, Finol Determination of Sales at Less Than Foir Volue*, 67 FR 55788 (Aug. 30, 2002).

[7] Id.

[8] *Antidumping Proceedings: Treotment of Section 201 Duties and Countervoiling Duties*, 68 FR 53,104 (Sept. 9, 2003).

[9] *See Chevron U.S.A. Inc.* v. *Naturol Resources Defense Council*, 467 U.S. 837 (1984).

duties are plainly "United States import duties."

Additionally, several commenters state that past and current Administrations have considered 201 duties simply to be an increase in the normally applicable *ad valorem* customs duties. Thus, according to the commenters, failing to deduct 201 duties from U.S. price will directly contradict the characterization of these duties by several Administrations that have imposed the duties.

Several commenters note that the 2003 Harmonized Tariff Schedule (HTS) treats 201 duties as a temporary modification to the regular customs duties. Section 201 identifies as a type of relief that the President can provide under that section "an increase in * * * any duty on the imported article." The *Presidential Proclamation* imposing the 201 duties on certain steel imports directs that the duties be memorialized in the Harmonized Tariff Schedules of the United States ("HTSUS"), just like any other U.S. import duties,[10] and that the HTSUS is the accepted repository of U.S. import duties. Consistent with the description of 201 duties in the *Presidential Proclamation* and the head notes to the chapter, HTS Chapter 99 first identifies the existing (*i.e.*, normal) tariff rate for each product covered by the safeguard action and then simply notes an additional increase in that duty (*e.g.*, the duty stated in HTS Chapter 72 plus 15 percent). Thus, the commenters claim that for U.S. Customs and Border Protection's (CBP) purposes, 201 duties, while temporary in duration, are like any other applicable duty assessed upon importation, such as the Most Favored Nation [11] (MFN) duty rate or harbor maintenance fees.

The commenters note that CBP regulations are instructive on this point and they assert that the regulations clearly spell out the difference between regular and "special duties."[12] Therefore, the commenters conclude that for purposes of customs law, 201 duties are regular duties. The commenters also note that there is nothing in the antidumping statute or the Department's regulations that indicates that 201 duties would be treated any differently than *ad valorem* duties with respect to the Department's margin calculations.

Numerous commenters contend that there is no legal support for considering 201 duties to be like antidumping duties, which are not deducted from U.S. price in margin calculations. As explained in *Federal Mogul* v. *United States*, 813 F. Supp. 856 (Ct. Int'l Trade 1993), there is a clear distinction between import duties that can be accurately determined and which are deducted from U.S. price in determining the dumping margin, and antidumping duty deposits, which are estimated amounts that may not bear any relationship to the actual duties owed. The commenters assert that, by making this distinction between antidumping duty deposits and other import duties, the Department intended that all import duties, the amount of which can be determined upon importation, to be deducted from U.S. prices.[13]

Moreover, these commenters maintain that even though the Department has never directly addressed the issue of how to treat 201 duties in any final determination, there is precedent supporting the deduction of 201 duties from U.S. price in the margin calculation. The commenters note that in *Certain Softwood Lumber Products From Canada (Softwood Lumber From Canada)*, the Department deducted from U.S. price the quota-based fee on lumber that resulted from the Softwood Lumber Agreement.[14] According to the commenters, this quota-based fee operates much the same as the 201 duties operate in this case. Further, the commenters claim that 201 duties are as much United States import tariffs as the "special tariff" that the Department deducted from the U.S. price in *Fuel Ethanol from Brazil*, in which the Department deducted from U.S. price additional duties over the existing *ad valorem* tariff for a particular type of ethyl alcohol.[15]

Some commenters assert that deducting 201 duties from U.S. price would not constitute double counting, which is another reason that has been given for the Department's policy against deducting antidumping duties from U.S. price. These commenters argue that 201 duties are imposed to offset injury resulting from import competition while antidumping duties are imposed to offset the amount of price discrimination between relevant markets.

Several commentators assert current U.S. practice is inconsistent with that of our trading partners. In particular, these commenters argue that the European Union and Canada deduct antidumping (AD), countervailing (CVD), and safeguard duties from the export price in calculating dumping margins, and that the United States should conform its practice to those of our trading partners.

Lastly, several commenters argue that the deduction of 201 duties from U.S. prices is required in order to maintain the effectiveness of both the section 201 relief and the antidumping duty order. If foreign producers and their affiliated importers absorb 201 duties by effectively lowering their U.S. prices and these duties have not been subtracted from U.S. price, the commenters contend that the amount of dumping will be understated and the domestic industry will not benefit from the Section 201 relief. Alternatively, the failure to deduct 201 duties from U.S. price would result in an unfair comparison of U.S. price and normal value because the U.S. price would contain a duty that is not part of normal value. Therefore, the commenters argue, failing to subtract 201 duties from U.S. price in margin calculations will either negate the section 201 relief or replace the relief granted under the antidumping duty provisions with the section 201 relief.

Comments in Opposition To Deducting Section 201 Duties

Many commenters maintain that the term "United States import duties" does not include 201 duties. While acknowledging that neither the statute, the Department's regulations, nor the legislative history defines the term, they maintain that it is not all-inclusive, given the Department's longstanding policy of not deducting antidumping duties (absent a determination of duty reimbursement) and countervailing duties from U.S. price. According to the commenters, the Department's treatment of antidumping duties and countervailing duties as duties that are separate from other customs duties has effectively created two categories of import duties: normal customs duties and special customs duties.

Numerous commenters note that the Department's policy of not subtracting special customs duties from U.S. price has been upheld by the United States Court of International Trade (CIT) because such deductions "would reduce the U.S. price—and increase the margin—artificially."[16] These commenters argue that 201 duties are not normal customs duties, but are "special" customs duties because: (1) Like antidumping and countervailing duties, they are specifically imposed to protect domestic industries against certain imports in accordance with the World Trade Organization (WTO) agreements; (2) they are not merely an extra cost or expense to the importer; (3) the mere inclusion of 201 duties in the HTS does not render them "normal" customs duties; (4) the placement of 201 duties in Chapter 99 of the HTS demonstrates that they are special customs duties—Congress establishes normal customs duties which are published in Chapters 1 through 98 of the HTS, and delegates its power to the executive branch to impose special customs duties, such as antidumping, countervailing and 201 duties; and (5) CBP does not consider the 201 duties on steel to be normal import duties—it refers to them as a "special duty for targeted steel products," and "new additional duties" that are "cumulative on

[10] *President's Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products*, 67 FR 10,553 (March 7, 2002).

[11] As of 1998, Most Favored-Nation (MFN) status was changed to Normal Trade Relations (NTR) status.

[12] Specifically, the commenters point out that 19 CFR 159, subpart D, includes a category entitled "special duties," which include antidumping and countervailing duties, but it does not include 201 duties.

[13] The commenters argue that in both *Hoogavens Staal* v. *United States*, 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998) and *Bethlehem Steel* v. *United States*, 27 F. Supp. 2d 201, 208 (Ct. Int'l Trade 1998), the Court justified the agency's policy of not deducting antidumping duties on the basis that such duties were unique because they reflected estimates of the level of price discrimination.

[14] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Softwood Lumber From Canada*, 66 FR 56062, 56067 (Nov. 6, 2001).

[15] *See Notice of Final Determination of Sales at Less Than Fair Value: Fuel Ethanol from Brazil*, 51 FR 5,572 (Feb.14, 1986) ("*Fuel Ethanol from Brazil*").

[16] *See Haagavens Staal* v. *United States*, 4 F. Supp. 2d 1220; *see also AK Steel Corp.* v. *United States*, 988 F. Supp. 594 (Ct. Int'l Trade 1998) ("making an additional deduction from U.S. price for the same antidumping duties that correct this price discrimination would result in double counting * * *")

top of normal duties, antidumping/countervailing duties* * *"[17]

Several commenters argue that the decisions in *Softwood Lumber from Canada and Fuel Ethanol from Brazil* do not support a conclusion that 201 duties should be deducted from U.S. price. They claim that in *Softwood Lumber from Canada*, the quota-based fee that the Department deducted from U.S. price was an export tax that Canadian exporters had agreed to pay if their exports exceeded certain quantities pursuant to the Softwood Lumber Agreement—not U.S. import duties imposed by the U.S. government, and thus the analogies to *Softwood Lumber from Canada* are misplaced. Similarly, commenters note that the rationale the Department applied in *Fuel Ethanol from Brazil* does not apply to 201 duties because: (1) The tariff in *Fuel Ethanol from Brazil* was added to the HTS by Congress whereas the 201 duties are imposed by the President; and (2) 201 duties are imposed to counter injury to the domestic industry due to increased imports whereas the tariff in *Fuel Ethanol from Brazil* was imposed to offset a federal excise tax subsidy that domestic producers received for fuel-grade ethanol.

Many commenters argue that the deduction of 201 duties from U.S. price will result in an illegal double safeguard remedy for the domestic industry. According to these commenters, the deduction of 201 duties will increase the amount of antidumping duties owed by the amount of the 201 duties paid, inappropriately amplifying the remedial impact of the 201 duties on the domestic industry. These commenters claim that courts have been unwilling to support a deduction in an antidumping calculation that would double the effect of import relief or artificially inflate the calculated margins. Moreover, commenters note that the AD law does not intend for the Department to create dumping margins artificially through the deduction of other special protective tariffs and it is contrary to good trade policy for the Department to do so.

Some commenters contend that it is not necessary to deduct 201 duties to achieve a fair comparison with normal value. They claim that the arguments by those in support of treating 201 duties as a cost assume that an increase in one cost element necessarily translates into a dollar-for-dollar change in the selling price. However, the commenters in opposition maintain that this is not true and note that an additional cost, such as a 201 duty, may simply result in a lower profit margin on the sale. The commenters point out that the Department does not automatically deduct all business expenses from the gross unit price.

Finally, several commenters claim that deduction of 201 duties from U.S. price further increases the impact of section 754 of the Act (19 U.S.C. 1675c), the "Byrd Amendment." Specifically, the commenters contend that, if the Department subtracts 201 duties from U.S. price, it will increase the amount of antidumping duties owed and distributed under the "Byrd Amendment," which has been found to be inconsistent with the obligations of the United States under the WTO Agreements.

The Department's Position

For the several reasons explained below, the Department has determined not to deduct 201 duties from U.S. prices under Section 772(c)(2)(A) of the Act in calculating dumping margins, either as "United States import duties" or as selling expenses.[18]

Although the AD law does not define the term "United States import duties," the Senate Report that accompanied the Antidumping Act of 1921 (the "1921 Act") contrasts antidumping duties (which it refers to as "special dumping duties") with normal customs duties (which it refers to as "United States import duties").[19] Moreover, Section 211 of the 1921 Act provides that, for the limited purpose of duty drawback, "the special dumping dut[ies] * * * shall be treated in all respects as regular Customs duties."[20] If "special dumping duties" normally were considered to be just one type of "United States import duty," this special provision would have served no purpose.

That "special dumping duties" were considered to be distinct from normal customs duties is also indicated by the fact that Section 202(a) of the 1921 Act provides that "special dumping duties" may be applied to "duty-free" merchandise.[21] In this context, "duty-free" must mean "free from normal Customs duties." If "duty-free" had meant "free from any import duties," that would have included antidumping duties, so that special dumping duties would have been applied to merchandise exempt from special dumping duties. Plainly, "duty-free" was understood to mean "free from normal Customs duties."

Thus, Congress has long recognized that at least some duties implementing trade remedies—including at least antidumping duties—are special duties that should be distinguished from ordinary customs duties. Accordingly, Commerce consistently has treated AD duties as special duties not subject to the requirement to deduct "United States import duties" (normal customs duties) from U.S. prices in calculating dumping margins.[22] The U.S. Court of International Trade has upheld this position on five occasions.[23] Moreover, Congress specifically endorsed this position in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act when, in explaining the consideration of duty absorption in administrative reviews, it stated that "[t]his new provision of law is not intended to provide for the treatment of antidumping duties as a cost."[24]

Like AD duties, 201 duties are special remedial duties. Section 201 duties represent the amount that the President determines is needed to provide "temporary relief for an industry suffering from serious injury * * *".[25] This is not to say that 201 duties are identical to AD duties. Section 201 duties do not embody dumping margins, so that deducting them from U.S. prices in calculating dumping duties would not involve the circular logic that would be inherent in deducting AD duties. Nevertheless, 201 duties are special remedial measures. Although they are not identical to AD duties, they are more like them in purpose and function than they are like ordinary customs duties. The U.S. International Trade Commission has recognized the extraordinary nature of 201 duties, similarly referring to them as "special duties."[26]

The fact that 201 duties are recorded in the HTSUS does not establish that they are normal customs duties. Unlike normal customs duties, 201 duties are imposed only following a finding of serious injury to the

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[17] *See Steel 201 Questions and Answers*, U.S. Bureau of Customs and Border Protection (Mar. 29, 2002), available at *http://www.customs.ustreas.gov*.

[18] This issue concerns sales of imported goods at prices that normally are considered to cover the applicable import duties. Generally speaking, this means sales of goods on which the seller, rather than the buyer, must pay the import duties. This normally occurs where the sales examined by Commerce are by sellers in the United States who are affiliated with the foreign producer or exporter ("constructed export price" or "CEP" sales). Because these sales normally occur after importation, the seller has already paid any import duties at the time of the sale. In contrast, sales from foreign producers or exporters to unrelated customers in the United States ("export price," or "EP" sales) normally occur before importation. Because the buyer must pay any import duties after these sales are completed, it is generally presumed that the prices do not include any import duties.

[19] *See* S. Rep. No. 67–16, at 4 (1921).

[20] The Antidumping Act of 1921 (the "1921 Act"), 42 Stat. 15 (1921).

[21] The 1921 Act, 42 Stat. 11.

[22] In addition to being different from normal customs duties because they implement a trade remedy, AD duties also embody dumping margins. Thus, to deduct the dumping duty from the U.S. price in calculating the dumping margin essentially would be to deduct the dumping margin itself from the U.S. price in calculating the margin—a circular calculation. The Department explained its reasons for not deducting antidumping duties from U.S. prices in *Certain Cold-Rolled Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 781, 786 (Jan. 7, 1998).

[23] *See, e.g., Hoogovens Staal* v. *United States*, 4 F. Supp. 2d 1213, 1220 (Ct. Int'l Trade 1998) (Commerce need not deduct AD duties from the initial price in the United States as either U.S. import duties or as costs); *Bethlehem Steel* v. *United States*, 27 F. Supp. 2d 208 (Commerce need not deduct AD duties from the initial price in the United States as either U.S. import duties or as costs); *U.S. Steel Group* v. *United States*, 15 F. Supp. 2d 892, 898–900 (Ct. Int'l Trade 1998) (Commerce need not deduct either AD or CVDs from the starting price in the United States in calculating AD duties); *AK Steel Corp.* v. *United States*, 988 F. Supp. 594 (Ct. Int'l Trade 1997) (actual antidumping and countervailing duties need not be deducted from the initial price in the United States); *Federal Mogul Corp.* v. *United States*, 813 F. Supp. 856, 872 (Ct. Int'l Trade 1993) (Commerce need not deduct estimated AD deposits from the initial price in the United States); *PQ Corp.* v. *United States*, 652 F. Supp. 724, 737 (Ct. Int'l Trade 1987) (Commerce need not deduct estimated AD deposits from the initial price in the United States).

[24] Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, Vol. 1, at p. 885 (1994)(herinafter "SAA").

[25] S. Rep. No. 93–1298 at 119 (1974).

[26] *Stainless Steel Plate from Sweden*, TC Pub. No. 573, Inv. No. AA1921–114 (1973), cited in *Avestra AB* v. *United States*, 724 F. Supp. 974 (Ct. Int'l Trade 1989).

industry in question by the International Trade Commission. That 201 duties are contained in the HTSUS proves only that this is a pragmatic way of implementing their collection along with other import duties. In any event, although 201 duties are set out in the HTSUS, they are contained in Chapter 99, which is reserved for special or temporary duties.

The Senate Report to the Trade Act of 1974 recognized not only that 201 duties and AD duties were similar, but the two remedial duties were, in fact, complementary:

> Furthermore, the Commission would be required, whenever * * * it has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act * * * or other remedial provisions of law, to notify promptly the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law. Action under one of those provisions when appropriate is to be preferred over action under this chapter.[27]

Congress again confirmed this point in 1994, in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act:

> In determining whether to provide [Section 201] relief and, if so, in what amount, the President will continue the practice of taking into account relief provided under other provisions of law, such as the antidumping * * * law[] which may alter the amount of relief necessary under section 203.[28]

In other words, the injury to the U.S. industry which is the subject of an inquiry under Section 201 may be remediable (at least to some extent) under the AD law. To some extent, 201 duties are interchangeable with special AD duties. It follows that 201 duties are more appropriately regarded as a type of special remedial duty, rather than ordinary customs duties.

As for the argument that 201 duties must be deducted from U.S. prices because they are included in the term "any costs, charges, or expenses" of bringing the merchandise into the United States, the better argument takes account of the fact that the statute refers to any additional "costs, charges, expenses and United States import duties. * * *" This indicates that import duties are considered to be independent of other costs, charges, and expenses. While 201 duties are a special type of import duty, they are nevertheless a species of import duty, and are thus covered, if at all, by the phrase "United States import duties." Thus, the Department interprets the statute as providing for the subtraction from initial U.S. prices of any "additional costs, charges, or expenses and normal United States import duties * * *", but not other import duties. The correctness of this interpretation may be seen from the fact that interpreting "U.S. import duties" broadly would require the Department to deduct AD duties as U.S. import duties. It is well established that this is not required, and the Department's longstanding practice is not to make such a deduction.

[27] S. Rep. No. 93–1298 at 123 (1974).

[28] SAA at 964.

The argument that 201 duties should be deducted from U.S. prices in calculating dumping margins rests on the premise that the Department must restore the dumping margin that would have been found absent any 201 duty. This premise is in error. Even to the extent that 201 duties may reduce dumping margins, this is not a distortion to the margin that must be eliminated, but a partial elimination of dumping. Section 201 duties are not directed at any type of unfair trade practice that Congress has defined as independent from dumping.[29] Quite the contrary, Congress has stated that the remedies provided by the two statutes complement one another and may, in fact, be substituted for one another. Consequently, to the extent that 201 duties may lower the dumping margin, this is a legitimate remedy for dumping.

Where there is a pre-existing dumping margin, deducting 201 duties from U.S. prices effectively would collect the 201 duties twice—first as 201 duties, and a second time as an increase in that dumping margin. Where there was no pre-existing dumping margin, the deduction of 201 duties from U.S. prices in an AD proceeding could create a margin. Nothing in the legislative history of section 201 or the AD law indicates that Congress intended such results. Moreover, nothing in section 201 indicates that Congress believed that 201 duties must have any particular effect on prices in the United States in order to provide an effective remedy for serious injury. If Congress had intended such a requirement, it presumably would have provided some mechanism for measuring the effect of 201 duties on U.S. prices and adjusting those duties if they did not have the intended effect. Congress provided no such mechanism.

Finally, the SAA language quoted above makes plain that any adjustment for the potential overlap between 201 and AD remedies is to be made by the President in setting the level of the 201 duties. Once the President has struck this balance, it is not Commerce's place to upset that balance by subtracting the 201 duties from U.S. prices in calculating dumping margins, providing relief beyond what the President approved. There is absolutely no indication in the Presidential Proclamation placing 201 duties on certain imports of steel that the President believed that Commerce effectively would increase those duties by taking them into account in calculating subsequent dumping margins.

The suggestion on the part of some commenters that many of our major trading partners deduct all import taxes, including safeguard duties, from reported prices in calculating dumping margins is without foundation. None of these commenters provided the Department with any evidence that any of our trading partners actually has made such an adjustment. For example,European Union law gives the EC Commission discretion to apply both AD duties and safeguard duties against the same products in some instances. This by no means establishes, however, that the EU ever has deducted safeguard duties from EU prices calculating dumping margins. Quite the contrary, the EU regulation gives the Commission the discretion to repeal existing AD measures to avoid excessive remedies where safeguard measures are applied to the same imports.[30] In the one instance of which we are aware in which the EU faced the possibility that AD duties and safeguard duties would be applied to the same imports, the Council adopted a regulation to prevent this result, except to the extent that the AD duty exceeded the safeguard duty.[31] Thus, deducting safeguard duties from EU prices in calculating AD margins, so as to collect both the entire safeguard duty and an AD duty increased by the amount of the safeguard duty would appear to conflict with the EU's actual practice. Similarly, while there is some indication that Canadian law might permit safeguard duties to be taken into account, we have no evidence that Canada has ever deducted safeguard duties from reported prices in Canada in calculating dumping margins. In any event, the fact that a particular methodology may be employed by another country would not be relevant to the question of what is permissible or appropriate under U.S. law.

Any inconsistencies between the treatment of 201 duties by the Department and the CBP in calculating the values to which *ad valorem* duty rates are applied are immaterial. It is well-established that the agencies' respective determinations are governed by different statutory provisions and regulations with distinct purposes.[32] In any event, any such differences occur only with respect to the collection of estimated antidumping duty deposits. Actual antidumping duties (as opposed to deposits of estimated antidumping duties) are the absolute difference between normal value and export price. These duties are aggregated, and then expressed as an amount per unit or a percentage of entered value that CBP applies for collection purposes. When the latter approach is employed, the percentage rate is calibrated so as to collect the correct total of absolute antidumping duties.

The Department's 1986 determination in *Fuel Ethanol from Brazil* is not relevant to the issue of the treatment of 201 duties. In that determination, the Department deducted

[29] AD duties remedy "material injury." 19 U.S.C. 1673. Section 201 is aimed at providing temporary relief from imports to an industry suffering from "serious injury, or the threat thereof, so that the industry will have sufficient time to adjust to the freer international competition." S. Rep. No. 93–1298, at 121 (1974).

[30] *See* EC Reg. No. 452/20032, Official Journal L 69, at 8 (March 13, 2003).

[31] *See* EC Reg. No. 778/2003, Official Journal L 114 at 2 (May 8, 2003).

[32] CBP valuation methodology is governed by Section 1401a of the Trade Agreements Act of 1979. *See Koyo Seiko Co., Ltd.* v. *United States*, 955 F. Supp. 1532, 1541 (Ct. Int'l Trade 1993) ("[C]lassification under the antidumping law need not match the Customs classification, as the Customs valuation statute and antidumping statute are substantially different in both purpose and operation"); *See also Royal Business Machines* v. *United States*, 507 F. Supp. 1007, 1014 n.18 (Ct. Int'l Trade 1980), *off'd* 69 C.C.P.A. 61, 669 F.2d 692 (C.C.P.A. 1982) ("[Customs] may not independently modify, directly or indirectly the [antidumping law] determinations, their underlying facts, or their enforcement.").

special tariffs on imported fuel ethanol from the initial U.S. prices.[33] The tariffs in question were not 201 duties. In fact, they were not remedial duties under any trade remedy law. Rather, they were tariffs added to the HTS by Congress to offset a tax subsidy that producers received for fuel-grade ethanol. A contemporary investigation by the International Trade Commission did not find injury to a U.S. industry.[34] Consequently, *Fuel Ethanol from Brazil* is not relevant to the issue of whether 201 duties should be subtracted from U.S. prices in calculating dumping margins.

Similarly, the Department's 2002 determination in *Softwood Lumber from Canada* is not relevant to the issue of the treatment of 201 duties.[35] That proceeding involved imports of lumber that had been subject to a quota-based fee under the U.S.—Canada Softwood Lumber Agreement. The export fees applied only to exports of lumber from Canada above 14.7 billion board feet. The Department deducted these fees from initial U.S. prices, noting that they did not qualify for the exemption from such deductions for export payments "specifically intended to offset countervailable subsidies."[36] Because that determination involved export fees rather than import duties, and similarly did not address the purpose of 201 duties or account for the legislative history discussed above, it does not apply to the issue of whether 201 duties should be deducted.

In conclusion, Commerce will not deduct 201 duties from U.S. prices in calculating dumping margins because 201 duties are not "United States import duties" within the meaning of the statute, and to make such a deduction effectively would collect the 201 duties a second time. Our examination of the safeguards and antidumping statutes and their legislative histories indicates that Congress plainly considered the two remedies to be complementary and, to some extent, interchangeable. Accordingly, to the extent that 201 duties may reduce dumping margins, this is not a distortion of any margin to be eliminated, but a legitimate reduction in the level of dumping.

Appendix II—Issues in Decision Memorandum

Comment 1: Whether the Respondent Properly Reported Steel Grade Codes
Comment 2: Whether Changwon Improperly Classified Certain Home Market Sales as Non-Prime Sales
Comment 3: Whether the Respondent Misreported the Entered Value of Constructed Export Price (CEP) Sales
Comment 4: Whether Changwon Properly Accounted for Certain Bank Charges
Comment 5: Whether Certain Inland Freight Expenses Incurred by Dongbang Are Based on Arm's-length Prices
Comment 6: Whether Dongbang Properly Reported Its Home Market Indirect Selling Expenses
Comment 7: Whether the Loss in Valuation of Finished Goods Inventory Should Be Included in General and Administrative (G&A) Expenses
Comment 8: Whether the Valuation Loss on Using the Equity Method Should Be Included in G&A Expenses
Comment 9: Whether the Department of Commerce (the Department) Should Subtract Imputed Credit Expense Associated With Freight Revenue From the Home Market Price
Comment 10: Ministerial Error Allegation
Comment 11: Whether the Department Should Grant Changwon a CEP Offset to the Home Market Sales

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[33] *Fuel Ethanol from Brazil; Finol Determinotion of Sales at Less Than Fair Volue*, 51 FR 5572 (Feb. 14, 1986).

[34] *Certoin Ethyl Alcohol from Brozil*, Inv. No. 731–TA–248, USITC Pub. 1818 (Final)(March 1986).

[35] *Certoin Softwood Lumber Products from Conodo; Notice of Final Determination of Sales at Less Than Foir Value*, 67 FR 15539 (Apr. 2, 2002), and accompanying decision memorandum, at Comment Nine.

[36] *Id.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 040318097–4097–01]

RIN 0693–ZA57

Professional Research Experience Program (PREP); Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Professional Research Experience Program (PREP) is soliciting applications for financial assistance from accredited colleges and universities to enable those institutions to provide laboratory experiences and financial assistance to undergraduate and graduate students and post-doctoral associates at the NIST, Boulder Laboratories in Boulder, Colorado. In Boulder, NIST carries out programs in five laboratories—its Electronics and Electrical Laboratory (EEEL), Chemical Science and Technology Laboratory (CSTL), Physics Laboratory (PL), Materials Science and Engineering Laboratory (MSEL), and Information Technology Laboratory (ITL). The PREP seeks to encourage the growth and progress of science and engineering in the United States by providing research opportunities for students and post-doctoral associates, enabling them to collaborate with internationally known NIST scientists, exposing them to cutting-edge research. The PREP will promote students' pursuit of degrees in science and engineering, and post-doctoral associates' professional development in science and engineering. The NIST Administrative Coordinator and NIST scientists will work with appropriate department chairs, outreach coordinators, and directors of multi-disciplinary academic organizations to identify students and programs that would benefit from the PREP experience.

DATES: All applications, paper and electronic, must be received no later than 5 pm Mountain Standard Time (MST) on May 12, 2004. Applications received after this deadline will be returned with no further consideration.

ADDRESSES: Paper applications must be submitted to Ms. Phyllis Wright, Administrative Coordinator, National Institute of Standards and Technology, Division 346.16, 325 Broadway, Building 1, Room 4007, Boulder, CO 80305–3328.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Wright, Administrative Coordinator, National Institute of Standards and Technology, Division 346.16, 325 Broadway, Boulder, CO 80305–3328; Tel.: (303) 497–3244; e-mail: *pkwright@boulder.nist.gov* or with assistance for using Grants.gov contact *support@grants.gov*. Further information regarding this announcement may also be found at *http://www.grants.gov*.

SUPPLEMENTARY INFORMATION:

Applications

Users of Grants.gov (*www.grants.gov*) will be able to download a copy of the application package, complete it off line, and then upload and submit the application package and associated proposal information via the Grants.gov website.

For electronic submission—Applicants should follow the Application Instructions provided at Grants.gov when submitting a response to this Notice. Applicants are encouraged to start early and not wait to the approaching due date before logging on and reviewing the instructions for submitting an application through Grants.gov.

For paper submission—Applicants are required to submit one signed original and two copies of the full application. All incomplete applications will be returned to the applicant. NIST determines whether an application has been submitted before the deadline by date/time stamping the applications as they are physically received in the PREP Administrator's office.

Funding Availability

Applications for the PREP will be considered for up to five years. Funding for students in the area of materials science and engineering will not be available in FY 2004, but may become available in future years of an award made pursuant to this notice. Funding for the PREP will be provided as fellows are identified by the successful applicant and approved by NIST. Fellowship support from NIST under the PREP is contingent upon the availability of NIST program funds and the need and selection by NIST advisors.

NIST anticipates awarding one or more cooperative agreements to eligible institution(s). In FY 1999, five cooperative agreements were awarded to two institutions, providing approximately $7.982 million since their inception and supporting 162 PREP fellows. For the most recent year of the PREP, FY 2003, NIST supported 89 PREP fellowships (some students received more than one fellowship) totaling approximately $2.340 million.

Statutory Authority: 15 U.S.C 278g-1.

CFDA Name and Number: Measurement and Engineering Research and Standards—11.609.

Eligibility: Eligible applicants are accredited educational institutions of higher education in the United States and its territories that offer undergraduate and graduate degrees in physics, chemistry, mathematics, computer science, or engineering. Undergraduate and graduate students who receive fellowships under the PREP must be citizens of the United States or lawfully admitted to the United States for permanent residence, show evidence of a 3.0 or higher grade point average in a curriculum acceptable to the sponsoring educational institution and NIST, and must be enrolled full-time at a sponsoring institution. Post-doctoral associates who receive fellowships under the PREP must be citizens of the United States, show proof of having earned a doctorate within the last five years, and must be affiliated with a sponsoring institution.

Review and Selection Process: All PREP applications are submitted to the Administrative Coordinator. Each application is examined for completeness and responsiveness. Substantially incomplete or non-responsive proposals will not be considered for funding, and the applicant will be notified. The PREP Administrative Coordinator will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed. Applications should include the following:

(A) Proposal Summary: Proposals may be structured in any way that the applicant believes will best present the proposed project. A format that NIST offers for consideration by the applicant is as follows:

(1) Introduction: Describe the institution's qualifications for conducting the proposed project. Applicant institutions must insure the availability of students for on-site work experiences in Boulder, Colorado concurrently with the university classroom studies.

(2) Needs Assessment: Document and explain the needs to be met by the proposed project or problems to be solved as a result of conducting the proposed project.

(3) Objectives: Provide detailed expected project outcomes and benefits to the college or university expressed in measurable terms.

(4) Evaluation: Delineate plans for measuring success or determining the degree to which the project objectives were met.

(5) Other: Applicants may provide additional information, which is not required to conform to a prescribed format. For example, applicants may wish to describe any plans for continuing the project with necessary funding beyond the Federal funding currently requested. In addition, applicants may wish to describe the application criteria they plan to use in selecting undergraduate and graduate students and post-doctoral associates for the fellowship program.

(B) Proposal Budget: Applicants should use the SF–424A to complete the budget submission. In addition to the SF–424A applicant must provide a detailed budget narrative to explain fully and justify all proposed project funding including each level of fellowship (undergraduate, graduate, and post-graduate) and other resources. Applications should contain annual budgets using the following assumptions:

Undergraduate Fellowship Program: 10 fellows at 200 hours per semester.

Cost elements to include in annual budget: Stipend or wage (Freshman @ $9.00, Sophomores @ $10, Juniors @ $11, and Seniors @ $12 per hour), full tuition assistance at the in-state rate, fringe benefits, and indirect costs.

Graduate Fellowship Program: 10 fellows at 20 hours per week during the school year (9 months); 40 hours per week in the summer (3 months).

Cost elements to include in annual budget: Stipend or wage (equivalent to what a research assistant in the student's given department would receive), full tuition assistance at the in-state rate, fringe benefits (which may include fees and health insurance), and indirect costs.

Post-Doctorate Fellowship Program: 5 fellows at 40 hours per week.

Cost elements to include in annual budget: stipend or wage, relocation expenses, and other miscellaneous expenses (travel, conferences, training).

Each applicant should include necessary costs to provide oversight of the program. All successful applicants will be required to have a PREP coordinator. Some the responsibilities of the successful applicant's PREP coordinator include: Serving as a single point of contact for University staff, PREP applicants and participants, and NIST research scientists and engineers; assisting students, University sponsors, and NIST sponsors in implementing the program and resolving any difficulties that may arise, and serving as the signatory on all agreements between NIST, the University and each fellow.

The number of fellows and number of hours per semester are purely illustrative and do not reflect any commitment as to the number of fellowships that may be approved under any resulting cooperative agreement.

(C) Applicants must submit the Application for Federal Assistance (SF–424), Budget Information, Non-construction Programs (SF–424A), and the Assurances, Nonconstruction Programs (SF424B), and Disclosure of Lobbying Activities SF–LLL during initial submission of the application. The Department of Commerce Form(s) CD–511, Certifications Regarding Debarment, Suspension and Other responsibility Matters; Drug Free Workplace Requirements and Lobbying, and if applicable the Department of Commerce Form(s) CD–346 Applicant for Funding Assistance (Non-Profits, For-Profits, and Individuals), will be required during the final review process. Each complete and responsive PREP application packet will be reviewed by at least three independent, objective NIST employees, who are knowledgeable in the subject matter of this announcement and its objectives and are able to conduct a review based on the Evaluation Criteria for the PREP as described in this notice.

Each application will be reviewed by three independent, objective NIST employees who are knowledgeable about the PREP. The selection of institutions to be recommended for an award will be made by the Director of the NIST Laboratories in Boulder, Colorado ("Director"), the Selecting Official. In recommending institutions

for funding the Director will take into consideration the results of the evaluations and scores of the independent reviewers, the interests of the NIST laboratories, and the Director's judgment as to which institutions, taken as a whole, are likely to best further the goals of the PREP. The final selection of institutions and award of cooperative agreements will be made by the NIST Grants Officer in Gaithersburg, Maryland, based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, compliance with Federal policies that best further the objectives of the Department of Commerce, and whether the recommended applicants appear to be responsible. Unsatisfactory performance on any previous Federal award may result in an application not being considered for funding. Applicants may be asked to modify objectives, work plans, or budgets, and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The PREP Administrative Coordinator will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

Evaluation Criteria: Applicants must be able to insure the availability of students for on site work experiences at the NIST Laboratories in Boulder, Colorado concurrently with the university classroom studies. The student must also be enrolled in an academic program acceptable to both the sponsoring institution and NIST while working in the Laboratories. The applications will be evaluated and scored on the basis of the following evaluation criteria:

(A) Soundness of the applicant's academic program, proposed project objectives, and appropriateness of proposed student work assignments in light of ongoing research at NIST/Boulder and the students' academic programs. (30 points).

(B) Experience in providing students pursuing degrees in physics, chemistry, mathematics, computer science, or engineering with work experiences in laboratories or other settings consistent with furthering the students' education. (30 points).

(C) Adequacy and reasonableness of plans for administering the project and coordinating with the PREP Administrative Coordinator in Boulder. (20 points).

(D) Cost realism of the proposed project budget (proposed fellowships and other proposed costs) in light of the activities proposed and the objectives of the sponsoring institution and NIST. (20 points).

Cost Share Requirements: Cost sharing and matching are not required under this program. However, in the interest of furthering the education and development of future scientists and engineers, applicants are encouraged to cost share on a voluntary basis. Voluntary cost sharing may include any eligible costs under the applicable cost principles that meet the test of reasonableness, allocability, and allowability. Such voluntary cost sharing may include, but is not limited to, cash contributions for direct costs, contributions of indirect costs, or in-kind contributions. While cost sharing is not required, any cost share contribution will be taken into consideration in reviewing the competitiveness of the proposed project budget.

Applicants are encouraged to propose to cover indirect costs as cost share under this program. However, indirect costs are eligible project costs. Any indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated with the applicant's cognizant or oversight Federal agency prior to the proposed effective date of the award.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this announcement. On the form SF–424, the applicant's 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be entered in the Applicant Identifier block.

Collaborations with NIST Employees: All applications should include a description of any work proposed to be performed by an entity other than the applicant, and the cost of such work should ordinarily be included in the budget.

If an applicant proposes collaboration with NIST, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved, if known. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200–212, 37 CFR part 401, 15 CFR 14.36, and in section 20 of the Department of Commerce Pre-Award Notification Requirements, 66 FR 49917 (2001), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Licensing or other disposition of NIST's rights in such inventions will be determined solely by NIST, and include the possibility of NIST putting the intellectual property into the public domain.

Initial Screening of all Applications: All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive to the scope of the stated objectives for each program. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for record keeping purposes. The remaining copies will be destroyed.

Fees and/or Profit: It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

On December 3, 2000, the U.S. Department of Health and Human Services (DHHS) introduced a new Federal-wide Assurance of Protection of Human Subjects (FWA). The FWA covers all of an institution's Federally supported human subjects research, and eliminates the need for other types of Assurance documents. The Office for Human Research Protections (OHRP) has suspended processing of multiple project assurance (MPA) renewals. All existing MPAs will remain in force until further notice. For information about FWAs, please see the OHRP Web site at *http://ohrp.osophs.dhhs.gov/humansubjects/assurance/fwas.htm.*

In accordance with the DHHS change, NIST will continue to accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current, valid MPA from DHHS. NIST also will accept the submission of human subjects protocols that have been approved by IRBs possessing a current, valid FWA from DHHS. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

On August 9, 2001, the President announced his decision to allow Federal funds to be used for research on existing human embryonic stem cell lines as long as prior to his announcement (1) the derivation process (which commences with the removal of the inner cell mass from the blastocyst) had already been initiated and (2) the embryo from which the stem cell line was derived no longer had the possibility of development as a human being. NIST will follow guidance issued by the National Institutes of Health at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/stemcell.pdf* for funding such research.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Type of Funding Instrument: The funding instrument will be a cooperative agreement. NIST will be "substantially involved" in the project by way of collaboration between NIST scientists and faculty, students, and associates of recipient institutions. Please see the Department of Commerce Grants and Cooperative Agreements Interim Manual which may be found on the Internet at: *http://www.osec.doc.gov/oebam/GCA_manual.htm.*

Matching Funds: Although the program described in this notice does not require cost share, if it is determined that your proposal falls within the authority of 19 U.S.C. 2543–45, cost share will be required as follows:

Pursuant to 19 U.S.C. 2543–45, financial assistance shall not exceed 75 percent of such program or activity, when the primary purpose of such program or activity is—

(1) To increase the awareness of proposed and adopted standards-related activities;

(2) To facilitate international trade through the appropriate international and domestic standards-related activities;

(3) To provide adequate United States representation in international standards-related activities; and

(4) To encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

Limitation of Liability: In no event will the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige the agency to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: April 2, 2004.

Hratch G. Semerjian,

Acting Director, NIST.

[FR Doc. 04–8125 Filed 4–9–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040504C]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a request for EFPs to conduct experimental fishing; request for comments.

SUMMARY:

The Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS (Office Director) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Office Director has also made a preliminary determination that the activities authorized under the EFPs would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Office Director proposes to issue EFPs that would allow a maximum of six vessels to conduct fishing operations involving the use of one juvenile lobster collector trap per vessel that are otherwise restricted by the regulations governing the American lobster fisheries of the Northeastern United States.

The EFP involves the non-destructive collection of size frequency and population data on legal and sublegal lobsters as part of an ongoing research project to monitor the offshore lobster fishery in Lobster Management Area 3. It would not involve the authorization of any additional trap gear in the area. A maximum of six participating commercial fishing vessels will collect detailed abundance and size frequency data on the composition of lobsters in three general offshore study areas in a collaborative effort with the University of New Hampshire (UNH) and the Atlantic Offshore Lobstermen's Association (AOLA) project. This EFP requests that each participating commercial fishing vessel utilize one modified juvenile lobster collector trap to collect population data. The lobster trap modifications are to the escape vents, and trap entrance head, not to the trap's size or configuration. Therefore, this modified trap would impact its environment no differently than the regular lobster trap it replaces and will add no additional traps to the area. After data is collected on lobsters in the trap, all sub-legal and berried female lobsters will be immediately returned to the sea. The EFP waives the American lobster escape vent requirement specified at 50 CFR 697.21(c) for a maximum of one trap per vessel for a maximum of six vessels in the program. Therefore, this document invites comments on the issuance of EFPs to allow a maximum of six commercial fishing vessels utilize a maximum of six modified lobster traps and to collect statistical data using modified lobster trap gear.

DATES: Comments on this lobster EFP notification for offshore lobster monitoring and data collection must be received on or before April 27, 2004.

ADDRESSES:

Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments—Lobster EFP Proposal." Comments also may be sent via facsimile (fax) to 978–281–9117. Comments on the Lobster EFP Proposal may be submitted by e-mail. The mailbox address for providing e-mail comments is *Lob0104@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments—Lobster EFP Proposal."

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, (978) 281–9234, fax (978)-281–9117.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

The American lobster fishery is the most valuable fishery in the northeastern United States. In 2002, approximately 82 million pounds (37,324 metric tons (mt)) of American lobster were landed with an ex-vessel value of approximately $293 million. American lobsters experience very high fishing mortality rates and are overfished throughout their range, from Canada to Cape Hatteras. Although harvest and population abundance are near record levels due to high recent recruitment and favorable environmental conditions, there is significant risk of a sharp drop in abundance, and such a decline would have serious implications. Operating under the Atlantic States Marine Fisheries Commission's interstate management process, American lobsters are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In Federal waters of the Exclusive Economic Zone (EEZ), lobster is managed under Federal regulations at 50 CFR part 697. Amendment 3. and compatible Federal regulations established a framework for area management, which includes industry participation in the development of a management program which suits the needs of each lobster management area while meeting targets established in the Interstate Fisheries Management Program. The industry, through area management teams, with the support of state agencies, have played a vital role in advancing the area management program.

To facilitate the development of effective management tools, extensive monitoring and detailed abundance and size frequency data on the composition of lobsters throughout the range of the resource are necessary. This proposed EFP will continue a project involved in extensive monitoring and detailed population information of American lobster in three offshore study areas using modified lobster trap gear that would otherwise be prohibited.

Proposed EFP

The proposed EFP is a continuation of a project begun in 2003, and is submitted by UNH in a collaborative effort with the AOLA and six commercial lobster fishing vessels that are also members of the AOLA. The EFP proposes to collect statistical and scientific information as part of a project designed to monitor the offshore American lobster fishery to collect data that will assist the development of management practices appropriate to the fishery. Participants in this project are funded by, and under the direction of the Northeast Consortium, a group of four research institutions (University of New Hampshire, University of Maine, Massachusetts Institute of Technology, and Woods Hole Oceanographic

Institution) which are working together to foster this initiative.

Each of six commercial fishing vessels involved in this monitoring and data collection program would collect detailed abundance and size frequency data on the composition of all lobsters collected from one string of approximately 40 lobster traps, including data on sub-legal, and egg bearing females in addition to legal lobsters. This EFP would not involve the authorization of any additional lobster trap gear in the area. Two vessels would collect data from each of three general study areas: The Southern—Hudson Canyon Area; the Middle—Veatch Canyon Area; and the Northern—Georges Bank and Gulf of Maine Area. The participating vessels may retain on deck sub-legal lobsters, and egg bearing female lobsters, in addition to legal lobsters, for the purpose of collecting the required abundance and size frequency data specified by this project. Data collected would include size, sex, shell disease index, and the total number of legals, sub-legals, berried females, and v-notched females. All sub-legals, berried females, and v-notched females would be returned to the sea as quickly as possible after data collection. Pursuant to 50 CFR 600.745(3)(v), the Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing.

This EFP requests the inclusion of a maximum of one modified lobster trap per vessel, designated as a juvenile lobster collector trap, in the string of approximately 40 traps. This modified lobster trap would have a smaller entrance head, no escape vents and would be made of a smaller mesh than the traditional offshore trap to catch and retain a high percentage of juvenile lobsters in the 30–65 mm carapace length range. The smaller entrance head would exclude large lobsters from this trap and decrease the probability of cannibalism within the trap. The modifications to the trap are to the escape vents, and trap entrance head, not to the trap's size or configuration, therefore this modified trap would impact its environment no differently than the regular lobster trap it replaces. This EFP will add no additional traps to the areas. Due to modifications to the escape vent, the EFP proposed to waive the American lobster escape vent requirement specified at 50 CFR 697.21(c) for a maximum of one trap per vessel for a maximum of six vessels in the program. With the exception of the one modified juvenile lobster collector trap, all traps fished by a maximum of six participating vessels would comply with all applicable lobster regulations specified at 50 CFR part 697.

All sample collections would be conducted by six federally permitted commercial fishing vessels, during the course of regular commercial fishing operations. There would not be observers or researchers onboard every participating vessel.

This project, including the lobster handling protocols, was initially developed in consultation with NOAA Fisheries and University of New Hampshire scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project.

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

Dated: April 6, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–800 Filed 4–9–04; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Futures Market Self-Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Exchange Act (the "Act"),[1] through Core Principles added by the Commodity Futures Modernization Act of 2000 ("CFMA")[2] and otherwise, imposes upon trading facilities (designated contract markets or "DCMs" and derivatives transaction execution facilities or "DTEFs"), upon registered futures associations ("RFAs"),[3] and upon clearinghouses (derivatives clearing organizations or "DCOs") certain self-regulatory obligations with respect to futures commission merchants ("FCMs") that are members of such DCMs, DTEFs, RFAs, and DCOs (together, "self-regulatory organizations" or "SROs"). In order to avoid duplicative supervisory burdens upon FCMs that are members of more than one SRO, the Commodity Futures Trading Commission (the "Commission" or "CFTC") permits SROs to enter into voluntary, cooperative agreements to both allocate certain supervisory responsibilities among themselves so that each FCM has a single designated self-regulatory organization ("DSRO") and to share relevant financial and risk information among themselves. Under such an agreement, each DSRO is primarily responsible for conducting periodic examinations of firms assigned to it, and the other SROs rely upon the findings of such examinations, yet under the Act and Commission regulations each SRO retains ultimate responsibility for ensuring proper performance of its self-regulatory duties.[4]

Any two or more SROs may propose to enter into an agreement to effectuate a DSRO plan but such a plan may not be implemented unless and until the Commission, following appropriate notice and opportunity for public comment, approves the plan (in whole or in part and as submitted or as modified according to the Commission's direction).[5] The Commission also may, after appropriate notice and opportunity for hearing, withdraw its approval of a plan (in whole or in part) that it has previously approved if, in the Commission's determination, the plan (or part) no longer adequately effectuates the purposes of the Act or Commission regulations.[6]

In 1984, a number of SROs entered into a Joint Audit Agreement ("1984 Agreement") to effectuate a DSRO plan.[7] Proposed amendments to the 1984 Agreement were recently submitted for approval ("Proposed Agreement"). In accordance with § 1.52(g) of its regulations and in conjunction with its ongoing review of the self-regulatory system for futures markets, the Commission is publishing this notice to

[1] 7 U.S.C. 1 *et seq.* (2000).

[2] *See* Pub. L. 106–554, 114 Stat. 2763 (Dec. 21, 2000).

[3] CFTC Regulation 170.15 requires each FCM to be a member of at least one RFA that is registered with the Commission pursuant to section 17 of the Act. Commission regulations referred to herein may be found at 17 CFR Ch. I (2003).

[4] DSROs also monitor compliance in the areas of sales practice, recordkeeping, and anti-money laundering protections.

[5] Regulation 1.52(g) states:

After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it: (1) Is necessary or appropriate to serve the public interest; (2) Is for the protection and in the interest of customers; (3) Reduces multiple monitoring and auditing for compliance with the minimum financial rules of the [SROs] submitting the plan for any [FCM or IB that] is a member of more than one [SRO]; (4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any [FCM or IB that] is a member of more than one [SRO]; (5) Fosters cooperation and coordination among the contract markets; and (6) Does not hinder the development of [an RFA] under [S]ection 17 of the Act.

[6] *See* Regulation 1.52(i).

[7] *See* 49 FR 28906 (Jul. 17, 1984) (approved in large part on Oct. 10, 1984 ("1984 Commission Letter")).

request public comment on the Proposed Agreement.

DATES: Comments must be received on or before May 27, 2004.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to "Futures Market Self-Regulation". This document also will be available for comment at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Associate Deputy Director and Chief Accountant, or Natalie A. Markman, Senior Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

A. The DSRO System

The Commission promulgated Regulation 1.52 in 1978 to permit cooperative self-regulatory arrangements such as the DSRO system that operates today.[8] Under CFTC regulations, the term "designated self-regulatory organization" means an SRO of which an FCM is a member or, if the FCM is a member of more than one SRO, the SRO to whom certain self-regulatory responsibilities are delegated pursuant to a DSRO agreement.[9] Notwithstanding the DSRO system, moreover, each SRO must establish and maintain appropriate procedures for monitoring the financial integrity of its member firms.[10] This fundamental obligation is reflected in the Act.[11]

[8] 43 FR 39956, 39981–82 (Sep. 8, 1978). Although the regulation has been amended over the years, its fundamental requirements have remained substantially the same.

[9] Originally, Regulation 1.3(ff) defined a DSRO to be an SRO:

> Of which [an FCM] is a member or, if the [FCM] is a member of more than one [SRO] and such [FCM] is the subject of an approved plan under § 1.52, then [an SRO] delegated the responsibility by such a plan for monitoring and auditing such [FCM] for compliance with the minimum financial and related reporting requirements of the [SROs] of which the [FCM] is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements from such [FCM].

43 FR at 39967. Regulation 1.3(ff) subsequently has been amended to include introducing brokers ("IBs") and leverage transaction merchants.

The 1984 Agreement created a Joint Audit Committee ("JAC" or "Committee") made up of one representative appointed by each of the parties to the agreement.[12] Currently, if an FCM is a member of a single DCM among a group of certain DCMs that are long-time JAC members, then that DCM serves as DSRO for such firm. If an FCM is a member of more than one DCM within that group, then the Committee designates one of those DCMs to act as the firm's DSRO. If an FCM is not a member of one of the DCMs within that group, then NFA acts as the DSRO for such FCM.

In addition to allocating DSRO responsibilities among certain SROs, the Committee also oversees the design and implementation of the examination program utilized by those DSROs that maintain in-house examination staffs in their examinations of assigned firms. (The NFA has a comparable examination program that it utilizes in examining firms for which it has been assigned as DSRO and firms that it examines under contractual arrangements with other SROs.) The Committee also determines the minimum examination practices and procedures to be followed in the conduct of examinations. Committee members may share information with each other about the financial condition and risk exposures of FCMs but are under confidentiality restrictions with respect to sharing such information with other persons.[13]

B. Commission Review of the DSRO System

CFTC Chairman James Newsome announced in May 2003 that the Commission would review "the roles, responsibilities, and capabilities of SROs in the context of market changes," such as demutualization and increasing competition.[14] Chairman Newsome recognized that self-regulation "has been integral to the success of the futures markets" and stated that it is appropriate for the Commission "to ensure that the principles of objectivity, confidentiality, and consistency continue to be adhered to as well as they have always been in this business."[15]

In February 2004, the Commission issued a press release announcing several initiatives in connection with its

DCM to establish and enforce rules to ensure the financial integrity of FCMs and IBs and the protection of customer funds. 7 U.S.C. 7(d)(2) and (11). Core Principle H requires each DCO to monitor and enforce its rules, and the rules of a clearing organization focus extensively on issues of financial integrity. Moreover, Core Principle C requires each DCO to establish appropriate continuing eligibility standards (including appropriate minimum financial requirements) for its members and participants, and Core Principle M directs each DCO to enter into all appropriate and applicable information-sharing agreements and to use relevant information obtained thereby in carrying out its risk management program. 7 U.S.C. 7a–1(c)(2)(C), (H), and (M); *see also*, DTEF Registration Criterion 4, 7 U.S.C. 7a(c)(4); DTEF Core Principle 2, 7 U.S.C. 7a(d)(2); and Section 17(b)(4) of the Act (financial responsibility standards for RFA members), 7 U.S.C. 21(b)(4).

[11] Both trading facilities and clearing organizations have important self-regulatory obligations under the Act. Core Principle 2 requires each DCM to monitor and enforce compliance with its rules. Core Principle 11 further requires each

[12] The parties to the 1984 Agreement were: the Board of Trade of the City of Chicago ("CBOT"); Board of Trade of Kansas City ("KCBOT"); Chicago Mercantile Exchange ("CME"); Chicago Rice and Cotton Exchange; Coffee, Sugar & Cocoa Exchange, Inc. ("CSCE"); Commodity Exchange, Inc. ("COMEX"); MidAmerica Commodity Exchange; Minneapolis Grain Exchange ("MGE"); New York Cotton Exchange ("NYCE"); New York Futures Exchange, Inc.; New York Mercantile Exchange ("NYMEX"); and NFA.

Current JAC members are: the AMEX Commodities Corp.; BrokerTec Futures Exchange, LLC; CBOE Futures Exchange, LLC; CBOT; CME; CSCE; COMEX; Island Futures Exchange, LLC; KCBOT; Merchants' Exchange, LLC; MGE; NQLX, LLC; NFA; NYCE; NYMEX; OneChicago, LLC; Philadelphia Board of Trade; and U.S. Futures Exchange, LLC. Not all members, however, have been assigned DSRO responsibilities.

[13] For example, Paragraph 8(b) of the 1984 Agreement does not permit a DSRO to share such information with any clearinghouse except the clearinghouse that clears transactions executed on the DSRO's trading facility. The proposed amendments, however, would permit a DSRO to share information about an FCM with any DCO of which the FCM is a member.

[14] Address by Chairman James E. Newsome at the Futures Industry Association Law and Compliance Luncheon (May 28, 2003), available at *<http://www.cftc.gov/opa/speeches03/opanewsm-40.htm>*.

[15] In congressional testimony, Chairman Newsome explained that he initiated a review of the SRO system "not because there are any particular issues that have arisen; but given the number of changes that have taken place in the industry over the last 2 or 3 years of both the exchanges and the firms, we think it is prudent and responsible for the CFTC to take a look at SROs and to make sure that the same principles that applied when SROs were put into place[ ] apply now." Commodity Futures Modernization Act: Hearings Before the Subcomm. on General Farm Commodities and Risk Management of the House Comm. on Agriculture, 108th Cong., 1st Sess. 6 (2003) (statement of James E. Newsome, Chairman, CFTC).

ongoing review of self-regulation.[16] One such initiative is the examination of the DSRO system, including its cooperative agreements and programs.[17] The CFTC's Division of Clearing and Intermediary Oversight has been assessing the impact of changes in the futures industry, such as new entrants being designated as DCMs[18] and the CFMA's creation of a new registration category for DCOs,[19] upon the DSRO system and its examination programs. A timely review of the DSRO system will ensure that DSROs continue to meet the needs of the markets and their participants. Accordingly, staff is conducting a formal review of the DSRO system as administered by the JAC through its examination program, including assessment of: (1) The governance and operation of the JAC; and (2) the effectiveness of the JAC and NFA examination programs, and related programs ("Programs").

The Commission invites comment on the Proposed Agreement, particularly with respect to the ability of the DSRO system to serve the public interest, reduce duplicative reporting and examination burdens on FCMs, strengthen customer protections, and foster cooperation and coordination among the markets. Some, but certainly not all, of the issues that the Commission may consider in its assessment of the Proposed Agreement include:

1. Membership criteria;
2. Decision-making processes and the limitation of voting eligibility on the bases of longevity and self-performance of examination services;
3. The process by which an FCM is assigned to a particular DSRO;
4. Delegation versus outsourcing of examination services;
5. Distinctions between RFAs and non-RFAs with respect to delegation and outsourcing issues;
6. Distinctions between DSRO responsibilities and SRO responsibilities;
7. The extent to which the Commission should review the JAC's governance and operation on a more routine, periodic basis; and
8. The general transparency of the DSRO system and its operation.[20]

In addition to the issues mentioned above, the Commission welcomes comment on any aspect of the DSRO system.

The 1984 Agreement, 1984 Commission Letter, and the Proposed Agreement are available on the Commission's Web site at *http://www.cftc.gov* upon the issuance of this notice by the Commission. Copies also may be obtained from the Office of the Secretariat, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC, on April 7, 2004, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–8235 Filed 4–9–04; 8:45 am]

BILLING CODE 6351–01–P

[16] CFTC Press Release 4890–04 (Feb. 6, 2004), available at *http://www.cftc.gov/opa/press04/opa4890–04.htm.*

[17] In a related initiative, the Commission encouraged each SRO to reexamine its policies and procedures, training efforts, and day-to-day practices to confirm that there are adequate safeguards to prevent the inappropriate use of confidential information obtained by SROs during audits, investigations, or other self-regulatory activities. The Commission also encouraged SROs to publicize any safeguards so market participants would continue to have faith in the integrity of the self-regulatory process and to participate enthusiastically in it.

[18] The Commission has designated seven new DCMs since passage of the CFMA.

[19] The CFMA changed the manner in which clearing organizations are recognized and regulated under the Act, and granted the Commission explicit authority to regulate DCOs. *See* 7 U.S.C. 7a–1. Each DCO must comply with certain core principles to maintain its registration. In particular, Section 5b(c)(2)(H)—Core Principle H on rule enforcement—requires a DCO to "maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance" with its rules and for resolving disputes and to "have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations" of its rules.

[20] Commission staff receives and reviews the Programs on an annual basis, but has not in the past reviewed the Joint Audit Agreement except in response to the submission of a new agreement.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

DATES: May 12, 2004, from 2 p.m. to 5 p.m., May 13, 2004, from 8 a.m. to 5 p.m., and May 14, 2004, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Hotel El Convento, 100 Cristo, St., Old San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than April 23, 2004.

Dated: April 6, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–8127 Filed 4–9–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: National Defense University, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: April 26–27, 2004.

ADDRESSES: The University of Virginia, Colonnade Club, Pavilion VII, West Lawn, Charlottesville, VA 22903.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: April 6, 2004.

L.M. Bynum,

Alternate OSD Federal Register Officer, DoD.

[FR Doc. 04–8128 Filed 4–9–04; 8:45 am]

BILLING CODE 5001–06–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, April 21, 2004. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the New York State Department of Environmental Conservation (NYSDEC) office building at 625 Broadway in Albany, New York.

The conference among the commissioners and staff will begin at 10 a.m. Topics of discussion will include: an update on the development and completion of the Water Resources Plan for the Delaware River Basin; a presentation and discussion regarding responses to comments on the proposed Resolution To Establish an Experimental Augmented Conservation Release Program for the New York City Delaware Basin Reservoirs for the Period Beginning May 1, 2004 and Ending May 31, 2007; an update on proposed Water Quality Standards revisions; a presentation and discussion regarding the proposed designation of the lower Delaware River as a Special Protection Water; a proposed rule change authorizing the Commission to require waste minimization plans from point source dischargers; and a presentation on the status of New York State's map modernization and flood plain mapping program.

The subjects of the public hearing to be held during the 2 p.m. business meeting include the dockets listed below:

1. *Greater Pottsville Area Sewer Authority D–2002–41 CP.* An application to replace a 4.5 million gallon per day (mgd) Sewage Treatment Plant (STP) with a new 8.2 mgd plant which will continue to provide secondary treatment via a conventional extended aeration system. The project is located on the west side of Route 61, about 0.2 miles northwest of its intersection with SR2015. The expansion is needed to phase-out the applicant's West End STP and to also connect and treat flows from some on-lot septic systems. The applicant will serve Pottsville City, portions of the Boroughs of Mechanicsville, Mount Carbon, Palo Alto, and Port Carbon, plus Norwegian, East Norwegian, and North Manheim Townships, all in Schuylkill County, Pennsylvania. STP effluent will continue to be discharged to the Schuylkill River.

2. *Slatington Borough and Slatington Borough Authority D–2003–15 CP.* An application to rerate a 0.995 mgd sewage treatment plant to process 1.5 mgd, while continuing to provide secondary treatment. The project STP is located just west of the Lehigh River to which it discharges in the Borough of Slatington, Lehigh County, Pennsylvania. The plant will continue to serve Slatington Borough and a small portion of Washington Township, both in Lehigh County, and the Borough of Walnutport in Northampton County, Pennsylvania. The project is located in the Lower Delaware River Management Plan drainage area.

3. *Aqua Pennsylvania, Inc. (formerly Pennsylvania Suburban Water Company) D–2003–33 CP.* An application to transfer up to 0.5 million gallons per day (mgd) (15 mg/30 days) of potable water from Downingtown Municipal Authority (DMUA) to the applicant's distribution system via a proposed interconnection. DMUA has adequate capacity to meet the applicant's needs within their existing 2.5 mgd water allocation from the East Branch Brandywine Creek, as supported by releases from Marsh Creek Reservoir. The 0.5 mgd water transfer represents an alternative to and is proposed in lieu of the use of water supply from the applicant's previously approved Cornog Quarry project (approved under DRBC Docket No. D–98–11 CP on April 3, 2002). DRBC Resolution No. 2003–22, dated October 15, 2003, suspended the authority to proceed with the surface water components of Docket D–98–11 CP. Docket D–98–11 CP remains suspended. The proposed Docket D–2003–33 CP will also consolidate all the applicant's sources in the UGS Northern Division distribution system, including those previously approved under Docket Nos. D–98–11 CP and D–2002–5 CP, including the use of Kay Wells B and C on other than a seasonal basis. Upon Docket D–2003–33 CP becoming effective, Docket Nos. D–98–11 CP and D–2002–5 CP will be rescinded. The project will serve portions of East Brandywine, West Brandywine and Caln Townships, all located in Chester County, Pennsylvania.

4. *Northampton Borough Municipal Authority* D–2004–13 CP. An application to construct new water treatment plant process wastewater treatment facilities to process potable water filtration plant backwash and rinse water to be located approximately 1,000 feet north of the intersection of Second Avenue and Roosevelt Boulevard in North Whitehall Township, Lehigh County. The permit proposes an average daily treated wastewater discharge of 0.311 million gallons per day (mgd) compared to 0.0833 mgd under an existing permit. The existing discharge location will be relocated approximately 200 feet downstream on Spring Creek approximately 500 feet from its confluence with the Lehigh River in Whitehall Township. The proposed wastewater treatment facilities will provide clarification and de-chlorination prior to discharge. The project is located in the Lower Delaware River Management Plan drainage area, approximately 24.7 river miles upstream from the Delaware River. The project will continue to serve the Boroughs of Northampton and North Catasauqua and a portion of Allen Township in Northampton County; and the Borough of Coplay plus portions of North Whitehall and Whitehall Townships in Lehigh County, all in Pennsylvania.

5. *Creek Road Development, L.P. D–2004–18.* An application for approval of a ground water withdrawal project to provide up to 8.6 million gallons (mg)/30 days of water for supplemental irrigation of the applicant's proposed golf course from one existing well, designated Ramex No. 1 in the Stockton Formation. In conjunction with the ground water withdrawal, the golf course will also receive supplemental irrigation from treated effluent from the adjacent Country Crossing Waste Water Treatment Plant. The project is located in the Little Neshaminy Creek Watershed in Warwick Township, Bucks County, Pennsylvania and is located in the Southeastern Ground Water Protected Area.

6. *Riverfront Development Corporation of Delaware D–2004–19.* An application for approval of a wetland enhancement project to restore and enhance an approximately 200-acre area of tidal marsh located on the Christina River, at the Russell W. Peterson Urban Wildlife Refuge. The project is located in the Brandywine-Christina Watershed in the City of Wilmington, New Castle County, Delaware.

The Commission's 2 p.m. business meeting also will include a resolution to establish an experimental augmented conservation release program for the New York City Delaware Basin Reservoirs for the period from May 1, 2004 through May 31, 2007 or a resolution to extend the existing release program or take other provisional action. In addition, the meeting will include: Adoption of the Minutes of the March 3, 2004 business meeting; announcements; a report on Basin hydrologic conditions; a report by the

executive director; and a report by the Commission's general counsel.

Draft dockets scheduled for public hearing on April 21, 2004 are posted on the Commission's Web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500 ext. 221 with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: April 6, 2004.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 04–8182 Filed 4–9–04; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 6, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Report of Children with Disabilities Unilaterally Removed or Suspended/Expelled for More Than 10 Days.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 158,400.

Abstract: This package provides instructions and a form for States to report the number of children and youth and the number of acts involving students served under the Individuals with Disabilities Act (IDEA) involving a unilateral removal by school personnel or long-term suspension/expulsion. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor State education agencies (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2492. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–8132 Filed 4–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 6, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act (IDEA–B).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 31,740.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B that receive special education and related services. It serves as the basis for distributing Federal assistance, monitoring, implementing, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2491. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila.Carey at *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–8133 Filed 4–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 11, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 6, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Part B, Individuals With Disabilities Education Act (IDEA-B) Implementation of Free Appropriate Public Education (FAPE) Requirements.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 266,640.

Abstract: This package provides instructions and forms necessary for States to report the extent to which children with disabilities served under IDEA-B receive special education and related services with their non-disabled peers. The form satisfies reporting requirements and is used by the Office of Special Education Programs (OSEP) to monitor State educational agencies (SEAs) and for Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2493. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–8134 Filed 4–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records; Human Capital Learning and Performance Improvement System (18–05–14)

AGENCY: Office of Management, Department of Education.

ACTION: Notice of a deleted and new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) deletes system of records 18–05–14, Individual Development Planning System published in the **Federal Register** on July 31, 2001 (66 FR 39503–39506), because it has been merged into and consolidated with the new system of records published in this notice. This new system of records is entitled "Human Capital Learning and Performance Improvement System (18–05–14)." This new system will be used by employees and supervisors to identify career development opportunities for employees to ensure that employees receive appropriate training and development to enhance job performance. The Human Capital Learning and Performance Improvement

System (HCL&PIS) will help guide employees through a systematic career development process for determining skill needs and setting career goals by identifying areas where performance improvement is needed and by providing resources for improving performance.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records included in this notice on or before May 12, 2004.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 7, 2004. This new system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on May 17, 2004 or (2) May 12, 2004, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments on the new system of records to Ruth Derr, Training and Development Team, Human Resources Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W224, Washington, DC 20202–4641. Telephone: (202) 260–3032. If you prefer to send comments through the Internet, use the following address: *Comments@ed.gov*. You must include the term "HCL&PIS" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 2W224, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Ruth Derr. Telephone: (202) 260–3032. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record" and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register**. Whenever an agency publishes a new system of records or makes a significant change to an established system of records, the agency is also required to prepare a report for OMB and to send copies of the report to the Chair of the Senate Committee on Governmental Affairs and the Chair of the House Committee on Government Reform. These reports are intended to permit an evaluation of the probable or potential effect of the proposal on the privacy of individuals.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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 CFR is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: April 7, 2004.

William J. Leidinger,

Assistant Secretary for Management Chief Information Officer.

For the reasons discussed in the preamble, the Assistant Secretary for Management/Chief Information Officer of the U.S. Department of Education deletes the system of records entitled Individual Development Planning System (18–05–14) published in the **Federal Register** on July 31, 2001 (66 FR 39503–39506) and issues a new system of records to read as follows:

18–05–14

SYSTEM NAME:

Human Capital Learning and Performance Improvement System (HCL&PIS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Department of Education, Office of Management, Human Resources Services, Training and Development Team, 400 Maryland Avenue, SW., room 1W100, Washington, DC 20202–4614.

In addition to this location, the records of the Mentoring Program System also will be located at The Training Connection, Inc., 15700 Beacon Court, Montclair, VA 22026.

The following records for the currently existing or prospective programs may be decentralized:

- Competency Development System,
- Skills Assessment System,
- Learning Tracks System,
- Individual Development Plan System,
- Learning Management System,
- Knowledge Management System, and
- Employee Learning Account System.

The additional locations for these programs are listed in the Appendix at the end of this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals may include all employees of the Department of Education (Department). The system contains records on Department employees who apply for and/or participate in the following programs:

- Mentoring Program System,
- Employee Learning Accounts,
- Tuition Reimbursement Program,

- Leadership and Management Development Program,
- Mobility Assignment Program,
- Upward Mobility Program,
- Evaluation System,
- Certificate Program,
- Career Intern Program, and
- Presidential Management Fellows Program.

The system also contains records on Department employees who request the following services:

- Career Counseling Services, and
- Organizational Development Process.

The system also contains records on Department employees who choose to access the following currently existing or prospective electronic or web-based systems:

- Competency Development System,
- Skills Assessment System,
- Learning Tracks System,
- Individual Development Plan System,
- Mentoring Program System,
- Learning Management System, and
- Knowledge Management System.

CATEGORIES OF RECORDS IN THESE SYSTEM:

This system contains a variety of records related to Department employees' applications for and/or participation in the following programs:

- Skills Assessment System,
- Learning Tracks System,
- Individual Development Plan System,
- Learning Management System,
- Competency Development System,
- Mentoring Program System,
- Knowledge Management System,
- Tuition Reimbursement Program,
- Employee Learning Account,
- Evaluation System,
- Leadership and Management Development Program,
- Career Counseling Service,
- Organizational Development Process,
- Mobility Assignment Program,
- Upward Mobility Program,
- Certificate Program, and
- Career Intern Program/Presidential Management Fellows.

Records in the system contain all or some of the following data: the individual's name, address, social security number, position level, pay plan, grade, series, supervisor, organization in which employed, building, room, telephone number, history of internal/external training attended and other learning and development activities for which the employee participated, associated training costs, competencies needed to perform a job, skill strengths and skill development needs; and short- and long-term career development plan, goals and objectives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. sections 3301, 3302, 4103, 4109, and 4115; Executive Orders 13162 (authorizing the Career Intern Program) and 13318 (authorizing the Presidential Management Fellows Program).

PURPOSE(S):

The purpose of the HCL&PIS is to implement the President's Management Agenda and to achieve the Department's One ED initiatives by strategically aligning the Department's human capital resources with its mission, core values, goals and objectives. The Department's ultimate objective is to ensure that the right people with the right skills are in the right jobs. And, in order to sustain a high performing workforce that is continuously improving in productivity, various systems and programs are designed and integrated to allow the Department to identify, develop, track and manage the learning and development of its human capital. This comprehensive systems development approach to learning and performance improvement allows Human Resources Service's (HRS) Training and Development Team (TDT) to identify skills needed for the current and future workforce, to design and implement activities to correct skill gaps and imbalances, and to capture the best-in-practice knowledge and skills of employees who leave the Department. The Department's approach to aligning its human capital resources to its mission includes and consists of implementation of these programs, services, and electronic or web-based systems:

Learning Management System (LMS)

The Learning Management System (LMS) will serve the following purposes: (1) To track course enrollments by Department employees; (2) to provide course rosters; (3) to produce attendance records for Department employees who attend internal training classes; (4) to produce reports on an individual employee's training activities; (5) to produce reports on training activities conducted by individual organizations within the Department; and (6) to allow Department employees to request approval to attend training activities conducted outside the Department.

Competency Development System (CDS)

Competencies are specific knowledge, skills, abilities, characteristics, and behaviors that enhance job performance. Therefore, the CDS will identify competencies for each critical job function within the Department and allow employees within those job functions or who aspire to move into those job functions to identify the level of promotion progression within those jobs and the level of performance required to carry out those functions.

Skills Assessment System (SAS)

Once an individual has identified, through the CDS, the necessary competencies for a specific job function and the expected level of performance at each grade interval, the purpose of the SAS is to help the employee to self-assess and measure, at the various grade intervals, the individual's ability to perform a specific skill and his or her knowledge of a particular job function. Another assessment component will allow the employee to identify individual training needs, including the types of training desired and the varying delivery formats (*i.e.*, classroom or e-learning). In addition, other self-assessment components will be facilitated, analyzed and interpreted by a certified consultant and will allow the employee to assess his or her behavior and interpersonal style in relation to various work environments and to determine areas for improvement. Use of any component of the SAS is voluntary, and information is maintained only on those employees who access the SAS.

Learning Tracks System (LTS)

As a result of the skills assessment, employees may identify existing skills they need to enhance or new skills they need to develop. The LTS will serve the purpose of helping an employee link a specific job function and its levels of performance to various learning and development activities that are available (internally and externally) to the Department.

Individual Development Plan (IDP) System

In addition, as a result of the data identified in the LTS, the IDP system will allow employees to chart a selected learning track and develop a plan of action with objectives that will help them achieve three to five year career goals. The IDP will guide employees through a process of setting short- and long-term developmental objectives and identifying learning activities that will enhance those skills necessary to achieve high performance in their current job function and/or prepare for future career transition goals.

Mentoring Program System (MPS)

The MPS is a learning and development option that complements the traditional classroom training,

conference attendance, and e-learning opportunities made available to employees. The MPS will allow a process for creating an environment for one-on-one working relationships. One person invests time, know-how, and effort in enhancing another person's growth, knowledge and skills and responds to that person's critical professional needs in order to help prepare the individual for greater productivity or achievement. In addition, the MPS will focus on developing leaders into coaches, enhancing their ability to influence others, and ingraining a willingness in them to accomplish organizational values, principles and vision. The system will ultimately allow managers and team leaders to train and orient employees to the realities of the workplace and help employees remove any barriers to achieving optimum work performance.

Knowledge Management System (KMS)

The KMS will serve the purpose of establishing a systematic process for identifying, capturing and transferring information and knowledge that can be used to create, complete and improve job functions. The KMS will increase the Department's ability to capture best-in-practice data, share the knowledge, and review past strategic plans, key business initiatives and customer relationships. In addition, having access to this type of historical data will allow Department employees and officials to make better informed decisions for overcoming current barriers and carrying out the organization's mission.

Tuition Reimbursement Program (TRP)

The TRP expands the opportunities for Department employees to pursue higher education learning at a college or university of their choice that is strategically linked to their current job or the mission of the Department. The purpose of this program is to enable the Department to retain and recruit highly skilled employees necessary to carry out mission critical functions within the Department. Courses can be taken through traditional classroom learning or e-learning. Employees receive tuition reimbursement for successfully completing pre-approved graduate or undergraduate job-related courses.

Employee Learning Account (ELA)

The purpose of an ELA is to set aside a specified amount of resources such as dollars, hours, or learning technology tools (*e.g.*, access to the Internet, use of government computers at an employee's desk, or time away from the office) or a combination of these options for an individual employee to use for his or her learning and development. ELAs move the Department's focus to continuous learning and strategic workforce development and integrates resources for training with balancing work and learning time. ELAs can benefit both managers and employees because they improve organizational performance through targeting employees' specific learning needs and involve employees in their own development.

Evaluation System (ES)

The ES will help the TDT measure the effectiveness of the content of training courses; the transfer of knowledge to the participant; the ability of the employee to apply the learning back on the job; and the goals achieved as a result of the employee participating in the learning. The analysis of the data allows TDT to make improvements to the systems and programs as necessary and ensures accountability for results.

Leadership and Management Development Program (LMDP)

The LMDP supports the Department's goal of ensuring management excellence to foster accountability and achieve strategic business outcomes. The purpose of the program is to enhance the ability of leadership to manage effectively their organization, maintain productive interpersonal relationships with subordinates, peers and upper level management, manage conflict, and balance work and life. The focus of the program evolves around the following Executive Core Qualifications: Leading Change, Leading People, Results Driven, Business Acumen and Building Coalitions/Communications.

Career Counseling Service (CCS)

The CCS assists employees with selecting alternatives for their career progression. The purpose of CCS is to provide on-site, confidential, one-on-one career counseling that helps individuals explore their future and match their interests and skills to their career plans. The counselors help employees develop their career profiles and individual development plans to utilize their strengths, maximize their potential, and put them on the path to achieving their goals. Employees determine their potential interests, interpersonal styles and basic skills through various adult-learning techniques. Employees can take charge of their individual development through the CCS. In addition, guidance is provided to employees and/or team leaders to create a comprehensive development plan that will contribute to individual and organizational effectiveness.

Organizational Development Process (ODP)

The purpose of an ODP is to offer principal offices (POs) the opportunity to review their organizational effectiveness in preparation for a reorganization initiative or significant organizational change. In conducting the review, TDT partners with leading management consulting firms staffed with highly respected experts in the fields of organizational development and psychology. They conduct reviews that are tailored to the needs of the organization and can cover such areas as: operating structure, leadership, customer satisfaction, employee satisfaction, organizational performance, and human resource needs. Throughout the review, POs are provided with updates on any emerging trends. In addition, the POs are provided with a report and briefing describing the findings, recommendations and next steps.

Mobility Assignment Program (MAP)

The Mobility Assignment Program (MAP) is designed to provide opportunities for employees to participate in detail assignments offering new skills, perspectives, and knowledge. MAP creates avenues for Department employees to gain experience in program areas in which they have not previously worked, thereby enhancing their skills and broadening their knowledge base. MAP details can last from 30 days to one year. MAP participants who are on a detail assignment for more than 120 days must have an individual development plan (IDP).

Upward Mobility Program (UMP)

The purpose of the UMP is to provide an opportunity for lower level employees whose current job provides limited or no opportunity for advancement, to enter a new career field in a technical, administrative or trade occupation that provides growth potential. The program allows an employee to develop specific skills that will prepare the employee for an identified target position. This program is initiated by the employee's supervisor and is part of a larger career development system that includes creating a position vacancy, developing an IDP, receiving career counseling, completing developmental activities and obtaining a promotion.

Certificate Program (CP)

The purpose of the CP is to provide professional certification for job functions that include, but are not

limited to, Information Technology, Accounting, Project Management and Financial Management. Employees within these job functions have the opportunity to enhance their knowledge and skills, stay abreast of the most current practices within their fields, and earn credit hours to maintain the necessary licenses or credentials required in their professions. Employees participate in a formal program that consists of several classes presented by a local college/university or an accredited institution.

Career Intern and Presidential Management Fellows Program (CIP&PMF)

The CIP and PMF Programs are special hiring authorities for recruitment and hiring of entry-level employees into professional career fields. Program participants must create and complete an Individual Development Plan, which identifies the learning objectives and describes the on-the-job and formal learning experiences that the intern will undertake. Progress towards completion of the program objectives and activities is monitored through records of course completions and evaluations of assignments. Successful completion of these programs leads to promotion and/or conversion to a permanent position.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Enrollment and Payment Disclosure.* The Department may disclose a record in this system of records to course or learning providers for enrollment purposes. Disclosures may also be made to course or learning providers to ensure that appropriate payments are being made to employees requesting reimbursement of their expenses.

(2) Litigation and Alternative Dispute Resolution (ADR) Disclosures.

(a) *Introduction.* In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity where the Department of Justice (DOJ) agrees to or has been requested to provide or to arrange for representation of the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to the DOJ, or attorneys engaged by DOJ, is relevant and necessary to litigation or ADR, and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, or to an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes, is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsel, Representatives and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(3) *Freedom of Information Act (FOIA) Advice Disclosure.* In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the FOIA or other authority permitting disclosure of records, disclosure may be made to DOJ or the Office of Management and Budget for the purpose of obtaining advice.

(4) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C 552a(m) with respect to the records in the system.

(5) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or executive order, or rule, regulation, or order issued pursuant thereto.

(6) *Congressional Member Disclosure.* The Department may disclose to a member of Congress the records of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(7) *Disclosure for Use By Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local or other agencies responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility within the entity's jurisdiction.

(8) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a

license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(9) *Employee Grievance, Complaint, or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competency determination proceedings. The disclosure may only be made during the course of the proceeding.

(10) *Labor Organization Disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The following programs, services, and systems are maintained in hard copy and on a networked computer database with backup procedures standard to all Department servers: CDS, SAS, LTS, IDP, ES, LMS, KMS, TRP, ELA, LMDP, CCS, ODP, MAP, UMP, CP, CIP, and PMF. The MPS is maintained on a contractor's leased/licensed system. Hard copies will be maintained in locked file cabinets.

RETRIEVABILITY:

The records are retrieved by a manual or computer search by indices. The TDT staff, designated employees, and contractors who support the TDT staff can access data in the systems by employee name or other individual identifiers.

SAFEGUARDS:

All physical access to the sites within the Department where the system of records is maintained are controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. Direct access to the system of records is restricted to authorized Department staff performing official duties. All hard copy records are maintained in locked file cabinets. Authorized staff is assigned passwords that must be used for access to computerized data. The systems-access passwords are changed frequently. The data is maintained in a secured-access area. All users of the system of records are given unique user IDs with personal identifiers. At a program/server level all interactions by individual users with the system are recorded. The databases will be protected by stringent security mechanisms that include a combination of hardware, operating systems, application software, and database software and procedures. The license holder will also maintain records for the Mentoring Program System. All information sent to the contractor's site for MPS is encrypted protecting against disclosures to third parties. Once data is received at the contractor's website, the contractor for MPS will follow the same safeguards as listed above.

RETENTION AND DISPOSAL:

The Department will retain and dispose of these records in accordance with National Archives and Records Administration General Records Schedule 1, Item 29, for Training Records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Services, Training and Development Team, Human Resources Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 1W100, Washington, DC 20202–4614.

NOTIFICATION PROCEDURE:

If an individual wishes to inquire whether a record exists regarding him or her in this system, the individual should provide his or her name and social security number to the appropriate system manager. Such request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURES:

If an individual wishes to gain access to a record in this system, he or she should contact the appropriate system manager and provide information as described in the notification procedure. Requests by an individual for access to a record must meet the requirements in 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If an individual wishes to request an amendment to a record pertaining to himself or herself that is contained in the system of records, he or she should contact the appropriate system manager with the information described in the notification procedure, identify the specific items requested to be changed, and provide a justification for such change. A request to amend a record must meet the requirements in 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual to whom the information applies. Additionally, the system may obtain additional information from the Department's Federal Personnel Payroll System (FPPS). The FPPS database may be used to provide the employee's social security number, name, grade, job series and service computation date. Supervisor and locator information (building/room/phone number, *etc.*) and all other information is manually provided by the TDT administrative staff, contractors supporting TDT, the individual employee and/or the supervisor of the employee.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix to 18–05–14—Additional Systems Locations

- Capital Place, 555 New Jersey Avenue, NW., Washington, DC 20208.
- Federal Building 6, 400 Maryland Ave., SW., Washington, DC 20202.
- Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202.
- L'Enfant Plaza, 2100 Corridor, Washington, DC 20202.
- Regional Office Building, 7th and D Streets, SW., Washington, DC 20202.
- 1990 K Street, NW., Washington, DC 20006.
- Union Center Plaza, 830 First Street, NE., Washington, DC 20202.
- Potomac Center, 555 12th Street, SW., Washington, DC 20024.
- Region I, McCormack Post Office and Courthouse, Boston, MA 02109.
- Region II, 75 Park Place, New York, NY 10007.
- Region III, 100 Penn Square East, Philadelphia, PA 19107.
- Region IV, 61 Forsyth Street, SW., Atlanta, GA 30303.
- Region V, 111 North Canal Street, Chicago, IL 60606.
- Region VI, 1999 Bryan Street, Dallas, TX 75201.
- Region VII, 10220 N. Executive Hills Blvd., Kansas City, MO 64153.
- Region VIII, 1244 Speer Blvd., Denver, CO 80204.
- Region IX, 50 United Nations Plaza, San Francisco, CA 94102.
- Region X, 915 Second Avenue, Seattle, WA 98174.

[FR Doc. 04–8237 Filed 4–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

April 7, 2004.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 14, 2004 (Within a relatively short time after the regular Commission Meeting).

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher and Kelly voted to hold a closed meeting on April 14, 2004. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 04–8310 Filed 4–8–04; 11:10 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0008; FRL–7645–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Environmental Performance Track Program (Outreach Award, Mentoring Program Registration, and Customer Satisfaction Questionnaire), EPA ICR Number 1949.04, OMB Control Number 2010–0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for revision of the approved collection.

This ICR describes the nature of the information collection and its estimated burden and cost. This ICR is scheduled to expire on August 31, 2006.

DATES: Additional comments may be submitted on or before May 12, 2004.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Lisa Grogan, Office of Policy, Economics, and Innovation, Mail Code 1808T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2981; fax number: 202–566–0292; e-mail address: *grogan.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 8, 2004, EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment. The comment appears to have been mistakenly entered under this docket as the contents of the comment have no relevance to the subject of this ICR.

EPA has established a public docket for this ICR under Docket ID No. OA–2003–0008, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," and then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503, and (2) submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: National Environmental Performance Track Program (Outreach Award, Mentoring Program Registration, and Customer Satisfaction Questionnaire).

Abstract: EPA announced the National Environmental Performance Track Program on June 26, 2000. The program is designed to recognize and

encourage facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress. This ICR proposes adding the following three components to the Performance Track Program to strengthen and expand membership:

Performance Track Outreach Award

Outreach Award applications are submitted voluntarily by any facility or organization that was a member of Performance Track during the calendar year. To be considered for the award, facilities/organizations may self-nominate or may be nominated by other facilities, local or state entities, or EPA Performance Track staff. Nominating facilities will be asked to complete and submit a short nomination application containing facility and contact information, as well as asking the nominating facility to list activities performed to be considered for the Outreach Award.

Performance Track Mentoring Program Registration

Facilities seeking to participate in the Performance Track Mentoring Program will be asked to submit a short registration form that includes facility and contact information, whether the facility seeks to serve as a mentor or mentee, and what areas of the Performance Track program the facility wishes to provide/receive assistance. Mentees are matched with Performance Track sites that volunteer their time and resources to share their experiences and expertise in environmental best practices.

Performance Track Customer Satisfaction Questionnaire

The Customer Satisfaction Questionnaire will be administered on-line, to reduce the burden on respondents and encourage a high response rate. All current members, along with approximately 12 corporate level representatives of participating facilities, will receive e-mail notification with passwords to allow them access to the survey. The questionnaire will ascertain the following information: Program benefits and services that are important to members; member satisfaction with current services; potential improvements in communicating with members about the program; the level of promotion/publicity that members desire for their participation in the program; and any additional benefits and services that would increase member satisfaction. The questionnaire will serve to assess satisfaction as well as identify improvements in future years, as EPA plans to administer the survey on a biennial schedule.

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annualized burden for these three components of the Performance Track Program together averages a total of 1.5 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

As this ICR is a revision to ICR No. 1949.02, this burden represents only the additional burden associated with this revision.

Respondents/Affected Entities: Members of EPA's National Environmental Performance Track Program.

Estimated Number of Respondents: 331.

Frequency of Response: On occasion for the Mentoring Program Registration; annually for the Outreach Award Application; biennially for the Customer Satisfaction Questionnaire.

Estimated Total Annual Hour Burden: 216 hours.

Estimated Total Annual Cost: $16,153 for respondents' labor costs. There are no capital or operations and maintenance costs.

Change in Estimates: This ICR represents an increase of 216 burden hours per year as it is a request for a revision.

Dated: April 1, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–8229 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0146; FRL–7645–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Aerospace Manufacturing and Rework Facilities (Renewal), ICR Number 1687.06, OMB Number 2060–0314

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003-0146, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division (CAMPD), Office of Compliance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number:

(202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 3, 2003 (68 FR 62289), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0146, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NESHAP for Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG) (Renewal).

Abstract: This National Emission Standards for Hazardous Air Pollutants (NESHAP) requires initial notification, performance tests, and periodic reports. Owners or operators also are required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these documents, and retain the file for at least five years following the date of such notifications, reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart GG as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 297 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to adjust the existing ways to comply with any previously applicable instructions and requirements; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Respondents/Affected Entities: Aerospace manufacturing and rework facilities.

Estimated Number of Respondents: 136.

Frequency of Response: Initial, Quarterly, Semiannually, On Occasion.

Estimated Total Annual Hour Burden: 141,645 hours.

Estimated Total Annual Costs: $9,096,770, which includes $0 annualized capital/startup costs, $136,000 annual O&M costs, and $8,960,770 annual labor costs.

Changes in the Estimates: There is a decrease of 3,595,755 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in annual burden due to an improved estimate of the number of facilities and a decrease in annual per person training burden.

Dated: April 1, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–8230 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0013; FRL–7645–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Request for Contractor Access to TSCA Confidential Business Information; EPA ICR No. 1250.07; OMB No. 2070–0075

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Request for Contractor Access to TSCA Confidential Business Information; (EPA ICR #1250.07; OMB #2070–0075). This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPPT–2003–0013, to both (1) EPA online at *http://www.epa.gov/edocket* (our preferred method), or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–1404; fax number: 202–564–8251; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 15, 2003 (68 FR 18202), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OPPT–2003–0013, which is available for public viewing at the Pollution Prevention and Toxics (OPPT) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. An electronic version of the public docket is available through EDOCKET at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search", then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 138102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Request for Contractor Access to TSCA Confidential Business Information.

Abstract: Certain employees of companies working under contract to EPA require access to confidential business information (CBI) collected under the authority of the Toxic Substances Control Act (TSCA) in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA CBI, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance, primarily the name, an identification number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI. EPA will observe strict confidentiality precautions with respect to the information collected on individual employees, based on the Privacy Act of 1974, as outlined in the ICR and in the collection instrument.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 1.6 hour per response.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Companies that are under contract to the Environmental Protection Agency to provide certain services, and whose employees must have access to TSCA confidential business information in the performance of their duties.

Estimated No. of Respondents: 19.

Frequency of Collection: One time only per individual employee needing TSCA CBI clearance.

Estimated Total Annual Burden on Respondents: 415 hours.

Estimated Total Annual Burden Costs: $15,488.

Changes in Burden Estimates: There is a decrease of 260 hours (from 675 hours to 415 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change results from a lesser number of contractor companies with employees needing TSCA CBI clearance.

Dated: April 1, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–8231 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7646–5]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Ambient Air Monitoring and Methods (AAMM) Subcommittee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is announcing the formation of the Clean Air Scientific Advisory Committee (CASAC) Ambient Air Monitoring and Methods (AAMM) Subcommittee (hereinafter, the "Subcommittee") and is hereby soliciting nominations for this Subcommittee.

DATES: Nominations should be submitted by May 3, 2004 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board Staff, at telephone/voice mail: (202) 343–9994; or via e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the SAB can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Subcommittee will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB Staff Office is forming this Subcommittee to provide EPA, through the CASAC, with advice and recommendations on topical areas related to ambient air monitoring and methods developments. The Clean Air Act requires EPA to establish NAAQS and to regulate, as necessary, hazardous air pollutants. The Agency uses ambient air monitoring to determine current air quality conditions, and to assess progress toward meeting these standards and related regulatory goals. EPA has traditionally concentrated much of the national air monitoring efforts on the six "criteria air pollutants," *i.e.*, ozone, particulate matter, nitrogen oxides, sulfur dioxide, carbon monoxide, and lead. More recently, the Agency is focusing upon the measurement of toxic air pollutants including early work to establish a national air toxics monitoring program. Nearly all of the air quality monitoring is conducted by State, local, and Tribal agencies through funding provided by EPA's matching Federal grants programs. Data needs, and therefore, scientific demands upon the ambient air monitoring network are increasing. EPA's Office of Air Quality Planning and Standards (OAQPS), within EPA's Office of Air and Radiation, developed a draft national ambient air monitoring strategy that will accommodate these changes.

The CASAC's National Ambient Air Monitoring Strategy (NAAMS or Strategy) Subcommittee provided an initial review of the draft strategy which is available on the SAB Web site at: *http://www.epa.gov/sab/pdf/casacl04001.pdf*. The CASAC requested that the Agency develop an implementation plan that matched the underlying concepts of the Strategy. Accordingly, the new Subcommittee will be charged with reviewing the monitoring strategy implementation plan, which will include specific recommendations of measurements, measurement methods, regulatory review and revision, quality assurance/quality control standards; and network design.

Furthermore, EPA's OAQPS has initiated the evaluation of continuous monitoring technologies for use in the measurement of coarse particles as either a Federal Reference Method (FRM) or a Federal Equivalent Method (FEM). These efforts support major regulatory objectives of the Clean Air Act as part of the Agency's work in developing a reference method for coarse particles to be included in the EPA *Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information* (*i.e.*, the draft OAQPS Staff Paper on Particulate Matter), which can be found at the following URL: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html*. Therefore, the new Subcommittee will also be charged with reviewing the coarse particle methods testing study conducted by EPA and providing recommendations for use of these methods as reference or equivalent methods. The review also will consider how to optimize the use of one or more methods to meet multiple monitoring objectives, while having a scientifically-acceptable approach to the coarse particle reference method.

Any questions concerning either the ambient air monitoring strategy implementation plan or the coarse particle methods evaluation activities should be directed to Dr. Richard Scheffe, U.S. EPA OAQPS Monitoring and Quality Assurance Group Leader, at phone: (919) 541–4650; or e-mail: *scheffe.rich@epamail.epa.gov*.

The SAB Staff Office is soliciting public nominations of national and international experts in one or more of the following areas:

(a) *Atmospheric sciences and air quality simulation modeling.* Areas of expertise include the development and application of regional and larger-scale air quality dispersion models to predict atmospheric concentrations of ozone, particulate matter and other air pollutants, with emphasis placed on the application of such systems to developing emission control strategies in support of national-level programs or State Implementation Plans (SIPs). Related areas of expertise include individuals with expertise in mechanisms of chemical interactions, source-receptor modeling, observational-based models and related data analysis expertise and conceptual model development.

(b) *Human health effects and exposure assessment.* Areas of expertise include utilizing ambient monitoring data in epidemiology, toxicology, and related disciplines that examine the causative relationships between air pollution and adverse health effects in indoor and outdoor environments.

(c) *Air quality measurement science.* Areas of expertise include measurement of criteria and hazardous air pollutants in particulate matter and gaseous samples with an understanding of routine monitoring conducted by most State and local agencies, an interest in and an understanding of integrating advanced methodologies into monitoring networks and transferring new technological advances to routine use by government air quality agencies.

(d) *Ecological risk assessment.* Areas of expertise include the assessment of ecosystem exposure to criteria and hazardous air pollutants and the use of such data in ecosystem risk assessment.

(e) *State, local agency or Tribal experience.* Areas of expertise include experience working in a State, local agency or Tribal organization familiar with the practical logistics of conducting air monitoring operations, as well as in air monitoring network design.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above to serve on the Subcommittee the areas of expertise described above. Nominations should be submitted in electronic format through

the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site, *http://www.epa.gov/sab*. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab*. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form, and any questions concerning any aspects of the nomination process may contact Mr. Fred Butterfield, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than May 3, 2004.

To be considered, all nominations must include: (a) A current biography, *curriculum vitae* (C.V.) or resume, which provides the nominee's background, experience and qualifications for the Subcommittee; and (b) a brief biographical sketch ("biosketch"). The biosketch should be no longer than one page and must contain the following information for the nominee:

(I) Current professional affiliations and positions held;

(ii) Area(s) of expertise, and research activities and interests;

(iii) Leadership positions in national associations or professional publications or other significant distinctions;

(iv) Educational background, especially advanced degrees, including when and from which institutions these were granted;

(v) Service on other advisory committees, professional societies, especially those associated with issues under discussion in this review; and

(vi) Sources of recent (*i.e.*, within the preceding two years) grant and/or other contract support, from government, industry, academia, etc., including the topic area of the funded activity.

Please note that even if there is no responsive information (*e.g.*, no recent grant or contract funding), this must be indicated on the biosketch (by "N/A" or "None"). Incomplete biosketches will result in nomination packages not being accepted.

The EPA SAB Staff Office will acknowledge receipt of the nomination. From the nominees identified by respondents to this notice (termed the "Widecast"), the SAB Staff Office will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Subcommittee.

For the EPA SAB Staff Office, a balanced subcommittee or review panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the Subcommittee, along with information provided by candidates and information independently-gathered by the SAB Staff Office on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual Subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) skills working in advisory committees, subcommittees and review panels. Subcommittee members will likely be asked to attend no more than two public, face-to-face meetings and/or public teleconference meetings per year.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is on the SAB Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: April 6, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–8224 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7645–9]

JEHL Cooperage Company Inc. Superfund Site; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Agreement concerning the the Jehl Cooperage Company Inc., Superfund Site (Site) located in Memphis, Shelby County, Tennessee, with 3M Corporation, Exxon Mobil Corporation, Ashland Chemical, Inc., and H.B. Fuller Company. EPA will consider public comments on the Agreement until May 12, 2004. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, E-mail: *Batchelor.Paula@EPA.Gov*.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: March 19, 2004.

Rosalind H. Brown,

Chief, Superfund Information & Management Branch, Waste Management Division.

[FR Doc. 04–8227 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Tifton Property Site Lakeland, Florida; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) entered into an Administrative Order on Consent for Removal Action (AOC) with Shell Oil Company, Hercules Incorporated, and Bob W. Stanley Trust (Respondents). Section XV of the AOC provides for the reimbursement of EPA's past and future response costs by the Respondents. EPA will consider public comments on section XV, paragraph 49 of the AOC until May 12, 2004. EPA may withhold consent to all or part of section XV, paragraph 49 of the AOC if comments received disclose facts or considerations which indicate that this part of the AOC is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. *Batchelor.Paula@epa.gov*; (404) 562–8887.

Written comments may be submitted to Paula V. Batchelor at the above address within 30 days of the date of publication.

Dated: March 31, 2004.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 04–8226 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7646–4]

Clean Water Act Section 303(d): Availability of 3 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 3 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before May 12, 2004.

ADDRESSES: Comments on the 3 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–6490, or e-mail: *caldwell.ellen@epa.gov*. For further information, contact Ellen Caldwell at (214) 665–7513. Documents from the administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/water/artmdl.htm*, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comments on 3 TMDLs

By this notice EPA is seeking comment on the following 3 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
08040201–80	Big Johnson Lake	Mercury in fish tissue.
08040204–27	Grays Lake	Mercury in fish tissue.
08040204	Monticello Lake	Mercury in fish tissue.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these 3 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs and determinations where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan. The EPA also will revise the Arkansas 303(d) list as appropriate.

Dated: April 5, 2004.

Miguel I. Flores,

Director, Water Quality Protection Division. Region 6.

[FR Doc. 04–8225 Filed 4–9–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 04–935]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On April 7, 2004, the Commission released a public notice announcing the May 18, 2004, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Tuesday, May 18, 2004, 9:30 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, the Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: April 7, 2004.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, May 18, 2004, from 9:30 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Tuesday, May 18, 2004, 9:30 a.m.*

1. Announcements and recent news.
2. Approval of minutes: Meeting of March 16, 2004.
3. Report from NBANC.
4. Report of NAPM, LLC.
5. Report of the North American Numbering Plan Administrator (NANPA).
6. Report of National Thousands Block Pooling Administrator.
7. Status of Industry Numbering Committee (INC) activities.
8. Reports from Issues Management Groups (IMGs).
9. Report of Local Number Portability Administration (LNPA) Working Group:—Wireless Number Portability Operations (WNPO) Subcommittee.
10. Report of Numbering Oversight Working Group (NOWG).
11. Report of Cost Recovery Working Group.
12. Special presentations.
13. Update list of NANC accomplishments.
14. Summary of action items.
15. Public comments and participation (5 minutes per speaker).
16. Other business.

Adjourn no later than 5 p.m.

Next meeting: Tuesday, July 13, 2004.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 04–8243 Filed 4–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2652]

Petitions for Reconsideration and Clarification of Action in Docketed Proceedings

March 29, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's license transfer proceedings listed in this Public Notice. The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by April 27, 2004. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102).

Number of Petitions Filed: 1.

Subject: In the Matter of Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands (WT Docket No. 02–353).

Number of Petitions Filed: 5.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–8241 Filed 4–9–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2653]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

April 1, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceedings listed in this Public Notice. The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by April 27, 2004. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Revisions of Part 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band (ET Docket No. 03–122).

Number of Petitions Filed: 3.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–8242 Filed 4–9–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that, at 11:14 a.m. on Tuesday, April 6, 2004, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman John M. Reich, seconded by Director James E. Gilleran (Director, Office of Thrift Supervision), concurred in by Director Thomas J. Curry, Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than March 30, 2004, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: April 6, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–801 Filed 4–9–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Citizens Banking Corporation, Frostproof, Florida; to merge with American Banking Corporation, Lake Wales, Florida, and thereby indirectly acquire American Bank & Trust Company, Lake Wales, Florida.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Independent Bank Corporation, Ionia, Michigan; to merge with North Bancorp, Inc., Gaylord, Michigan, and thereby indirectly acquire First National Bank of Gaylord, Gaylord, Michigan.

Board of Governors of the Federal Reserve System, April 6, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–8179 Filed 4–9–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire California Savings Bank, San Francisco, California, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, April 6, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–8180 Filed 4–9–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Embryo Adoption Public Awareness Campaigns

Funding Opportunity Title: Public Awareness Campaigns on Embryo Adoption.

Announcement Type: Competitive Grant—Initial.

Funding Opportunity Number: OPHS–2004-EA.

CFDA Number: 93.007.

Dates: Applications are due no later than June 11, 2004. A Letter of Intent (LOI) is requested on or before May 12, 2004.

Executive Summary: This notice announces the availability of fiscal year (FY) 2004 grant funds for embryo adoption public awareness campaigns. Approximately $950,000 in funding is available on a competitive basis for three to four new projects each in the range of $200,000 to $250,000. Grants will be made for a project period of one year. This announcement seeks applications to develop and implement public awareness campaigns regarding embryo adoption. Applicants must demonstrate experience with embryo adoption programs that conform with professionally recognized standards governing embryo adoption and other applicable Federal or State requirements. For the purposes of this announcement, embryo adoption is defined as the donation of frozen embryo(s) from one party to a recipient who wishes to bear and raise a child or children.

I. Funding Opportunity Description

The Office of Public Health and Science (OPHS) of the Department of Health and Human Services (DHHS) announces the availability of funds for FY 2004 and requests applications for grants for public awareness campaigns on embryo adoption.

The OPHS is under the direction of the Assistant Secretary for Health (ASH), who serves as the Senior Advisor on public health and science issues to the Secretary of the Department of Health and Human Services (DHHS). The Office serves as the focal point for leadership and coordination across the Department in public health and science; provides direction to program offices within OPHS; and provides advice and counsel on public health and science issues to the Secretary.

The increasing success of assisted reproductive technologies (ART) has resulted in a situation in which an

infertile couple typically creates several embryos through in-vitro fertilization (IVF). During IVF treatments, couples may produce many embryos in an attempt to conceive with several being cryopreserved (frozen) for future use. If a couple conceives without using all of the stored embryos, they may choose to have the remaining unused embryos donated for adoption allowing other infertile couples the experience of pregnancy and birth. Embryo adoption is a relatively new process in which individuals who have extra frozen embryos agree to release the embryos for transfer to the uterus of another woman, either known or anonymous to the donor(s) for the purpose of the recipient(s) attempting to bear a child and be that child's parent.

Program Statutes

Public Law 108–199, the Consolidated Appropriations Act, 2004, which includes appropriations for the Department of Health and Human Services, authorizes the Secretary to conduct a public awareness campaign to educate Americans about the existence of frozen embryos available for adoption.

The FY 2004 Senate Appropriations Report (S. Rep. 108–81) contains the following statement:

Embryo Adoption Awareness.—A recent study has shown that there are nearly 400,000 frozen embryos in fertility clinics in the United States, a figure several times higher than previous estimates. The Committee understands that only approximately 2 percent of these frozen embryos are donated to other couples in order to bear children. The Committee believes that, if educated about the possibility, many more couples may chose to donate their embryos and more infertile couples may chose to adopt such embryos. In fiscal year 2002, the Committee directed the Department to launch a public awareness campaign regarding the existence of these spare embryos. The Committee believes that increasing public awareness of this option remains an important goal and therefore directs the Department to continue its embryo adoption awareness campaign. The Committee has provided $1,000,000 for this purpose.

II. Award Information

Funding Instrument Type: Grant.
Anticipated Total Funding: $950,000.
Anticipated Number of Awards: 3–4.
Expected Amounts of Individual Awards: of $200,000–250,000.
Project Periods for Awards: 12 months.

III. Eligibility Information

1. Eligible Applicants

Eligibility to compete for this announcement is limited to particular applicant organizations. Only agencies and organizations, not individuals, are eligible to apply. Eligible applicants include public agencies, non-profit organizations, and for-profit organizations. One agency must be identified as the applicant organization and will have legal responsibility for the project. Additional agencies and organizations can be included as co-participants, subgrantees, subcontractors, or collaborators if they will assist in providing expertise and in helping to meet the needs of the recipients. Faith-based and community-based organizations meeting the eligibility requirements may apply, or they may be included as co-participants, subgrantees, subcontractors, or collaborators if they will assist in providing expertise and in helping to meet the needs of recipients. Eligibility is limited to organizations that can demonstrate previous experience with embryo adoption and are knowledgeable in all elements of the process of embryo adoption.

Applicants should note that § 74.81 of the DHHS grants administration regulations (45 CFR part 74) indicates that, except for awards under certain "small business" programs, no grant funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

2. Cost Sharing or Matching

None.

3. Other

Applicants are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the OPA Web site at: *http://opa.osophs.dhhs.gov/duns.html.*

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested from, and applications submitted to the Grants Management Office, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, Maryland, 20852. Application kits are also available online at: *http://opa.osophs.dhhs.gov/* or by fax at (301) 594–9399.

2. Content and Form of Application Submission

The OPHS requests that you send a Letter of Intent (LOI) if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, estimate the potential review workload, and allow OPHS to plan the review process. The information will be used to determine the number of expert reviewers needed to evaluate the applications. The narrative should be not more than two double-spaced pages, printed on one side, with one-inch margins, and in 12-point font, unreduced. The LOI should include the following information: "Attention: Embryo Adoption Public Awareness Campaign Letter of Intent;" name and address of the applicant institution; name, address and telephone number of the contact person; and specific objectives to be addressed by the proposed project.

Applications must be prepared on the forms supplied (OPHS–1, Revised 6/2001) and in the manner prescribed in the application kits provided by the OPHS. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, applicants must submit one signed original of the application and two photocopies in one package, including all forms and attachments. Please label the application envelope: "Attention: Embryo Adoption Public Awareness Campaign." The application should be typed and should be no more than 50 double-spaced pages (excluding attachments), printed on one side, with one-inch margins, and in 12-point font, unreduced. All pages, including appendices should be numbered sequentially and stapled, or otherwise secured, in the upper left corner.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the applications summary in grants management documents.

Applicants will be required to develop and implement programs for a public awareness campaign on embryo adoption. Applicants are required to

submit a plan and time line that demonstrate that the proposed public awareness campaign: (a) Will be competency-based, (b) has experience with embryo adoption programs that conform to professionally-recognized guidelines and other relevant Federal or State requirements, (c) will be pilot tested and appropriately modified, as necessary, before use, and (d) can be reliably evaluated.

In the narrative section of the application, applicants are advised to describe the strategies and processes that they will use to design a public awareness campaign. The applicant should document its capacity to undertake a public awareness campaign focused on potential donors and/or recipients. Applicants are encouraged to present a description of approaches that may be used, as well as any supplemental materials (brochures, handouts, visual aids, and other resources). Moreover, applicants are advised to demonstrate a familiarity with and understanding of professionally recognized standards or practices (both medical and legal issues) pertaining to embryo adoption, as well as supportive services for potential donor or recipient couples. The applicant organization should clearly demonstrate its professional knowledge and experience in embryo adoption whether with potential donor or recipient populations.

Applicants must make reasonable efforts to ensure that the individuals who design and implement the public awareness campaign are knowledgeable in all elements of the embryo adoption process and are experienced in providing such information. Applicant organizations should demonstrate that they have access to frozen embryos for adoption either directly or through partnership arrangements. Applicants should include information about the number of frozen embryos to which they have access, their history in working with either potential donor or recipient couples, and the organization's capacity to facilitate an embryo adoption public awareness campaign. As part of the project narrative, applicants are advised to describe the methods they will use to recruit, select, train, and evaluate individuals who will implement the public awareness campaign. In the project narrative, applicants are encouraged to present a plan that may be used for working with potential donors and/or recipients under the proposed public awareness campaign.

Applicants, in the project narrative, are encouraged to present a plan for evaluation of the public awareness campaign. The evaluation plan should be two tiered to address: (1) Process, including the planning, content and quality of the public awareness campaign materials provided and (2) participant satisfaction and campaign effectiveness. Applicants that do not have the in-house capacity to conduct an evaluation are advised to propose contracting with a third party social sciences evaluator or a university or college to conduct the evaluation.

Applicants should prepare a project description statement in accordance with the following general instructions. Use the information provided in this section and the evaluation criteria section to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in describing your program plan. The narrative should contain the following sections in the order presented below:

1. *Project Summary/Abstract:* Provide a summary of the project description not to exceed one page. Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project since the abstract will be used to provide reviewers with an overview of the application, will form the basis for an application summary in official documents, and it may be posted on the OPHS web site. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

2. *Specific Aims and Objectives:* Clearly identify the physical, economic, social, legal, 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 studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as well as information about frozen embryos available for adoption. In developing the project description, the applicant may volunteer to provide information on the total range of related projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Describe the specific geographic region that will be served by the organization. This section should include a justification for the selection of the region, based on, for example, geographic size or the number and types of ART centers in the area, and an estimate of the number of frozen embryos available for adoption. There are no geographic restrictions on where the prospective projects may be conducted. The OPHS will accept applications for projects of national, regional, or local scope. The rationale for the project scope must be justified in detail.

3. *Approach:* Outline a plan of action, which 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 program activities to be held, or appropriate measurable outcomes. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

4. *Evaluation:* Provide a narrative addressing how the results of the project and the conduct 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.

5. *Organizational Profiles:* Provide information on the applicant organization and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation

of experience in the program area, and other pertinent information.

6. *Budget and Budget Justification:* Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. 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, and wage rates. 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. Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, and taxes, unless treated as part of an approved indirect cost rate. Include information on the costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). 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 the grantee meeting should be detailed in the budget. 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. Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested. Include information on the costs of all contracts for services and goods except for those, which belong under other categories such as equipment, supplies, construction, *etc.* 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, should be included under this category. 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 required supporting information.

Budget plans should include funding for participation in two grantee meetings. Approximately four to six weeks after the award of funding, the project directors for funded projects will be required to attend a one-day grantee orientation meeting in the Washington, DC area. Toward the end of the project period, a second one-day grantee meeting will also be scheduled. During the orientation meeting, DHHS staff will review grantee plans regarding embryo adoption and discuss the implications for developing the public awareness campaign and related educational materials. Scheduling matters and plans for ensuring that the public awareness campaigns are appropriately focused and targeted to donors as well as potential recipients during the course of the project will be outlined and discussed.

3. Submission Dates and Times

Applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management on or before the deadline listed in the **DATES** section of this announcement. The application due date requirement specified in this announcement supercedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread. Hand-delivered applications must be received by the OPHS Office of Grants Management not later than 4:30 p.m. eastern standard time on the application due date. Applications that are delivered to the OPHS Office of Grants Management after the deadline will not be accepted for review.

4. Intergovernmental Review

This program is not subject to the intergovernmental review requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR Part 100.

5. Funding Restrictions

The allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A–21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR Part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

6. Submission Requirements

Applications must be submitted to the Grants Management Office, Office of Public Health and Science, Department of Health and Human Services, 1001 Wootton Parkway, Suite 550, Rockville, Maryland 20852. Letters of Intent should also be sent to this address.

V. Application Review Information

1. Criteria

Each application will be evaluated individually against the following four criteria by a panel of independent reviewers appointed by the OPHS. Before the review panel convenes, each application will be screened for applicant organization eligibility, as well as to make sure the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration. Applications that do not conform to the requirements of this program announcement will not be accepted for review and will be returned to the applicant. Applications sent via facsimile or electronic mail will not be accepted for review.

Applicants that meet the requirements of this program announcement will be notified by the Office of Grants Management. A panel of at least three reviewers will use the evaluation criteria listed below to determine the strengths and weaknesses of each application, provide comments and assign numerical scores. Applicants should address each criterion in the project application. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1: Objectives and Need for Assistance (30 points)

Applicants must demonstrate a clear understanding of the legislative goals and demonstrate how their approach to the design of a public awareness campaign will contribute to achieve the legislative goals. Applicants must also demonstrate an understanding of the information and skills needed by the designated staff conducting such a public awareness campaign, as well as the information and service needs of potential donors and recipients. Applicants should provide letters of commitment or Memoranda of Understanding from organizations, agencies and consultants that will be partners or collaborators in the proposed project. These documents should describe the role of the agency, organization or consultant and detail

specific tasks to be performed. Specific review criteria include:

(1) Extent to which the application reflects an understanding of the legislative goals of the public awareness campaign for embryo adoption, and shows how their approach to the design of a public awareness campaign and implementation will contribute to achieving the legislative goals;

(2) Extent to which the application clearly describes and documents an understanding of the need for assistance to support and/or enhance existing efforts regarding awareness of embryo adoption;

(3) Extent to which the application reflects a knowledge and understanding of the issues faced by donors and/or recipients;

(4) Extent to which the application reflects a knowledge and understanding of the medical and legal framework of embryo adoption and the services and resources in the geographic area in which the proposed project will be conducted;

(5) Extent to which the application explains how the proposed public awareness campaign will contribute to increased knowledge of the problems, issues, and effective strategies and best practices in the field;

(6) Extent to which the application reflects a knowledge and understanding of the challenges of developing a public awareness campaign and in providing support to donors and/or recipients; and

(7) Extent to which the application presents a vision of the campaign to be developed, and discusses broad contextual factors that will facilitate or impede the implementation of the campaign.

Criterion 2: Approach (30 Points)

In this section, applicants are expected to define goals and specific, measurable objectives for the project. Goals and objectives should not be confused. Goals are an end product of an effective project. Objectives are measurable steps for reaching goals. Applicants are advised to describe a preliminary, yet appropriate and feasible plan of action pertaining to the scope of the proposed public awareness campaign and provide details on how the proposed public awareness campaign will be accomplished. If the project involves partnerships with other agencies and organizations, then the roles of each partner should be clearly specified. Applicants are required to describe how the public awareness campaign will be evaluated to determine the extent to which it has achieved its stated goals and objectives. Applicants are expected to present a project design that includes detailed procedures for documenting project activities that is sufficient to support a sound evaluation. The evaluation design is expected to include process and outcome analyses with qualitative and quantitative components. Applicants are expected to report on their evaluation results in their final report to the OPHS upon completion of the project period. Applicants are required to describe the products that they will develop pursuant to the public awareness campaign. Applicants should discuss the intended audiences for these products (*e.g.*, ART centers, adoption organizations, practitioners, professional organizations that work with infertile couples, potential recipients, or donors) and present a dissemination plan specifying the venues for conveying the information. This criterion consists of four broad topics: (A) Design of the public awareness campaign, (B) implementation, (C) evaluation, and (D) dissemination. Specific review criteria include:

(A) Design of the Public Awareness Campaign

(1) Extent to which the application reflects a familiarity with and understanding of professionally-recognized standards and/or other relevant Federal or State requirements pertaining to embryo adoption and supportive services for donors and recipients.

(2) Extent to which the proposed project goals, objectives and outcomes are clearly specified and measurable, and reflect an understanding of the characteristics of the donors and recipients and the context in which embryo adoption operates; and

(3) Extent to which the application presents an approach to the design of a public awareness campaign is: (a) Competency based, (b) linked to embryo adoption programs which are consistent with the nationally recognized guidelines, (c) pilot tested and appropriately modified, as necessary, before use, and (d) can be readily evaluated.

(B) Implementation

(1) Extent to which the application clearly describes and provides a justification for the selection of the geographic region that will be served by the project;

(2) Extent to which the application presents an appropriate, feasible and realistic plan for scheduling and conducting the public awareness campaign;

(3) Extent to which the application presents an appropriate, feasible and realistic plan for recruiting, selecting, and training individuals to provide information under the public awareness campaign;

(4) Extent to which the application provides an appropriate, feasible and realistic plan for documenting project activities and results, that can be used to describe and evaluate the public awareness campaign, and participant satisfaction with the campaign; and

(5) Extent to which the proposed project will establish and coordinate linkages with other appropriate agencies and organizations serving the target population.

(C) Evaluation

(1) Extent to which the methods of evaluation are feasible, comprehensive and appropriate to the goals, objectives and context of a public awareness campaign;

(2) Extent to which the applicant provides an appropriate, feasible and realistic plan for evaluating the public awareness campaign, including performance feedback and assessment of program progress that can be used as a basis for program adjustments;

(3) Extent to which the methods of evaluation include process and outcome analyses for assessing the effectiveness of program strategies and the implementation process; and

(4) Extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the program and will produce quantitative and qualitative results.

(D) Dissemination

(1) Extent to which the application provides an appropriate, feasible and realistic plan for dissemination of information in a public awareness campaign and related educational materials;

(2) Extent to which the intended audience is clearly identified and defined and is appropriate to the goals of the proposed program;

(3) Extent to which the program's products will be useful to the respective audiences;

(4) Extent to which the application presents a realistic schedule for developing these products, and provides a dissemination plan that is appropriate in scope and budget to each of the audiences; and

(5) Extent to which the products to be developed during the program are described clearly and will address the goal of dissemination of information and are designed to support evidence-

based improvements of practices in the field.

Criterion 3: Organizational Profile (20 Points)

Applicants need to demonstrate that they have the capacity to implement the proposed program. Capacity includes: (1) Previous experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) experience and commitment of any consultants and subcontractors; and, (5) appropriateness of the organizational structure. This criterion consists of three broad topics: (A) Management plan, (B) staff qualifications, and (C) organizational capacity and resources.

Applicants are expected to present a sound and feasible management plan for implementing the proposed program. This section should detail how the program will be structured and managed, how the timeliness of activities will be ensured, how quality control will be maintained, and how costs will be controlled. The role and responsibilities of the lead agency should be clearly defined and, if appropriate, applicants should discuss the management and coordination of activities carried out by any partners, subcontractors, and consultants. Applicants should include a list of organizations and consultants who will work with the project, along with a short description of the nature of their contribution or effort. Applicants are also expected to produce a time line that presents a reasonable schedule of target dates, and accomplishments. The time line should include the sequence and timing of the major tasks and subtasks, important milestones, reports, and completion dates. The application should also discuss factors that may affect project implementation or the outcomes and present realistic strategies for the resolution of these difficulties.

Applicants must provide evidence that project staff have the requisite experience, and expertise to carry out the proposed public awareness campaign on time, within budget, and with a high degree of quality. Include information on staff knowledge of the medical and legal issues concerning embryo adoption, and experience working in this area. Brief resumes of current and proposed staff, as well as job descriptions, should be included. Resumes must indicate the position that the individual will fill, and each position description must specifically describe the job as it relates to the proposed project.

Applicants must show that they have the organizational capacity and resources to successfully carry out the project on time and to a high standard of quality, including the capacity to resolve a variety of technical and management problems that may occur. If the proposed project involves partnering and/or subcontracting with other agencies/organizations, then the application should include an organizational capability statement for each participating organization documenting the ability of the partners and/or subcontractors to fulfill their assigned roles and functions. Specific review criteria include:

(A) Management Plan

(1) Extent to which the management plan presents a realistic approach to achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines and milestones for accomplishing project tasks;

(2) Extent to which the role and responsibilities of the lead agency are clearly defined and the time commitments of the project director and other key project personnel (including consultants) are appropriate and adequate to meet the objectives of the proposed project; and

(3) Extent to which the application discusses factors that may affect the development and implementation of the public awareness campaign and presents realistic strategies for the resolution of these difficulties.

(B) Staff Qualifications

(1) Extent to which the proposed project director, key project staff and consultants have the necessary technical skill, knowledge and experience to successfully carry out their responsibilities; and

(2) Extent to which staffing is adequate for the proposed project, including administration, program services, data processing and analysis, evaluation, reporting and implementation of the public awareness campaign, including related educational materials.

(C) Organizational Capacity and Resources

(1) Extent to which the applicant and partnering organizations collectively have experience in embryo adoption consistent with professionally recognized guidelines;

(2) Extent to which the applicant has experience in developing and implementing similar information or public awareness campaigns; and

(3) Extent to which the applicant has adequate organizational resources for the proposed project, including administration, program operations, data processing and analysis, and evaluation.

Criterion 4: Budget and Budget Justification (20 Points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas and sufficient to accomplish the objectives. Consideration shall be given to project delays due to start-up when preparing the budget. Applicants are expected to allocate sufficient funds in the budget to provide for the project director to attend two grantee meetings in the Washington, DC area. Specific review criteria include:

(1) Extent to which applicant demonstrates that the project costs and budget information submitted for the proposed program are reasonable and justified in terms of the proposed tasks and the anticipated results and benefits; and,

(2) Extent to which the fiscal control and accounting procedures are adequate to ensure prudent use, proper and timely disbursement and an accurate accounting of funds received under this announcement.

2. Review and Selection Process

Each application submitted to the OPHS Office of Grants Management will be screened to determine whether it was received by the closing date and time.

The results of a competitive review are a primary factor in making funding decisions. In addition, Federal staff will conduct administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ASH. The ASH reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. The ASH may also solicit and consider comments from Public Health Service Regional Office staff and others within DHHS in making funding decisions. Final grant awards decisions will be made by the ASH. The ASH will fund those projects which will, in his/her judgement, best promote the purposes of this program, within the limits of funds available for such projects.

VI. Award Administration Information

1. Award Notices

The OPHS does not release information about individual applications during the review process. When final decisions have been made, successful applicants will be notified by

letter of the outcome of the final funding decisions. The official document notifying an applicant that a project has been approved for funding is the Notice of Grant Award (NGA), signed by the OPHS Grants Management Officer, which sets forth the amount of funds granted, the terms and conditions of the award, the effective date of the grant, the budget period for which initial support will be given, and the total project period for which support is contemplated. The ASH will notify an organization in writing when its application will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions in 45 CFR parts 74 (non-governmental) and 92 (governmental) currently in effect or implemented during the period of the grant.

The Buy American Act of 1933, as amended (41 U.S.C. 10a-10d), requires that Government agencies give priority to domestic products when making purchasing decisions. Therefore, to the greatest extent practicable, all equipment and products purchased with grant funds should be American-made.

A Notice providing information and guidance regarding the "Government-wide Implementation of the President's Welfare-to-Work Initiative for Federal Grant Programs" was published in the **Federal Register** on May 16, 1997. This initiative was designated to facilitate and encourage grantees and their subrecipients to hire welfare recipients and to provide additional needed training and/or mentoring as needed. The text of the Notice is available electronically on the OMB homepage at *http://www.whitehouse.gov/omb.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting

A successful applicant under this notice will submit: (a) Progress reports; (b) annual Financial Status Reports; and (c) a final progress report and Financial Status Report. Reporting formats are established in accordance with provisions of the general regulations which apply under 45 CFR parts 74 and 92. Applicants must submit all required reports in a timely manner, in recommended formats (to be provided) and submit a final report on the project, including any information on evaluation results, at the completion of the project period. Agencies receiving $500,000 or more in total Federal funds are required to undergo an annual audit as described in OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

VII. Agency Contacts

Grants Management Office Contact: Karen Campbell, Department of Health and Human Services, Office of Public Health and Science, OPHS Grants Management Office, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20852. E-mail: *Kcampbell@osophs.dhhs.gov;* telephone: (301) 594–0758.

Program Office Contract: Evelyn Kappeler, Department of Health and Human Services, Office of Public Health and Science, Office of Population Affairs, 1001 Wootton Parkway, Suite 750, Rockville, Maryland 20852. E-mail: *Ekappeler@osophs.dhhs.gov;* telephone (301) 594–4001.

Dated: April 5, 2004.

Cristina V. Beato,

Acting Assistant Secretary for Health, Office of Public Health and Science.

[FR Doc. 04–8202 Filed 4–9–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–46–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Surveillance for Bloodstream and Vascular Access Infections in Outpatient Hemodialysis Centers, (OMB No. 0920–0442)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

CDC is proposing an extension of a surveillance survey of bloodstream infections, vascular access infections, infections caused by hospitalization, and antimicrobial infections, all of which starts at U.S. outpatient hemodialysis centers. Although bloodstream and vascular access infections are common in hemodialysis patients, prior to this system there was no previous system to record and track these complications.

Participation in the proposed project is voluntary. Currently about 80–90 centers report data each month. We estimate that about 100 of the approximately 4,500 U.S. outpatient hemodialysis centers will participate in the coming years.

Participating centers may collect data continuously, or may discontinue participation at any time. CDC estimates that the average center will participate for nine months. Each month, participating centers will record the number of hemodialysis patients they treat and maintain a log of all hospitalizations and intravenous (IV) antimicrobial starts. For each hospitalization or IV antimicrobial start, further information (*e.g.*, type of vascular access, clinical symptoms, presence of a vascular access infection, and blood culture results) will be collected. These data may be reported to CDC on paper forms or via a secure Internet site. CDC aggregates this data and generates reports which are sent to participating dialysis centers.

Centers that participate in the Internet-based reporting system may also analyze their own data and print out reports as desired. Rates of bloodstream infection, vascular access infection, and antimicrobial use per 1,000 patient-days will be calculated. Also, the percentage of antimicrobial starts for which a blood culture is performed will be calculated. Through use of these data, dialysis centers will be able to track rates of key infectious complications of hemodialysis. This will facilitate quality control improvements to reduce the incidence of infections, and clinical practice guidelines to improve use of antimicrobials. The estimated annualized burden is 6,300 hours.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Agreement to Participate and Practices Survey	100	1	1
Census Form	100	12	1
Log	100	10	1
Incident Form	100	200	12/60

Dated: April 1, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–8184 Filed 4–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–37–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Jail STD Prevalence Monitoring System, OMB No. 0920–0499—Revision—National Center for HIV, STD and Tuberculosis (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting from the Office of Management and Budget (OMB) a 3-year approval for the standardized record layout for the Jail STD Prevalence Monitoring System. The Jail STD Prevalence Monitoring System consists of test data compiled for persons entering corrections facilities. The standard data elements were created in response to the need to systematically assess morbidity in persons entering correction facilities, who are at high risk for STDs or sexually transmitted diseases and who often do not seek medical care in mainstream medical settings. Use of these standard data elements will improve surveillance of STDs by allowing for systematic assessment of a high-risk population, taking advantage of already computerized data.

States that compile data from corrections facilities are encouraged to participate in the system. In most places, STD test results for persons in corrections facilities are computerized by the laboratory or by the health department. The burden of compiling data in the standardized format involves running a computer program to convert the data to the specified format. This involves an initial investment of time by a programmer but afterwards involves only running the program once a quarter (average of 3 hours per quarter). Therefore, the respondent burden is approximately 12 hours per year.

If a respondent does not have computerized test results for persons in corrections facilities, and must enter the data, the burden of data-entry is approximately 1.5 minute per record. On an average a respondent will enter approximately 1250 records per quarter, which will result in a total burden of 1875 minutes or 31 hours per quarter.

During the next 3 years, CDC expects approximately 20 project areas per year to participate. Approximately 15 will have already computerized data for a burden of 180 hours (15x12 hrs) per year, and five respondents will have to enter data into a computerized database which will result in a burden of 620 additional hours (5x124 hrs) per year. The total estimated annualized burden is 800 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response
State/local health departments with computerized data	15	4	3
State/local health departments without computerized data	5	4	31

Dated: April 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–8185 Filed 4–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period through April 1, 2006.

For more information, contact Dr. Stephen Hadler, Acting Executive Secretary, Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E05, Atlanta, Georgia 30333, telephone 404/639–8549 or fax 404/639–8626.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of

meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 6, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–8189 Filed 4–9–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Drug Safety and Risk Management Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 5, 2004, from 8 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville MD.

Contact Person: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512535. Please call the Information Line for up-to-date information on this meeting. Background materials for this meeting when available will be posted on the Internet 1 business day before the meeting at *www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

Agenda: From 8 a.m. to 3 p.m., the committee will discuss medication errors relating to the labeling and packaging of various drug products in low-density polyethylene plastic vials. From 3 p.m. to 5 p.m., the committee will receive a progress report on the new drug application (NDA) 21–107, LOTRONEX (alosetron hydrochloride), GlaxoSmithKline, Risk Management Program.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 27, 2004. Oral presentations from the public will be scheduled between approximately 11 a.m. and 11:30 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 27, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shalini Jain 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: April 5, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–8126 Filed 4–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are 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: 2005 National Survey on Drug Use and Health—(OMB No. 0930–0110, Revision)—The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2005 NSDUH, additional questions are being planned regarding internet use and access. Questions on neighborhood cohesiveness are slated to be removed, and income questions are scheduled to be re-designed. The remaining modular components of the questionnaire will remain essentially unchanged except for minor modifications to wording.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2005 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

	Number of responses	Responses/ respondent	Average burden/ response (hr.)	Total burden (hrs)
Household Screening	182,250	1	.083	15,127
Interview	67,500	1	1.0	67,500
Screening Verification	5,559	1	0.067	372
Interview Verification	10,125	1	0.067	678
Total	182,259			83,677

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received by June 11, 2004.

Dated: April 5, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–8188 Filed 4–9–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Request for Applications for Grant Program To Provide Substance Abuse Treatment and Reentry Services to Sentenced Juveniles and Young Adult Offenders Returning to the Community From the Correctional System (Short Title: Young Offender Reentry Program) (TI 04–002)

Authority: Section 509 of the Public Health Service Act, as amended and subject to the availability of funds.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of request for applications for Grant Program to Provide Substance Abuse Treatment and Reentry Services to Sentenced Juveniles and Young Adult Offenders Returning to the Community from the Correctional System (Short Title: Young Offender Reentry Program) (TI 04–002).

SUMMARY: The United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) is accepting applications for fiscal year (FY) 2004 grants to expand and/or enhance substance abuse treatment and related reentry services in agencies currently providing supervision of and services to *sentenced* juvenile and young adult offenders returning to the community from *incarceration* for criminal/juvenile offenses. Applicants are expected to form stakeholder partnerships that will plan, develop and provide community-based substance abuse treatment and related reentry services for the targeted populations. Because reentry transition must begin in the correctional or juvenile facility before release, funding may be used for limited activities in institutional correctional settings in addition to the expected community-based services.

DATES: Applications are due on June 15, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on program issues, contact: Kenneth W. Robertson, Team Leader, Systems Improvement Branch, Division of Services Improvement, SAMHSA/CSAT, 5600 Fishers Lane, Rockwall II, Suite 740, Rockville, MD 20857, Phone: (301) 443–7612, Fax: (301) 443–8345, E-mail: *kroberts@samhsa.gov*.

For questions on grants management issues, contact: Kathleen Sample, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, Phone: (301) 443–9667, Fax: (301) 443–6468, E-mail: *ksample@samhsa.gov*.

SUPPLEMENTARY INFORMATION:

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243.

Key Dates

Application Deadline: June 15, 2004

Intergovernmental Review (E.O. 12372): Letters from State Single Point of Contact (SPOC) are due no later than 60 days after application deadline.

Public Health System Impact Statement (PHSIS)/Single State Agency Coordination: Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due no later than 60 days after application deadline.

Date of Issuance: April 2004.

Table of Contents

I. Funding Opportunity Description

1. Introduction

As authorized under section 509 of the Public Health Service Act, the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), announces the availability of Fiscal Year 2004 grants to expand and/or enhance substance abuse treatment and related reentry services in agencies currently providing supervision of and services to *sentenced* juvenile and young adult offenders returning to the community from *incarceration* for criminal/juvenile offenses. Applicants are expected to form stakeholder partnerships that will plan, develop and provide community-based substance abuse treatment and related reentry services for the targeted populations. Because reentry transition must begin in the correctional or juvenile facility before release, funding may be used for limited activities in institutional correctional settings in addition to the expected community-based services. (**NOTE:** see **EXPECTATIONS** section below for allowable services in incarcerated settings.)

2. Expectations

2.1 Target Population

This program addresses the needs of *sentenced* substance-abusing juveniles and young adult offenders returning to their families and community from adult or juvenile incarceration in facilities including prisons, jails, or juvenile detention centers. This grant program is not designed to address the needs of individuals in custody or detention settings awaiting adjudication, or sentenced to residential treatment facilities, or school-based programs.

SAMHSA/CSAT will award grants to applicants proposing to serve one of two specific young offender population categories:

Juveniles: Those sentenced offenders 14 years up to 18 years old under the jurisdiction of the juvenile justice system. (In those State jurisdictions where juvenile justice supervision extends up past 18 years of age, those "juveniles" are eligible to be served.)

Young Adult Offenders: Those sentenced offenders up to 24 years of age under the supervision of the adult criminal justice system.

The applicant organization must clearly state in the application *Abstract* and in the *Project Narrative* which population is to be served and the number of clients to be served each year.

In addition to qualifying as either a "juvenile offender" or a "young adult offender" as defined above, individuals must meet the following qualifications to receive services funded under this grant program. They must:

- Be assessed as substance-abusing or diagnosed as having a substance abuse disorder;
- Have been *sentenced* by the criminal or juvenile justice system to incarceration;
- If incarcerated, be within one year of scheduled release to the community in order to receive services in the correctional/detention setting (including limited assessment, transition planning, and systems coordination).—[**NOTE:** see Section I–2.4 Expectations, Required Systems Linkages and Services/ Treatment of this Request for Applications (RFA)]; and
- If already released to the community from incarceration, be within 60 days of release from incarceration and under some form of juvenile/criminal supervision.

2.2 Background

Statistics regarding juvenile offenders indicate that "juveniles were involved in 16 percent of all violent crime arrests and 32 percent of all property crimes in 1999. . . ." As the trend toward confining greater numbers of juveniles and young offenders continues, so does the growing number of young offenders reentering our communities. An estimated 100,000 youth are released from secure and residential facilities and returned to the community each year. Research also shows that a small percentage of juveniles commit an overwhelming majority of juvenile crime, and that a substantial number of these juvenile and young adult offenders are substance-involved or have substance abuse disorders.

Over the past decade, awareness of the issue of the need for a continuing care system for juvenile and young adult offenders has grown as States and local communities have struggled with the increasing number of these individuals returning to the community after release from correctional confinement. Often the juvenile or adult criminal justice system has services and structures in place for these offenders at entry into the system (*i.e.*, at pre-trial or adjudication), but there are few and fragmented services in place for these young offenders as they are released from correctional settings. Reentry into the community and reintegration into the family are risky times for these offenders and their families. The U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) indicates that in the first year following release, young offenders re-offend at a rate of sixty-three (63) percent. Substance abuse treatment for offenders in prison and in the community has been extensively studied and evaluated over the past several years, and the results are consistent and clear—treatment works, reducing crime and recidivism. SAMHSA/CSAT recognizes the need to successfully return and reintegrate these youths into the community by providing substance abuse treatment and other related reentry services while also ensuring public safety for the community and family. This program builds on previous and ongoing SAMHSA/CSAT criminal and juvenile justice program initiatives, and builds on learning gained from these previous initiatives.

2.3 Required Letters of Support From Proposed Key Stakeholders

SAMHSA/CSAT is seeking applications from individual organizations that have or will form partnerships with key stakeholders such as criminal/juvenile agencies (as appropriate to the juvenile or young adult population specified in your application), alcohol and drug abuse agencies, substance abuse treatment providers and community-based organizations providing treatment-related wrap around services for family and community reintegration. Therefore, all eligible entities that apply are required to provide in Appendix 2 of the application, "Letters of Support and Commitment," (as appropriate to the proposed approach) from key partners. Examples of key partners include:

- The State or local Department of Corrections;
- The State or local Alcohol and Drug Abuse Agency;
- The State or local Mental Health Agency;
- The State or local juvenile/criminal justice agency responsible for community supervision upon release from incarceration (such as parole authority, after release judicial or probation agency, reentry court, community corrections supervision authority, youth release authority);
- Community-based substance abuse treatment agencies whose services will be used (Note: see Section III–3.2 Eligibility Information/Other/Evidence of Experience and Credentials); and
- Other Federal, State, or local government agencies and community-based organizations including faith-based organizations, whose services will be used for ancillary reentry services, including housing assistance, job skills development, employment assistance, educational and vocational assistance, and family counseling, among other services.

Applications submitted by Indian Tribes and tribal organizations for juveniles and young adults returning from Tribal or Federal facilities must include the appropriate Tribal or Federal stakeholder agencies/ organizations in lieu of State or local governmental entities, as appropriate.

Letters of support and commitment must include:

- The agency/organization's commitment to participate;
- The proposed role and level of support of the stakeholder agency/ organization; and
- The signature of the head of the agency/organization.

Because SAMHSA/CSAT recognizes that each State, Tribe, and local community differs in its ability to immediately implement the proposed services, awarded grantees will be allowed *up to 6 months of the first year of the grant* to develop any appropriate systems coordination among governmental agencies and community-based organizations, and to start the

implementation of the proposed services expansion and/or enhancement. Applicants should clearly indicate the period of time, up to 6 months, needed in year one to develop a systems coordination plan and implement proposed services to the target population.

2.4 Required Systems Linkages and Services/Treatment

Offender reentry, often called reintegration or continuing care, is the process an offender in a juvenile or adult correctional facility goes through as he/she transitions from the institution to the community.

SAMHSA/CSAT has a substantial interest in funding projects that provide *both systems linkages and services/treatment* for the reentering young offender. Applications must propose to address both of these areas, and funds must be used to support the following activities:

Systems Linkages: Activities that support communities in their development of a comprehensive, multi-agency approach to expanding and/or enhancing substance abuse treatment in addition to juvenile/criminal justice supervision to targeted juveniles and young adults leaving incarceration and returning to the community and to their families (*No more than 15% of the total grant award may be used for Systems Linkages activities*).

Upon release of the offender to the community, funds should be used to provide effective, comprehensive substance abuse and related reentry services to the target population. The following represents a comprehensive but not inclusive range of *systems linkage* coordination activities to be provided, and for which funds may be used.

1. Systems coordination planning and developmental activities that bring all the key stakeholder agencies/organizations together.

2. The development of systems linkages and referral sources in the community.

3. Efforts to increase treatment capacity to provide immediate entry into substance abuse treatment.

4. Assistance in paying for Department of Labor Bonding for employment of the substance-abusing offender.

Services/Treatment: Activities that improve the health of the targeted clients by:

- Providing comprehensive substance abuse treatment for the client diagnosed as having a substance abuse disorder;
- Improving family functioning;
- Helping clients develop job skills and find jobs;
- Reducing the likelihood the client will be re-arrested; and
- Reducing the crime rate and the number of victims.

The following represents a comprehensive but not inclusive range of *treatment services* to be provided, and for which funds may be used.

1. Alcohol and drug (substance abuse) treatment.

2. Wrap around services supporting the access to and retention in substance abuse treatment or to address the treatment-specific needs of clients during or following a substance abuse treatment episode.

3. Screening, assessment, case management, program management and referrals related to substance abuse treatment for clients.

4. Comprehensive individual assessment for alcohol and drug abuse.

5. Individualized services planning.

6. Case management, using a team approach that includes juvenile or adult criminal justice supervising authorities, substance abuse treatment professionals, existing treatment alternatives organizations such as TASC or similar treatment referral and case management models, and law enforcement as appropriate to the community setting.

7. Drug testing as required for supervision, treatment compliance, and therapeutic intervention.

8. Support in obtaining a GED and/or other necessary education.

9. Relapse prevention and long-term management support.

10. As appropriate for juvenile populations, continuing care programming, including peer support groups and mentoring services.

Because CSAT's focus is on the return of the young offender to the community, the expectation is that most proposed treatment and related reentry services will be provided in the community. However, recognizing that effective offender reentry requires assessment and release planning while the offender is incarcerated, limited funds (*no more than 15% of the total grant award*) may be used for certain activities inside juvenile or adult institutional correctional settings for:

1. Systems coordination planning and developmental activities that bring together all the key stakeholder agencies/organizations identified in the Letters of Support and Commitment to form partnerships that will plan, develop, and provide substance abuse treatment and related reentry services in the community.

2. The development of systems linkages and referral processes in both institutional and communities settings.

3. Purchase and/or administration of brief diagnostic and screening tools for identification of substance abuse issues for the targeted offender population.

4. Purchase and/or administration of substance abuse instruments for the targeted offender population.

5. Intake and/or case management staff with substance abuse treatment expertise to administer assessment instruments and to assist correctional staff in developing the individual offender transition plans for reentry into the community.

6. Community-based organizations, including faith-based groups, to go inside the correctional institution to begin wraparound transition planning activities such as, but not limited to, jobs skills planning or educational program planning for community follow-up upon release.

2.5 Recommended Treatment Models for Youth

Applicants are encouraged, when appropriate for their setting and population, to choose the assessment instrument and one of the treatment protocols listed below. The assessment instrument, the treatment protocols, and other supporting materials are available at *http://www.chestnut.org/LI/APSS/CSAT/protocols/*. If you experience any difficulty accessing this site, please contact Dan Foust at 309–820–3543, ext. 8–3421 or by email at *Dfoust@chestnut.org*.

The majority of CSAT's grantees providing services to youth are using a standardized comprehensive bio-psycho-social assessment: The Global Appraisal of Individual Needs. The cost for licensing, software, training, and certification will be borne by CSAT for successful applicants who choose to use this assessment instrument. Successful applicants who use this instrument will also have the opportunity to participate with other grantees in ongoing studies on youth treatment outcomes.

Two of CSAT's earlier grant programs: Cannabis Youth Treatment (CYT), and Adolescent Treatment Models (ATM) tested and manualized a number of effective treatment interventions for youth with substance use disorders. The Assertive Continuing Care (ACC) intervention has also been used successfully by CSAT grantees. These adolescent treatment services interventions range from brief outpatient through long-term residential models. Applicants are encouraged to adopt/adapt one of these protocols as their treatment intervention. Training and technical assistance for implementation of these treatment

protocols will be available for successful applicants.

As indicated previously, applicants may propose a planning phase of up to six months of the first year of funding for systems linkages activities. However, even with unexpected delays that may occur, grantees must begin delivery of treatment and reentry services by the end of the first year in order to receive continuation funding for additional years.

2.6 Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

2.7 Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to set program performance targets and report annually on the degree to which the previous year's targets were met.

Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures and justify requests for funding.

To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. Grantees are required to report these GPRA data to SAMHSA on a timely basis. Specifically, grantees will be required to provide data on a set of required measures explained below.

For adults receiving services, GPRA indicators include changes in a positive direction or stability over time on each of five measures, showing that adults receiving your services:

- Are currently employed or engaged in productive activities;
- Have a permanent place to live in the community;
- Have reduced their involvement with the criminal justice system;
- Have not used illegal drugs or misused alcohol or prescription drugs during the past month; and
- Have experienced reduced health, behavior, or social consequences related to abuse of alcohol or illegal drugs or misuse of prescription drugs.

For youth/adolescents under age 18 receiving services, GPRA indicators include changes in a positive direction or stability over time on five measures, showing that youth/adolescents receiving your services:

- Are attending school;
- Are residing in a stable living environment;
- Have no involvement in the juvenile justice system;
- Have not used alcohol or illegal drugs or misused prescription drugs during the previous month; and
- Have experienced reduced health, behavior, or social consequences related to use of alcohol, abuse of illegal drugs, or misuse of prescription drugs.

GPRA data must be collected at baseline (*i.e.*, the client's entry into the project), 6 months after the baseline, and 12 months after the baseline. Projects serving adolescents also must collect 3 month post-baseline data to capture the nuances of change particular to this population. GPRA data must be entered into the GPRA web system within 7 business days of the forms being completed. In addition, 80% of the participants must be followed up.

The data collection tool, Targeted Capacity Expansion Client Level GPRA Tool, to be used for reporting the required data will be provided in the application kits distributed by the National Clearinghouse for Alcohol and Drug Information (NCADI) and can be found at *www.csat-gpra.samhsa.gov.* (Click on "Data Collection Tools/ Instructions." Then click on "Targeted Capacity Expansion Program," then "GPRA Tool.")

In your application, you must demonstrate your ability to collect and report on these measures. GPRA data are to be collected and then entered into CSAT's GPRA Data Entry and Reporting System (*www.csat-gpra.samhsa.gov*). Training and technical assistance on data collecting, tracking, and follow-up, as well as data entry, will be provided by CSAT.

The terms and conditions of the grant award also will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

Applicants should be aware that SAMHSA is working to develop a set of required core performance measures for four types of grants (*i.e.*, Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants). As this effort proceeds, some of the data collection and reporting requirements included in this RFA may change. All grantees will be expected to comply with any changes in data collection requirements that occur during the grantee's project period.

2.8 Evaluation

Grantees must evaluate their projects, and you are required to describe your evaluation plans in your application. The evaluation should be designed to provide regular feedback to the project to improve services. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget.

Process components should address issues such as:

- How closely did implementation match the plan?
- What types of deviation from the plan occurred?
- What led to the deviations?
- What effect did the deviations have on the planned intervention and evaluation?
- Who provided (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

- What was the effect of treatment on participants?
- What program/contextual factors were associated with outcomes?
- What individual factors were associated with outcomes?
- How durable were the effects?

No more than 20% of the total grant award may be used for evaluation and data collection, including GPRA.

II. Award Information

1. Award Amount

It is expected that $6 million will be available to fund up to 12–14 awards in FY 2004. The average annual award will range from $300,000 to $500,000 in total costs (direct and indirect). *Applicants may request up to but no more than $500,000 in total costs (direct and indirect) per year in any year of the grant project.* The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received.

Awards may be requested for up to 4 years. Applicants may request up to six months of the first year for systems coordination planning and development. The planning phase is to be followed by the implementation of the reentry work plan including the delivery of treatment and other reentry services.

Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

2. Funding Mechanism

Awards for this funding opportunity will be made as grants (see the Glossary in Appendix B for further explanation of this funding mechanism).

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are domestic public and private *nonprofit* entities. For example, State, local or tribal governments; public or private universities and colleges; courts; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program prohibits grants to for-profit organizations.

While units of government may apply, they may not submit "pass through," "umbrella," or "cover letter" applications. This means that as the applicant, a unit of government, must take an active role in the oversight of the project, coordinate with the treatment services providers, and be legally, fiscally, and administratively responsible for the grant.

2. Cost-Sharing

Cost-sharing (*see* Glossary) is not required in this program, and applications will not be screened out on the basis of cost-sharing. However, you may include cash or in-kind contributions (*see* Glossary) in your proposal as evidence of commitment to the proposed project.

3. Other

3.1 Additional Eligibility Requirements

Applicants must comply with the following requirements or they will be screened out and will not be reviewed: use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document.

3.2 Evidence of Experience and Credentials

SAMHSA believes that only existing, experienced, and appropriately credentialed organizations with demonstrated infrastructure and expertise will be able to provide required services quickly and effectively. Therefore, in addition to the basic eligibility requirements specified in this announcement, applicants must meet three additional requirements related to the provision of treatment or prevention services.

The three requirements are:

- A provider organization for direct client substance abuse treatment services appropriate to the grant must be involved in each application. The provider may be the applicant or another organization committed to the project. More than one provider organization may be involved;
- Each direct service provider organization must have at least 2 years experience providing services in the geographic area(s) covered by the application, as of the due date of the application; and
- Each direct service provider organization must comply with all applicable local (city, county) and State/tribal licensing, accreditation, and certification requirements, as of the due date of the application.

[**Note:** The above requirements apply to all service provider organizations. A license from an individual clinician will not be accepted in lieu of a provider organization's license.]

In **Appendix 1** of the application, you must: (1) Identify at least one experienced, licensed service provider organization; (2) include a list of all direct service provider organizations that have agreed to participate in the proposed project, including the applicant agency if the applicant is a treatment service provider organization; and (3) include the Statement of Assurance (provided in Appendix C of this announcement), signed by the authorized representative of the applicant organization identified on the face-page of the application, that all participating service provider organizations:

- Meet the 2-year experience requirement
- Meet applicable licensing, accreditation, and certification requirements, and,
- If the application is within the funding range, will provide the Government Project Officer (GPO) with the required documentation within the time specified.

If Appendix 1 of the application does not contain items (1)–(3), the application will be considered ineligible and will not be reviewed.

In addition, if, following application review, an application's score is within the fundable range for a grant award, the GPO will call the applicant and request that the following documentation be sent by overnight mail:

- A letter of commitment that specifies the nature of the participation and what service(s) will be provided from every service provider organization that has agreed to participate in the project;
- Official documentation that all participating organizations have been providing relevant services for a minimum of 2 years before the date of the application in the area(s) in which the services are to be provided; and
- Official documentation that all participating service provider organizations comply with all applicable local (city, county) and State/tribal requirements for licensing, accreditation, and certification or official documentation from the appropriate agency of the applicable State/tribal, county, or other governmental unit that licensing, accreditation, and certification requirements do not exist.

If the GPO does not receive this documentation within the time specified, the application will be removed from consideration for an award and the funds will be provided to another applicant meeting these requirements.

IV. Application and Submission Information

To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.

1. Address To Request Application Package

You may request a complete application kit by calling SAMHSA's National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.

You also may download the required documents from the SAMHSA Web site at *www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (e.g., guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms,

assurances, certification, and checklist. Applications that are not submitted on the required application form will be screened out and will not be reviewed.

• Request for Applications (RFA)—Includes instructions for the grant application. This document is the RFA.

You must use the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

• *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

• *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases. Indicate the total number of clients to be treated in each year of the grant, and which population (juveniles or young adult offenders) will be served.

• *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.

• *Budget Form*—Use SF 424A, which is part of the PHS 5161–1. Fill out Sections B, C, and E of the SF 424A.

• *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through D. Sections A–D together may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections E through H. There are no page limits for these sections, except for Section G, the Biographical Sketches/Job Descriptions.

• *Section E*—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• *Section F*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 15% of the total grant award will be used for certain activities inside juvenile or adult institutional correctional settings and for systems linkages activities, respectively, and that no more than 20% of the total grant award will be used for data collection and evaluation, including GPRA.

• *Section G*—Biographical Sketches and Job Descriptions.

—Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

—Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

—Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• *Section H*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4. of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

• *Appendices 1 through 5*—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1, 4 and 5. There are no page limitations for Appendices 2 and 3. Do not use appendices to extend or replace any of the sections of the Project Narrative. Reviewers will not consider them if you do.

—*Appendix 1:* Evidence of Experience and Credentials. Identification of at least one experienced, licensed service provider organization. A list of all direct service provider organizations that have agreed to participate in the proposed project, including the applicant agency, if it is a treatment service provider organization. The Statement of Assurance (provided in Appendix C of this announcement) signed by the authorized representative of the applicant organization identified on the face page of the application, that assures SAMHSA that all listed providers meet the 2-year experience requirement, are appropriately licensed, accredited, and certified, and that if the application is within the funding range for an award, the applicant will send the GPO the required documentation within the specified time.

—*Appendix 2:* Letters of Support and Commitment from stakeholders and project participants. (As indicated in Section I–2.3, Expectations, Required Letters of Support from Proposed Key Stakeholders.)

—*Appendix 3:* Data Collection Instruments/Interview Protocols.

—*Appendix 4:* Sample Consent Forms.

—*Appendix 5:* Letter to the SSA (if applicable; see Section IV–4 of this document).

• *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1. Because grantees in the YORP program will use grant funds to provide direct substance abuse services, applicants are required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations, Form SMA 170. This form will be posted on SAMHSA's Web site with the RFA and provided in the application kits available at NCADI.

• *Certifications*—Use the "Certifications" forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper

signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

- Information provided must be sufficient for review.
- Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

- Paper must be white paper and 8.5 inches by 11.0 inches in size.
- To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25. This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

- The 30-page limit for Appendices 1, 4 and 5 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

- Pages should be typed single-spaced with one column per page.
- Pages should not have printing on both sides.
- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section H of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection: All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must describe how you will address these requirements.

1. *Protect Clients and Staff from Potential Risks*

- Identify and describe any foreseeable physical, medical, psychological, social and legal risks or potential adverse effects as a result of the project itself or any data collection activity.
- Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.
- Identify plans to provide guidance and assistance in the event there are adverse effects to participants.
- Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. *Fair Selection of Participants*

- Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.
- Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.
- Explain the reasons for *including or excluding* participants.
- Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

- Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.
- If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, *etc.*).
- State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. Data Collection

- Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.
- Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.
- Provide in Appendix 3, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

- Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.
- Describe:

—How you will use data collection instruments.

—Where data will be stored.
—Who will or will not have access to information.
—How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of title 42 of the Code of Federal Regulations, part II.

6. Adequate Consent Procedures

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

—Whether or not their participation is voluntary.
—Their right to leave the project at any time without problems.
—Possible risks from participation in the project.
—Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain *written* informed consent.

• Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 4 "Sample Consent Forms", of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations. Depending on the evaluation and data collection requirements of the particular funding opportunity for which you are applying or the evaluation design you propose in your application, you may have to comply with the Protection of Human Subjects Regulations (45 CFR 46).

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and the IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the Web at *http://ohrp.osophs.dhhs.gov.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301/496–7005).

3. Submission Dates and Times

The deadline for submission of applications for YORP is June 15, 2004.

Your application must be received by the application deadline. Applications received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *www.whitehouse.gov/omb/grants/spoc.html.*

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. TI 04–002.

In addition, community-based, non-governmental service providers who are not transmitting their applications through the State must submit a Public Health System Impact Statement or PHSIS (approved by OMB under control no. 0920–0428; see burden statement below) to the head(s) of the appropriate State and local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. The PHSIS is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. *State and local governments and Indian tribal*

government applicants are not subject to the following Public Health System Reporting Requirements.

This PHSIS consists of the following information:

- a copy of the face page of the application (SF 424); and
- a summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 5, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to:

Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SSA—Funding Announcement No. TI 04–002.

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. 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 number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road. MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428)].

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21
- State and Local Governments: OMB Circular A–87
- Nonprofit Organizations: OMB Circular A–122
- Appendix E Hospitals: 45 CFR Part 74

In addition, YORP grant recipients must comply with the following funding restrictions:

- No more than 15% of the total grant award may be used for systems linkages activities.
- No more than 15% of the total grant award may be used for activities inside juvenile or adult correctional facilities.
- No more than 20% of the total grant award may be used for evaluation and data collection, including GPRA.

YORP grant funds must be used for purposes supported by the program and may not be used to:

- Pay for any lease beyond the project period.
- Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community), except as noted in the Expectations Section of this RFA.
- Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request up to $75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)
- Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
- Pay for housing other than residential substance abuse treatment.
- Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
- Pay for incentives to induce individuals to enter treatment. However, a grantee or treatment provider may provide up to $20 or equivalent (coupons, bus tokens, gifts, child care, and vouchers) to individuals as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.
- Implement syringe exchange programs, such as the purchase and distribution of syringes and/or needles.
- Pay for pharmacologies for HIV antiretroviral therapy, sexually transmitted diseases (STD)/sexually transmitted illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.
- Provide any services in a program implementing stated "harm reduction" philosophy or practice.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include "YORP, TI 04–002" in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored according to the quality of your response to the requirements listed below for developing the Project Narrative (Sections A–D). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
- The Project Narrative (Sections A–D) together may be no longer than 25 pages.
- You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, *or it will not be considered.* Your application will be scored according to how well you address the requirements for each section of the Project Narrative.
- Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at

www.samhsa.gov. Click on "Grant Opportunities."

• The Supporting Documentation you provide in Sections E–H and Appendices 1–5 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.

• The number of points after each heading is the maximum number of points a review committee may assign to that section of your Project Narrative. Except as provided in Section B below, bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within the criterion.

Section A: Understanding the Problem, Justification of Need, and Project Description, 20 points

• For the proposed project, discuss offender reentry, showing an understanding of the substance abuse relationship to crime, the obstacles to effective reentry, and solutions to the obstacles. Review recent literature and other information that demonstrates a thorough understanding of the substance abuse issues in the proposed target population.

• Describe the problem the project will address in terms of unmet treatment need for the target population, using local data to the extent possible.

• Clearly indicate which one of the target populations (sentenced juveniles or young adults) are to be served, and provide the rationale for selecting the target population.

• Describe the target population in terms of demographics, and demonstrate that the target population meets the qualifications listed in Section I–2.1, Target Population in this RFA.

• Describe the geographic area that will have access to expanded or enhanced services and provide recent population numbers for the area.

• Fully describe existing services, including the number and type of current treatment services/slots/beds available and the number of people *currently* being served.

Section B: Project Plan, 35 points

• Describe the proposed project for meeting the needs you described above in Section A: Understanding the Problem, Justification of Need, and Project Description, making sure that the design is consistent with Section I–2, Expectations, in this RFA.

• Demonstrate an understanding of key stakeholder partnerships needed to plan, develop, and provide substance abuse treatment and related reentry services. Applicants must show evidence of stakeholder partnership by including Letters of Support and Commitment, signed by the head of the agency/organization, from key partners critical to the success of the proposed project in Appendix 2 of the application. (**Note:** For purposes of rating the understanding of key stakeholder partnerships needed, and the presence of signed Letters of Support and Commitment from key partners in Appendix 2, reviewers will be instructed to use 9 of the total 35 points allowed for Section B for this single critical requirement).

• Describe the systems linkages component of the project design, and define the role and responsibility of each stakeholder. Identify any cash or in-kind contributions that will be made to the project by the applicant or other partnering organizations.

• By grant year, fully describe the number of additional people to be served each year with the grant funds, and the four-year total. State the types of services you will provide these individuals.

• Explain the time frame for year one planning of systems coordination and development; indicate the proposed number of months of planning before actual services provision. (Make sure to comply with the RFA requirement that only up to six months of year one may be used for this purpose.)

• Explain how you propose to provide services to the target population in the correctional or detention facility and which services will be provided there. Discuss how these services are consistent with the limitations on funding within correctional settings specified under Section I–2, Expectations, in this RFA.

• Explain how you propose to provide services to the target population after return to the community, which treatment and related reentry services will be provided, who will provide these services, and how the stakeholders' partnership will coordinate the services and supervision.

• Demonstrate how the proposed project will have a significant impact on the described need during the four years of funding. Demonstrate that the number of persons to be served and the anticipated outcomes of service represent an effective use of funds requested.

• Discuss how the project will address age, race/ethnic, cultural, language, sexual orientation, disability, literacy, and gender issues relative to the target population.

Section C: Evaluation/GPRA, 15 points

• Describe plans to comply with GPRA requirements, including the collection of CSAT's GPRA Core Client Outcomes, and tracking and follow-up procedures to meet the 80% follow-up standard.

• Describe the process and outcome evaluation, including assessments of implementation and individual outcomes. Show how the evaluation will be integrated with requirements for collection and reporting of performance data, including data required by SAMHSA to meet GPRA requirements.

• Discuss instruments to be used, including their reliability, validity, and cultural appropriateness. Document the appropriateness of the proposed approaches to gathering quantitative and qualitative data for the target population. Address not only traditional reliability and validity but also sensitivity to age, gender, language, sexual orientation, culture, literacy, disability and racial/ethnic characteristics of the target population.

• Provide examples of forms that will be signed by clients that permit the appropriate exchange of treatment and other information between the named agencies (*i.e.*, confidentiality waiver forms). Further, provide any data sharing agreements that the key stakeholders will use. Place all of this documentation in Appendices 3 (Data Collection Instruments/Interview Protocols) and 4 (Sample Consent Forms) of your application.

Section D: Project Management, 30 points

Implementation and Operation Plan

• Present a plan for the implementation and operation of the project to achieve the intended results. Include a schedule and timeline of activities and products, target dates and person(s) responsible; and how multi-agency and/or system arrangements will be implemented and managed.

• Describe how the applicant will provide effective management, fiscal, and administrative monitoring and oversight of the grant including the treatment providers and other contractors (including evaluators).

• Demonstrate that the project will be fully operational within six months and providing treatment and related reentry services to the target population within the first year.

Organization Capability

• Describe your experience with the implementation of multi-agency systems partnerships and multi-system programs. Discuss how this experience

will contribute to the success of your project.

• If subcontractors are involved, describe their organizational capabilities, and what they will contribute to the project.

Staff and Staffing Plans

• Provide a staffing plan, showing an organizational chart. Include staff, consultants, subcontractors, and collaborating agencies.

• Provide the level of effort and qualifications of the Project Director and other key personnel.

• Provide evidence that the proposed staff have requisite training, experience, and cultural sensitivity to provide services to the target population. Show evidence of the appropriateness of the proposed staff to the language, age, gender, sexual orientation, disability, literacy, and ethnic, racial, and cultural factors of the target population.

Equipment and Facilities

• Describe facilities and equipment available to the project, and any equipment that will have to be procured for the project. Equipment and facilities must be shown to be adequate for the proposed project activities; accessible to the target population; and American Disabilities Act compliant.

Budget, Sustainability and Other Support

• Provide a per-person or unit cost of the project to be implemented, based on the applicant's actual costs and projected costs over the life of the project. Applicants must state whether or not the per person costs are within the following reasonable ranges by treatment modality. Applicants must also discuss the reasonableness of the per person costs. If proposed costs exceed reasonable ranges, a detailed justification must be provided.

• Program costs. The following are considered reasonable ranges by treatment modality:

Residential: $3,000 to $10,000.

Outpatient (Non-Methadone): $1,000 to $5,000.

Outpatient (Methadone): $1,500 to $8,000.

Intensive Outpatient: $1,500 to $7,500.

Screen/Brief Intervention/Brief Treatment/Outreach/Pretreatment Services: $200 to $1,200.

SAMHSA/CSAT computes per person costs as follows. The total support requested for the life of the project is multiplied by .8 (.2 will be the allowance for GPRA reporting requirements). The resulting amount is then divided by the number of persons the applicant proposes to serve over the life of the project.

The outreach and pretreatment services cost band only applies to outreach and pretreatment programs that do not also offer treatment services but operate within a network of substance abuse treatment facilities. Treatment programs that add outreach and pretreatment services to a treatment modality or modalities are expected to fall within the cost band for that treatment modality.

• Provide a plan to secure resources or obtain support to continue activities funded by this program at the end of the period of Federal funding.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

In submitting the line item budgets for each year of the proposed grant, the applicant is to use annualized budgets that are the same each year. This means that the amount requested in the first year (for example, $300,000 in total costs) should be the amount requested for each of the remaining three years ($300,000). Applicants should request a full year's funding in the first year although there is recognition that most projects will not begin operating and serving clients immediately.

Applicants may build in cost-of-living increases for the second, third, and fourth years, but the costs must come from within the other budget lines. For example, an applicant may increase salaries by 3% in accordance with cost of living increases, but the total amount of the budget request must remain at the year one level (using the above indicated example, $300,000 for each year).

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

• The strengths and weaknesses of the application as identified by peer reviewers and, when applicable, approved by the appropriate National Advisory Council;

• Availability of funds;

• Equitable distribution of awards in terms of geography (including urban, rural and remote settings) and balance among target populations and program size.

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points (Section B: Project Plan—35 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

2. Administrative and National Policy Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site *www.samhsa.gov/grants/2004/useful_info.asp.*

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be negotiated with the grantee prior to grant award. These may include, for example:

—Actions required to be in compliance with human subjects requirements;
—Requirements relating to additional data collection and reporting;
—Requirements relating to participation in a cross-site evaluation; or
—Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide semi-annual (6 months) and final progress reports. The final report must summarize information from the semi-annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of semi-annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that treatment services can be sustained, your financial reports should explain plans to ensure the sustainability (see Glossary) of efforts initiated under this grant. Initial plans for sustainability should be described in year 01. In each subsequent year, you should describe the status of your project, as well as the successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act (GPRA)

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. These requirements are specified in Section I–2.7, Expectations, Data and Performance Measurement, in this RFA.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded grant project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

For questions on program issues, contact: Kenneth W. Robertson, Team Leader, Systems Improvement Branch, Division of Services Improvement, CSAT/SAMHSA, Rockwall II/Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–7612, E-mail: *kroberts@samhsa.gov*.

For questions on grants management issues, contact: Kathleen Sample, SAMHSA, Division of Grants Management, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, (301) 443–9667, E-mail: *ksample@samhsa.gov*.

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (e.g., relating to eligibility) may be stated in the specific funding announcement. Please check the entire funding announcement before preparing your application.

• Use the PHS 5161–1 application.

• Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

• Information provided must be sufficient for review.

• Text must be legible.

—Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

—Text in the Project Narrative cannot exceed 6 lines per vertical inch.

• Paper must be white paper and 8.5 inches by 11.0 inches in size.

• To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

—Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

—Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the total number of allowed pages. This number represents the full page less margins, multiplied by the total number of allowed pages.

—Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

• The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

• The 10 application components required for SAMHSA applications should be included. These are:

—Face Page (Standard Form 424, which is in PHS 5161–1)

—Abstract

—Table of Contents

—Budget Form (Standard Form 424A, which is in PHS 5161–1)

—Project Narrative and Supporting Documentation
—Appendices
—Assurances (Standard Form 424B, which is in PHS 5161–1)
—Certifications (a form within PHS 5161–1)
—Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
—Checklist (a form in PHS 5161–1)

• Applications should comply with the following requirements:

—Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the specific funding announcement.
—Budgetary limitations as specified in Sections I, II, and IV–5 of the specific funding announcement.
—Documentation of nonprofit status as required in the PHS 5161–1.

• Pages should be typed single-spaced with one column per page.

• Pages should not have printing on both sides.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available regarding effectiveness and acceptability.

Catchment Area: A catchment area is the geographic area from which the target population to be served by a program will be drawn.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Fidelity: Fidelity is the degree to which a specific implementation of a program or practice resembles, adheres to, or is faithful to the evidence-based model on which it is based. Fidelity is formally assessed using rating scales of the major elements of the evidence-based model. A toolkit on how to develop and use fidelity instruments is available from the SAMHSA-funded Evaluation Technical Assistance Center at *http://tecathsri.org* or by calling (617) 876–0426.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) Community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Sustainability: Sustainability is the ability to continue a program or practice after SAMHSA grant funding has ended.

Target Population: The target population is the specific population of people whom a particular program or practice is designed to serve or reach.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C—Statement of Assurance

As the authorized representative of the applicant organization, I assure SAMHSA that if {*insert name of organization*} application is within the funding range for a grant award, the organization will provide the SAMHSA Government Project Officer (GPO) with the following documents. I understand that if this documentation is not received by the GPO within the specified timeframe, the application will be removed from consideration for an award and the funds will be provided to another applicant meeting these requirements.

• A letter of commitment that specifies the nature of the participation and what service(s) will be provided from every service provider organization, listed in Appendix 1 of the application, that has agreed to participate in the project;

• Official documentation that all service provider organizations participating in the project have been providing relevant services for a minimum of 2 years prior to the date of the application in the area(s) in which services are to be provided. Official documents must definitively establish that the organization has provided relevant services for the last 2 years; and

• Official documentation that all participating service provider organizations are in compliance with all local (city, county) and State/tribal requirements for licensing, accreditation, and certification or official documentation from the appropriate agency of the applicable State/tribal, county, or other governmental unit that licensing, accreditation, and certification requirements do not exist. (Official documentation is a copy of each service provider organization's license, accreditation, and certification. Documentation of accreditation will not be accepted in lieu of an organization's license. A statement by, or letter from, the applicant organization or from a provider organization attesting to compliance with licensing, accreditation and certification or that no licensing, accreditation, certification requirements exist does not constitute adequate documentation.)

Signature of Authorized Representative

Date

Dated: April 6, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–8207 Filed 4–9–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Required Advance Electronic Presentation of Cargo Information: Compliance Dates for Rail Carriers

AGENCY: Bureau of Customs and Border Protection, DHS.

ACTION: Announcement of compliance dates.

SUMMARY: This document informs rail carriers when they will be required to transmit advance electronic cargo information to Customs and Border Protection regarding cargo they are bringing into the United States, as mandated by section 343(a) of the Trade Act of 2002 and the implementing regulations. The dates when rail carriers will be required to comply vary depending on the port of entry at which the rail carrier will be arriving in the United States.

DATES: The implementation schedule set forth in the **SUPPLEMENTARY INFORMATION** discussion specifies three compliance dates, depending on the port of entry at which the rail-crossing is located.

FOR FURTHER INFORMATION CONTACT: For questions concerning Inbound Rail Cargo: Juan Cancio-Bello, Field Operations, (202) 927–3459.

SUPPLEMENTARY INFORMATION:

Background

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

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule intended to effectuate the provisions of the Act. In particular, regarding inbound rail cargo, a new § 123.91 (19 CFR 123.91) was added to the CBP Regulations to implement the Act's provisions. Section 123.91 describes the general requirement that for inbound trains requiring a train sheet under § 123.6, that will have commercial cargo aboard, CBP must electronically receive from the rail carrier certain information concerning incoming cargo no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

Section 123.91(e) provides that rail carriers must commence the advance electronic transmission to CBP of the required cargo information, 90 days from the date that CBP publishes notice in the **Federal Register** informing affected 3 carriers that the approved electronic data interchange system is in place and operational at the port of entry where the train will first arrive in the United States.

In this document, CBP is notifying rail carriers how CBP will be implementing the electronic data exchange and when the rail carriers will be required to begin transmitting advance cargo information regarding cargo arriving in the United States. Thirty-one ports of entry have been identified. The implementation schedule will be staggered in three phases.

As discussed above, § 123.91 requires CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the electronic data interchange system is in place and operational. CBP's approved electronic data base is now in place and operational at the twenty-four rail-crossing ports of entry listed in the "Compliance Dates" section of this document, under the caption "*First Implementation*". The initial implementation of the electronic data interchange system will occur at these twenty-four ports. Rail carriers, which will first arrive in the United States at these ports, will be required, 90 days from the date of publication of this notice in the **Federal Register**, to comply with the advance electronic transmission requirements set forth in § 123.91, CBP Regulations.

The second implementation of the electronic data interchange system will occur at the four rail-crossing ports of entry listed in the "Compliance Dates" section of this document, under the caption "*Second Implementation*". Rail carriers, which will first arrive in the United States at these ports, will be required, 120 days from the date of publication of this notice in the **Federal Register**, to comply with the advance electronic transmission requirements set forth in § 123.91.

The third implementation of the electronic data interchange system will occur at the three rail-crossing ports of entry listed in the "Compliance Dates" section of this document, under the caption "*Third Implementation*". Rail carriers, which will first arrive in the United States at these ports, will be required, 150 days from the date of publication of this notice in the **Federal Register**, to comply with the advance electronic transmission requirements set forth in § 123.91.

The schedule for implementing the advance electronic transmission requirements at all thirty-one rail-crossing ports is summarized below. Consistent with the provision in § 123.91 that requires CBP to announce when ports are operational, CBP is announcing that the seven ports listed in the second and third phases of implementation will become operational 90 days prior to the date rail carriers are required to transmit advance electronic information to CBP at those ports.

Compliance Dates

First Implementation

Effective July 12, 2004, rail carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following twenty-four ports of entry (corresponding port code and field office location in parenthesis):

(1) Buffalo, NY (0901, Buffalo);
(2) Detroit, MI (3801, Detroit);
(3) Richford, VT (0203, Boston);
(4) Ft. Covington/Trout River, NY (0715, Buffalo);
(5) Norton, VT (0211, Boston);
(6) Highgate Springs, VT (0212, Boston);
(7) Champlain-Rouses Point, NY (0712, Buffalo);
(8) Brownsville, TX (2301, Laredo);
(9) Eagle Pass, TX (2303, Laredo);
(10) Laredo, TX (2304, Laredo);
(11) El Paso, TX (2402, El Paso);
(12) Calexico, CA (2503, San Diego);
(13) Nogales, AZ (2604, Tucson);
(14) Blaine, WA (3004, Seattle/Tacoma);
(15) Sumas, WA (3009, Seattle/Tacoma);
(16) Eastport, ID (3302, Seattle/Tacoma);
(17) Sweetgrass, MT (3310, Seattle/Tacoma);
(18) Noyes, MN (3402, Seattle/Tacoma);
(19) Portal, ND (3403, Seattle/Tacoma);
(20) Frontier/Boundary, WA (3015, Seattle/Tacoma);
(21) Laurier, WA (3016, Seattle/Tacoma);

(22) International Falls, MN (3604, Chicago);
(23) Port Huron, MI (3802, Detroit);
(24) Sault Ste. Marie, MI (3803, Detroit).

Second Implementation

Effective August 10, 2004, rail carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following four ports of entry:
(25) Jackman, ME (0104, Boston);
(26) Van Buren, ME (0108, Boston);
(27) Vanceboro, ME (0105, Boston);
(28) Calais, ME (0115, Boston).

Third Implementation

Effective September 9, 2004, rail carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following three ports of entry:
(29) Tecate, CA (2505, San Diego);
(30) Otay Mesa, CA (2506, San Diego);
(31) Presidio, TX (2403, El Paso).

Dated: April 6, 2004.

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

[FR Doc. 04–8199 Filed 4–9–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–28]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Survey of Faith Based and Community Organizations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 26, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting 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.

This Notice also lists the following information:

Title of Proposal: Survey of Faith Based and Community Organizations.

Description of Information Collection: The U.S. Department of Housing and Urban Development plans to survey a sample of faith based and community organizations that have received training from HUD on how to apply for a variety of programs funded by HUD. The survey instrument would be used to obtain information on their likelihood of success in applying for various funding programs. The instruments would be administered in two waves:

The first wave immediately upon approval of this information collection; a second wave in 6 to 8 months. These two phases of data collection will help HUD determine how well its efforts to educate faith based and community organizations on its programs has translated into interest in applying, actual application, and successful funding for grantees. It will also indicate what further work the Department needs to do to assist faith based and community organizations at accessing Federal, State, and local funding.

OMB Control Number: 2528–Pending.

Agency Form Numbers: None.

Members of Affected Public: Faith Based and Community Organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 500, number of respondents is 1,000, frequency of response is 2 per annum, and the total hours per respondent is 0.25.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 5, 2004.

Wayne Eddins,

Departmental PRA Compliance Officer, Office of the Chief Information Officer.

[FR Doc. 04–8137 Filed 4–9–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4905–N–01]

Notice of Proposed Information Collection; Comment Request; Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Section 3 program 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:* June 11, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Surrell Silverman, Reports Liaison Officer, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5124, Washington, DC 20410. Telephone number (202) 708–4150.

FOR FURTHER INFORMATION CONTACT: Linda Thompson, Acting Director, Office of Economic Opportunity, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3633. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 34, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Enhance the Section 3 Program, (2) Enhance the quality, utility, and clarity of the information to be collected; and (3) 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.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Economic Opportunity for Low- and Very Low-Income Persons.

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529–0043.

Description of the need for the information and proposed use: A. *The Section 3 Summary Report (Revised HUD form 60002).* The information will be used by the Department to monitor program recipients' compliance with Section 3. HUD Headquarters will use the information to assess the results of the Department's efforts to meet the statutory objectives of Section 3. The data collected will be used by recipients as a self-monitoring tool. If the information is used, it will be used to prepare the mandatory reports to Congress assessing the effectiveness of Section 3.

B. *Updated Section 3 Brochure (HUD–1476–FHEO, Revised).* The Section 3 Brochure will be used to disseminate information about the Section 3 program. It provides information regarding the program and provides instructions on filing a complaint.

C. *Monitoring Review Feedback Form (New) (HUD form 60003).* The information on this form will be used to improve and enhance Section 3 outreach and education efforts.

D. *Complaint register HUD form 958.* The information will be used in order to respond to and investigate complaints (allegations of non-compliance with Section 3).

Agency form numbers, if applicable: Form HUD 60002 Revised, HUD 958, HUD 1476–FHEO Revised, and HUD form 60003.

Members of affected public: State and local governments or their agencies, public and private non-profit organizations, low and very low income residents, Public Housing authorities or other public entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis approximately 58,593 respondents (HUD recipients) will submit one report to HUD. It is estimated that two hours per annual reporting period will be required of the recipients to prepare the Section 3 report for a total of 117,186 hours.

Status of the proposed information collection: Reinstatement of a currently approved collection of information from HUD recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 31, 2004.

Paul T. Christian,

Director, Office of Management and Planning.

[FR Doc. 04–8140 Filed 4–9–04; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–04]

Notice of Proposed Information Collection for Public Comment on the Survey of Fair Housing Literacy

AGENCY: Office of Policy Development and Research, 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:* June 11, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Reports Liaison Officer, Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Todd Richardson, Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; (202) 708–3700, extension 5706 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 for 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.

This Notice also lists the following information:

Title of Proposal: Survey of Fair Housing Literacy.

Description of the need for the information and proposed use: This request is for the clearance of a survey instrument designed to measure the change in the public's knowledge of the nation's fair housing laws between the already completed baseline survey of 2000/2001 and the proposed survey of 2004/2005. The purpose of the survey is to: (1) Replicate the core components of the survey used in 2000 in order to measure change in the public's knowledge of fair housing laws; (2) Ascertain the general public's knowledge of HUD's role in the fair housing process and to better understand why people don't do anything when they feel they have been discriminated against; and (3) Conduct a large enough survey, with weighted

sampling, to assess the knowledge of particular protected classes versus the national average. Specific protected classes of interest are African Americans, Hispanics/Latinos, families with children, and persons with disabilities.

Agency form numbers: None.

Members of Affected Public: Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 2,500 individuals will be surveyed. Average time to complete the survey is 30 minutes. Respondents will only be contacted once. Total burden hours are 1,250.

Status of the proposed information collection: Pending.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: April 2, 2004.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 04–8141 Filed 4–9–04; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–03]

Notice of Proposed Information Collection for Public Comment on the Continued Participant Tracking in the Moving to Opportunity Demonstration Program

AGENCY: Office of Policy Development and Research, 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:* June 11, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Todd Richardson, Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8140, Washington, DC 20410; (202) 708–3700, extension 5706 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 for 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.

This Notice also lists the following information:

Title of Proposal: Continued Participant Tracking in the Moving to Opportunity Demonstration Program.

Description of the need for the information and proposed use: This request is for the clearance of several survey instruments designed to collect information on the current locations of participants in the Moving to Opportunity (MTO) demonstration program. The instruments also have a small number of outcome measures, such as employment. Authorized by Congress in the Housing and Community Development Act of 1992, MTO is a unique experimental research demonstration designed to learn whether moving from a high-poverty neighborhood to a low-poverty neighborhood significantly improves the social and economic prospects of poor families. Families living in high poverty public and assisted housing in Baltimore, Boston, Chicago, Los Angeles and New York who applied for MTO were randomly assigned into two treatment groups and one control group between 1994 and 1998. Families assigned to the treatment groups were provided Section 8 to allow them to move out of the high poverty developments. Families in one of the treatment groups received intensive mobility counseling and were required to lease a unit in a neighborhood with less than ten percent poverty. The other treatment group families could lease a unit wherever they chose, but only received the normal housing authority counseling. Those families assigned to the control group did not receive any Section 8 assistance but continued to receive project-based assistance.

This data collection is necessary to continue to track the families who signed up for the Moving to Opportunity program in order to measure impacts and mediators in 2007, approximately 10 years after families signed up for the program.

Data gathered would be used by Abt Associates to provide HUD with continued information on where families are living so that the final evaluation will have as little sample attrition as possible.

Agency form numbers: None.

Members of Affected Public: Individuals or households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Approximately 1,430 households over 4 years are expected to complete an 8-minute mail survey, 3,226 households will respond to the 19-minute family canvass form in 2006. Total burden hours for this data collection are estimated at 1,214.

Status of the proposed information collection: Pending OMB approval.

Authority Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: April 2, 2004.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 04–8142 Filed 4–9–04; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4859–FA–02]

Announcement of Funding Awards for Fiscal Year (FY) 2003 Urban Scholars Fellowship Award Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Housing and Urban Development (HUD).

ACTION: Announcement of funding awards.

SUMMARY: The purpose of the HUD Urban Scholar Fellowship Program is to

provide encouragement to new scholars to undertake research now, and throughout their careers, on topics of interest to HUD. In accordance with the Department of Housing and Urban Development Reform Act of 1970, Title V, the purpose of this document is to announce to the public the names, research topics, and amounts awarded to the winners for Fiscal Year (FY) 2003.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–3061, extension 3852. To provide service for persons who are hearing or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–1455. (Telephone numbers, other than the two "800" numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Urban Scholars Fellowship Program is administered by the Office of University Partnerships Under the General Deputy Assistant Secretary for Policy Development and Research.

Eligible applicants for the Urban Scholar Fellowship Program include only Ph.D.'s who have an academic appointment at an institution of higher education and have received their Ph.D. no earlier than January 1, 1998. The Urban Scholar Fellowship Program provides each participating scholar up to $55,000 for expenses such as salary for two summers, graduate assistants to work on the research project, partial cost of paying for replacements to cover a reduced course load, computer software, the purchase of data, and travel expenses to collect data and make presentations at meetings.

The Catalog of Federal Domestic Assistance number for this program is 14.518.

On October 10, 2003 (68 FR 57768), HUD published a Notice of Funding Availability (NOFA) announcing the availability of approximately $550,000 from the Consolidated Appropriations Resolution (Pub. L. 108–7; approved February 20, 2003), Division K for the Research and Technology Program, Office of Policy Development and Research for this program. Applications were reviewed, evaluated, and scored based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2003 Urban Scholars Fellowship Program Funding Competition, by Name, Institution, Research Topic and Grant Amount

New England

1. Scott W. Allard, Brown University, Department of Political Science, 36 Prospect Street, Providence, RI 02912. Title of Project: Access to Social Services in Urban America. Grant Amount: $54,590.

2. Pascale Joassart-Marcelli, University of Massachusetts, Department of Economics, 100 Morrissey Boulevard, Boston, MA 02125. Title of Project: Closing the Gap between Housing and Job Locations: The Role of Rental Assistance Programs. Grant Amount: $54,975.

New York/New Jersey

3. Niki T. Dickerson, Rutgers University, Department of Labor Studies and Employment, 50 Labor Center Way, New Brunswick, NJ 08901. Title of Project: Residential Segregation and Access to Economic Opportunity for Blacks and Latinos. Grant Amount: $52,920.

Mid-Atlantic

4. Tama Leventhal, Johns Hopkins University, Institute for Policy Studies, Wyman Building 546, 3400 North Charles Street, Baltimore, MD 21218. Title of Project: The Influence of Neighborhood Transformation on Child and Adolescent Well-Being. Grant Amount: $55,000.

Midwest

5. Christopher DeSousa, University of Wisconsin, Milwaukee, Department of Geography, Milwaukee, WI 53201. Title of Project: Increasing residential development activity on urban brownfields: An examination of redevelopment trends, developer perceptions, and future prospects. Grant Amount: $51,084.

Midwest

6. Nancy Theresa Kinney, University of Missouri, St. Louis, Department of Political Science SSB 347, 8001 Natural Bridge Road, St. Louis, MO 63121–4499. Title of Project: Strengthening the Participation of Faith-Based Organizations in Community Development: the Promise and Peril of the Congregational Spin-off Process. Grant Amount: $55,000.

Southeast/Caribbean

7. Casey J. Dawkins, Virginia Polytechnic Institute and State University, 211 Architecture Annex, Urban Affairs and Planning (0113), Blacksburg, VA 24061. Title of Project: Racial Gaps in the Transition to First-Time Homeownership: the Role of Residential Segregation. Grant Amount: $53,164.

Southeast/Caribbean

8. Kristin E. Larsen, University of Florida, Department of Urban and Regional Planning P.O. Box 115706, Gainesville, FL 32611–5706. Title of Project: Defining Characteristics and Implementation: Analysis of Housing Trust Funds With a Focus on Florida's SHIP Program. Grant Amount: $52,862.

Pacific/Hawaii

9. Thomas Davidoff, University of California, Berkeley, Haas School of Business, Berkeley, CA 94720. Title of Project: Prospects for Expansion of the U.S. Reverse Mortgage Industry. Grant Amount: $50,492.

10. Stephanie Dyer, Sonoma State University, 222 Baja Avenue, Davis, CA 94928–3609. Title of Project: Markets in the Meadows: How Suburban Shopping Centers Changed the American City, 1920–1980. Grant Amount: $53,276.

Dated: March 18, 2004.

Darlene F. Williams,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 04–8139 Filed 4–9–04; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4732–N–06]

Modification of the Statutory and Regulatory Waivers Granted to New York State for Recovery from the September 11, 2001, Terrorist Attacks

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers granted.

SUMMARY: This notice advises the public of modifications of the waivers of regulations and statutory provisions granted to the State of New York for the purpose of assisting in the recovery from the September 11, 2001, terrorist attacks on New York City. This notice describes an eligibility waiver and a change to alternative requirements related to public benefit documentation for the Empire State Development Corporation's retail recovery grant (RRG) program.

DATES: *Effective Date:* April 19, 2004.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Information Relay Service at (800) 877–8339. Fax inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority to Grant Waivers

The three grants covered by this notice are governed by provisions of the fifth proviso under the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States (Pub. L. 107–38, approved September 18, 2001); by section 434 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001) (FY 2002 HUD Appropriations Act); by chapter 13 of division B of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 (Pub. L. 107–117, approved January 10, 2002) (FY 2002 Department of Defense Appropriation); and by the 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States (Pub. L. 107–206, approved August 2, 2002) (FY 2002 Recovery and Response to Terrorist Attacks Supplemental).

The third proviso of section 434 of the FY 2002 HUD Appropriations Act, and the FY 2002 Supplemental, authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment.

The Department finds that the following waivers and alternative requirements (together with previously granted waivers and alternative requirements) are necessary to facilitate the use of the $700 million awarded to New York State's Empire State Development Corporation (ESDC) and the $2.0 billion and $783 million awarded to New York State's Lower Manhattan Development Corporation (LMDC) (collectively, the grantees).

The Department also finds that such uses of funds, as described below, are not inconsistent with the overall purpose of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Except as noted by published waivers and alternative requirements, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR subpart I, shall apply to the use of these funds. In **Federal Register** notices published March 18, 2002 (67 FR 12042, and effective March 25, 2002), May 22, 2002 (67 FR 36017, and effective May 28, 2002), and May 16, 2003, (68 FR 26640, and effective May 21, 2003), the Department promulgated waivers and alternative requirements necessary to facilitate the use of the $700 million in disaster recovery funds awarded to New York State's Empire State Development Corporation and the $2.0 billion and $783 million awarded to New York State's Lower Manhattan Development Corporation.

Eligibility waiver. This notice waives requirements at 42 U.S.C. 5305(a) to the extent necessary to allow new construction of housing, including affordable housing. HUD is taking this action because the grantee, after consultation with citizens, has determined that additional housing units will support its disaster recovery and economic revitalization efforts and is developing an Action Plan including an activity to support new housing construction.

RRG Program. This notice also modifies the published alternate requirements related to reports and documentation for the retail recovery grant (RRG) program implemented by Empire State Development Corporation in the immediate wake of the disaster. ESDC established the RRG immediately after September 11, 2001, in an effort to expedite financial assistance to those small retail businesses in lower Manhattan that were affected by the attack on the World Trade Center. The program provided grant funding to eligible businesses based on a percentage of their gross revenue figures, reflecting three days of business activity. Because this program was established so soon after the September 11, 2001, disaster, prior to New York State's award of HUD CDBG disaster assistance funding, ESDC did not collect all of the information that is now required by HUD for certain programs implemented thereafter. The application for the RRG program collected information sufficient to meet core CDBG requirements related to a special economic development activity undertaken under the urgent need national objective, but the program was implemented so rapidly that it predated the additional requirements of the referenced notices related to documentation of salary ranges and job types. HUD approved the action plan containing the RRG activity and is now clarifying in this notice what documentation requirements apply.

The text below indicates the paragraphs being updated.

Description of Modifications

1. A new paragraph 21 is added to the requirements of the notice published on May 22, 2002 (67 FR 36017) by adding text to read as follows:

21. New construction of housing. Limitations of 42 U.S.C. 5305(a) are waived to the extent necessary to allow new construction of housing as an eligible use of funds.

2. Paragraph 1 of the notice published on May 16, 2003 (68 FR 26640), which modified Paragraphs 12 and 16 of the notice published on May 22, 2002 (67 FR 36017), is amended to read as follows:

12. Public benefit standards for economic development activities. Currently, grantees are limited in the amount of CDBG assistance they may spend per job retained or created, or per low- and moderate-income person to which goods or services are provided by the activity, that will be considered to meet public benefit standards. Public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that, the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. For the Bridge Loan program included in the Empire State Development Corporation's January 30, 2002, Action Plan and for the Retail Recovery Grant program, the grantee shall report and maintain public benefit documentation only on the total number of jobs created and retained. Paragraph (g) of 24 CFR 570.482, regarding amendments to economic development projects after review determinations, is also waived to the extent its provisions are related to public benefit.

16. Performance reports. Generally, grantees submit an annual performance report ninety days after the jurisdiction's program year. The conferees for Pub. L. 107–73 directed that HUD submit reports to the

Committees on Appropriations quarterly on the obligation and expenditure of the CDBG funds appropriated under the Emergency Response Fund. Therefore, 42 U.S.C. 12708(a)(1) and 24 CFR 91.520 are waived with respect to these funds, and HUD is establishing an alternative requirement that the State must submit a quarterly report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, Federal source and funds (other than CDBG disaster funds), numbers and North American Industry Classification System (NAICS) codes of businesses assisted by activity, total number of jobs created and retained by activity, numbers of such jobs by salary ranges (to be defined by HUD), numbers of properties and housing units assisted; for activities benefiting low- and moderate-income persons, the number of jobs taken by persons of low- and moderate-income, and numbers of low- and moderate-income households benefiting. For the Bridge Loan program included in the Empire State Development Corporation's January 30, 2002, Action Plan, and for the Retail Recovery Grant program, the grantee is not required to report by salary ranges on the numbers of created and retained jobs. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Grant Reporting system. Annually (*i.e.*, with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the status of administrative costs.

Section 434 of the FY 2002 HUD Appropriations Act requires HUD to publish these waivers in the **Federal Register** no later than five days before their effective date. The effective date of these waivers is April 19, 2004.

Dated: April 2, 2004.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 04–8138 Filed 4–9–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Noxubee National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of final Comprehensive Conservation Plan for Noxubee National Wildlife Refuge, Located in Noxubee, Oktibbeha, and Winston Counties, Mississippi.

SUMMARY: The Fish and Wildlife Service announces that a final Comprehensive Conservation Plan for Noxubee National Wildlife Refuge is available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years. The compatibility determinations for recreational hunting, recreational fishing, wildlife observation and photography, environmental education and interpretation, forest habitat management, haying, and research and collections are also available within the plan.

ADDRESSES: A copy of the plan may be obtained by writing to the Noxubee National Wildlife Refuge, 224 Office Road, Brooksville, Mississippi 39739. The plan may also be accessed and downloaded from the Service's Internet Web Site: *http://southeast.fws.gov/planning.*

SUPPLEMENTARY INFORMATION: Noxubee National Wildlife Refuge, located in east-central Mississippi, consists of 47,959 acres, of which 42,500 acres are in bottomland hardwood, upland hardwood, mixed pine/hardwood and pine forests. These forests support a variety of upland species including turkey, deer, and quail. The endangered red-cockaded woodpecker is found in the refuge's old-growth pine habitat. Many neotropical bird species benefit from refuge forests. Greentree reservoirs, natural ponds, and man-made impoundments provide important habitat for migratory birds, as well as wintering habitat for waterfowl and bald eagles. Annually, more than 150,000 visitors participate in refuge activities.

The availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for a 60-day public review and comment period was announced in the **Federal Register** on May 21, 2003, volume 68, number 98. The plan and environmental assessment identified and evaluated three alternatives for managing the refuge over the next 15 years. Alternative 1, the "no action" alternative, would have continued current management of the refuge. Alternative 2, the "preferred alternative" emphasized old growth forest communities, with increased emphasis on education and recreation programs. Alternative 3 emphasized providing early successional forest habitat and increases in certain education and recreation programs.

Based on the environmental assessment and the comments received, Alternative 2, the "preferred alternative," was selected for implementation. It was selected because it best meets the purposes and goals of the refuge, as well as the goals of the National Wildlife Refuge System. The preferred alternative will also benefit the public by providing opportunities to learn about, enjoy, and appreciate fish and wildlife. The preferred alternative also emphasizes providing habitat for red-cockaded woodpeckers and forest nesting birds dependent on mature forests and adequate habitat for resident and migratory waterfowl. A comprehensive cultural resources' survey will be conducted under this alternative, and protection and interpretation of cultural resources will be improved.

FOR FURTHER INFORMATION CONTACT: Refuge Manager, Noxubee National Wildlife Refuge, telephone: 662/323–5548; fax: 662/323–5806; e-mail: *noxubee@fws.gov;* or by writing to the Refugee Manager at the above address.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: November 14, 2003.

J. Mitch King,

Acting Regional Director.

Editoral Note: This document was received in the Office of the Federal Register on April 7, 2004.

[FR Doc. 04–8191 Filed 4–9–04; 8:45 am]

BILLING CODE 4316–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220–00 PD; G0–00]

Notice of Supplementary Rule for Public Lands in California

AGENCY: Bureau of Land Management, El Centro Field Office, California Desert District, Interior.

ACTION: Camping closure of selected Federal lands, Imperial County, CA.

SUMMARY: The Bureau of Land Management's (BLM) El Centro Field Office is issuing a supplementary camping closure rule. This rule will apply to a portion of the public lands within the West Mesa adjacent to the Superstition Mountain Off-Highway Vehicle (OHV) area. This rule is being

issued to protect the flat-tailed horned lizard will continue a current camping closure for this area.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Resources Branch Chief, 1661 So. 4th St., El Centro, CA 92243 (760) 337–4420.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Supplementary Rule

This rule is needed to support the Decision Record for the Western Colorado Desert Routes of Travel Designation (WECO ROT) Plan. Stakeholders participated in the development of this plan and have had opportunity to provide comments on this supplementary rule through the development of the WECO ROT Plan. This rule is final upon publication and applies to public lands within: SBM, T.14S., R.11E., Secs. 22, 27 and 28.

II. Procedural Matters

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule does not represent a government action capable of interfering with Constitutionally-protected property rights. It is simply a ban on certain conduct that has implications to natural and cultural resource protection. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism [Replaces Executive Orders 12612 and 13083.]

This rule 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. This rule does not come into conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, we have found that this rule does not include policies that have tribal implications. None of the lands included in this rule affects Indian lands or Indian Rights. Coordination was conducted through preparation of the WECO ROT Plan with all affected tribes.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in the proposed rule are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from this rule and are exempt from the Paperwork Reduction Act.

Authors

The principal author of this rule is Chief Ranger Robert Zimmer.

Supplementary Rule

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rule on public lands in the West Mesa area of Imperial County, CA, adjacent to the Superstition Mountain OHV area, El Centro Field Office, California Desert District. A more detailed explanation as to the need for such a rule may be found in the Western Colorado Desert Routes of Travel Designation Decision Record signed January 31, 2003.

You must follow this rule:

1. No person may camp within the "No Camping Zone" located adjacent to the western boundary of the Superstition Mountain Off-Highway Vehicle Open Area. This area is located between the pole line road (old Route Y272) and the Superstition Open Area. Its boundaries are (1) from old Route Y272 approximately one mile northwest from the intersection of Wheeler Road going north to the open area, (2) the open area boundary, (3) Route Y272, and (4) from old Route Y272 approximately 2 miles northwest from the intersection of Wheeler Road going north to the open area.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2004.

Dated: December 29, 2003.

J. Anthony Danna,

Acting California State Director.

[FR Doc. 04–8146 Filed 4–9–04; 8:45 am]

BILLING CODE 4392–68–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–922–04–1320–EL; OKNM 111344]

Invitation To Participate: Exploration for Coal in Oklahoma

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of invitation for coal exploration license application.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Farrell Cooper Mining Company, on a pro rata cost-sharing basis in a program for the exploration of unleased coal deposits owned by the United States of America containing approximately 6,160.82 acres in Haskell, Latimer, and Le Flore Counties in the State of Oklahoma.

DATES: Written notice of intent to participate must be received no later than 30 calendar days after publication of this notice. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes.

ADDRESSES: Any parties electing to participate in this coal exploration program shall notify in writing both, State Director, Bureau of Land Management, New Mexico State Office, P. O. Box 27115, Santa Fe, New Mexico 87502–0115, and Farrell Cooper Mining Company, P. O. Box 11050, Fort Smith, Arkansas 72917.

FOR FURTHER INFORMATION CONTACT: Ida T. Viarreal, New Mexico State Office, at (505) 438–7603 or Abe Elias, Tulsa Field Office, at (918) 621–4116.

SUPPLEMENTARY INFORMATION: This proposed coal exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan, to be approved by the BLM. A copy of the coal exploration plan, as submitted by Farrell Cooper Mining Company, may be examined at the BLM, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico, and the BLM, Tulsa Field Office, 7906 East 33rd Street, Suite 101, Tulsa, Oklahoma.

Dated: March 2, 2004.

Carsten F. Goff,

Acting State Director.

[FR Doc. 04–8160 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–065–1990]

Notice of Intent To Prepare an Environmental Impact Statement for the Gold Hill Project, Nye County, NV

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to analyze the Proposed Plan of Operations for Gold Hill Project and notice of scoping period.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, 40 Code of Federal Regulations subparts 1500–1508, and 43 Code of Federal Regulations subpart 3809, notice is hereby given that the Bureau of Land Management (BLM), Battle Mountain District, Tonopah Field Station, and the U.S. Department of Agriculture, Forest Service (USFS), Tonopah Ranger District as a cooperating agency, will be directing the preparation of an EIS for the gold Hill Project, a proposed gold mine located on public lands in Nye County, Nevada. Round Mountain Gold Corporation (RMGC) has submitted a 43 CFR 3809 Plan of Operations to the BLM for the proposed mining project. A third-party contractor will prepare the EIS under the direction of the BLM.

During the scoping period, the Gold Hill Plan of Operations (Plan) will be presented to the local public during scoping meetings to be held in Round Mountain and Tonopah, Nevada. The BLM invites public comment on the scope of the analysis.

DATES: This notice initiates a 45-day public scoping period. Written comments on the scope of the EIS should be post-marked or otherwise delivered by 4:30 p.m. by May 27, 2004 to ensure full consideration. The public will be notified of the two scoping meetings through the local news media at least 15 days prior to the meetings.

ADDRESSES: Scoping comments should be sent to the Bureau of Land Management, Battle Mountain Field Office, Attention: George Deverse, Bureau of Land Management, P.O. Box 911, Tonopah, NV 89049. Comments, including names and street addresses of respondents, will be available for public review at the Tonopah Field Station, Tonopah, Nevada, during regular business hours, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. BLM will not consider anonymous comments. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: George Deverse at the BLM Tonopah address or call (775) 482–7800.

SUPPLEMENTARY INFORMATION: Round Mountain Gold Corporation has submitted a Plan of Operations (43 CFR 3809) for a gold mine (the Gold Hill Project), located 7 miles east of the town of Carvers, Nevada. The historic Gold Hill mine and mill operated in the 1930's within the proposed Gold Hill project area. The proposed Gold Hill Project is located in Nye County, Nevada, on public lands in sections 28, 29, 32, and 33, T. 11 N., R. 44 E., and sections 4, 5 and 6, T. 10 N., R. 44 E., Mount Diablo Meridian. The Project would disturb approximately 1,600 acres of public land. Major facilities at the proposed mine include two open pits of 380 acres and 105 acres in size. Gold-bearing ore and waste rock would be drilled, blasted, loaded and hauled from the open pits. Lower-grade gold ore would be loaded on the heap leach pad (280 acres) for chemical dissolution of the gold by a solution of sodium cyanide. Higher-grade ore would be trucked to a mill at the existing Round Mountain Gold mine located 5 miles to the south of the Gold Hill Project. Waste rock would be hauled to a waste rock dump (640 acres). The planned disturbances also include process plant (25 acres) for extraction of the gold and a network of access and haul roads (170 acres).

The U.S. Department of Agriculture, Forest Service, Tonopah Ranger District will be a cooperating agency in the preparation of the EIS. Other Federal, State of Nevada, local agencies, tribal entities and public organizations that may be interested in or affected by the proposed action are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM to participate as a cooperating agency.

Mark Storzer,

Associate Field Manager, Battle Mountain Field Office.

[FR Doc. 04–8155 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–XM–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 18, 2004 from 9:15 a.m. to 4:30 p.m. and will continue on May 19, 2004 from 8 a.m. to 3 p.m.

ADDRESSES: Inn of the Rio Grande, 333 Santa Fe Avenue, Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics on May 18 include: Manager updates on current land management issues; San Luis Valley Travel Management Planning; Healthy Forest Assessment; and Fuels Treatment Projects. On May 19 the Council will tour and discuss issues at the Blanca Wetlands and Zapata Falls Recreation Site.

All meetings are open to the public. The public is encouraged to make oral

comments to the Council at 9:30 a.m. on May 18, 2004 or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public is also welcome to attend the field tour on May 19, however they may need to provide their own transportation. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: April 6, 2004.

Linda McGlothlen,

Acting Front Range Center Manager.

[FR Doc. 04–8186 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, May 10, 2004, from 8 a.m., to 5 p.m., local time, and on Tuesday, May 11, 2004, from 8 a.m., to 12 p.m., local time.

ADDRESSES: The Advisory Board will meet at the Hilton Tulsa Southern Hills, 7902 South Lewis Avenue, Tulsa, Oklahoma 74136 or call (918) 492–5000. Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO 260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business May 5, 2004. See the **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Neal, Wild Horse and Burro Public Outreach Specialist, (775) 861-6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Neal* at any time by calling the Federal Information Relay Service at 1 (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, May 10, 2004 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions:
8:15 a.m. Old Business:
Approval of February 2004 Minutes
2005 Request for AB Nominations
2004–2006 Advisory Board Charter
8:45 a.m. FY'04 Program Update
9:30 a.m. Break
9:45 a.m. Old Business:
FY04 Funding Capabilities
Steering Committee Updates
Program Contingencies
National Adoption Plan
12:30 p.m. Lunch
1:30 p.m. Old Business: (continued)
2:30 p.m. Break
2:45 p.m. Old Business: Continued
Foundation MOU
Forest Service Agreement
4 p.m. Public Comments
4:45 p.m. Recap/Summary
5 p.m. Adjourn
5–6 p.m. Roundtable Discussion

Tuesday, May, 11, 2004 (8 a.m.–12:00 p.m.)

8 a.m. New Business—TBD
9 a.m. Board Recommendations
9:45 a.m. Break
10 a.m. Board Recommendations
11 a.m. Next Meeting/Date/Site—
Proposed Agenda Items
12 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations (41 CFR 101–6.1015(b)) require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on May 10, 2004, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4 p.m., local time. Persons wishing to make statements should register with the BLM by noon on May 10, 2004, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Neal@blm.gov*. Please include the identifier "WH&B" in the subject of your message and your name and address in the body of your message.

Dated: April 6, 2004.

Thomas H. Dyer,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 04–8135 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–FI; CACA 43775]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per Pub. L. 97–451, the lessee timely filed a petition for reinstatement of oil and gas lease CACA 43775 for lands in Kern County, California. The lessee paid the required rentals accruing from the date of termination.

The Bureau of Land Management (BLM) has not issued any new leases affecting the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre and 16⅔ percent. The lessee has paid the administrative fee for the reinstatement of the lease and the cost for publishing this Notice.

The lessee has met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease CACA 43775 effective February 1, 2003, subject to:

- The original terms and conditions of the lease;
- The increased rental rate of $10.00 per acre;
- The increased royalty rate of 16 2/3 percent; and
- The cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Edgerly, Land Law Examiner, Branch of Adjudication, Division of Energy and Minerals, BLM California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825, (916) 978–4370.

Dated: March 1, 2004.

Debra Marsh,

Supervisor Branch of Adjudication, Division of Energy and Minerals.

[FR Doc. 04–8149 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–FI; CACA 44201]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per Public Law 97–451, the lessee timely filed a petition for reinstatement of oil and gas lease CACA 44201 for lands in Kern County, California. The lessee paid the required rentals accruing from the date of termination.

The Bureau of Land Management (BLM) has not issued any new leases affecting the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre and 16⅔ percent. The lessee has paid the administrative fee for the reinstatement of the lease and the cost for publishing this notice.

The lessee has met the requirements for reinstatement of the lease per sec. 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease CACA 44201 effective February 1, 2003, subject to:

- The original terms and conditions of the lease;
- The increased rental rate of $10.00 per acre;
- The increased royalty rate of 16⅔ percent; and
- The cost of publishing this notice.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Edgerly, Land Law Examiner, Branch of Adjudication, Division of Energy and Minerals, BLM California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825, (916) 978–4370.

Dated: March 1, 2004.

Debra Marsh,

Supervisor Branch of Adjudication, Division of Energy and Minerals.

[FR Doc. 04–8150 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–FI; CACA 44204]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per Public Law 97–451, the lessee timely filed a petition for reinstatement of oil and gas lease CACA 44204 for lands in Kern County, California. The lessee paid the required rentals accruing from the date of termination.

The Bureau of Land Management (BLM) has not issued any leases affecting the lands. The lessee agrees to new lease terms for rentals and royalties of $10.00 per acre and 16⅔ percent. The lessee has paid the administrative fee for the reinstatement of the lease and the cost for publishing this notice.

The lessee has met the requirements for reinstatement of the lease per sec. 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188). The BLM is proposing to reinstate lease CACA 44204 effective February 1, 2003, subject to:

- The original terms and conditions of the lease;
- The increased rental rate of $10.00 per acre;
- The increased royalty rate of 16⅔ percent; and
- The cost of publishing this notice.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Edgerly, Land Law Examiner, Branch of Adjudication, Division of Energy and Minerals, BLM California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825, (916) 978–4370.

Dated: March 1, 2004.

Debra Marsh,

Supervisor, Branch of Adjudication, Division of Energy and Minerals.

[FR Doc. 04–8151 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–04; OKNM 96077]

Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 96077

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 96077 for lands in Coal County, Oklahoma, was timely filed and accompanied by all required rentals and royalties accruing from December 1, 2003, the date of termination.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, (505) 438–7530.

SUPPLEMENTARY INFORMATION: No valid lease has affected the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof and 18⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 2003, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Bernadine T. Martinez,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 04–8152 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 020–04–1430–EU; AZA–31774FD]

Termination of Segregation, Opening Order; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice cancels and terminates the segregative effect of a proposed land exchange of 3,912.67 acres. The land will be opened to location and entry under the general land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

EFFECTIVE DATE: May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Jim Andersen, BLM Phoenix Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, 623–580–5500.

SUPPLEMENTARY INFORMATION: A Decision was issued on May 16, 2001, which segregated the land described therein from location and entry under the general land laws, including the mining laws, subject to valid existing rights, for a 5-year period. The Bureau of Land Management has determined that the proposed land exchange of the following described lands will not be needed and has been canceled:

Gila and Salt River Meridian, Arizona

T. 12 N., R. 1 E.
Secs. 16, 22, 23, and 26 (Portions of).
T. 12 N., R. 2 E.
Sec. 17 (Portions of).
T. 13 N., R. 1 E.
Secs. 4, 8, 13, 15, 18, 19, 20, 21, 23, 26, 29, 30 and 31 (Portions of).

Above described property aggregates approximately 3,912.67 acres in Yavapai County.

At 9 a.m. on May 12, 2004 the land will be opened to the operation of the general land laws and to location and entry under the United States mining laws, subject to valid existing right, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, because Congress has provided for such determinations in local courts. All valid applications under any other general land laws received at or prior to 9 a.m. on May 12, 2004 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: March 2, 2004.

Teresa A. Raml,

Field Manager.

[FR Doc. 04–8158 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–050–1430–ET; MTM 41502, MTM 41513, MTM 41560]

Expiration of Withdrawals and Opening of Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Three public land orders, which withdrew 37,216.07 acres of public lands from surface entry for stock driveway purposes, have expired. This action opens the lands to surface entry.

FOR FURTHER INFORMATION CONTACT: Jeff Daugherty, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–8038, or Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052.

SUPPLEMENTARY INFORMATION:

1. The following public land orders (PLOs), which withdrew public lands for stock driveway purposes, have expired:

PLO	FR citation	Area name	Expired	Acres
6503	49 FR 3856	Stock Driveway No. 11, MT No. 1	2/28/2004	31,106.98
6515	49 FR 5923	Stock Driveway No. 22, MT No. 3	2/15/2004	2,985.92
6519	49 FR 5925	Stock Driveway No. 11, MT No. 1	2/15/2004	1,897.24

2. Copies of the public land orders for the expired withdrawals showing the affected lands are available at the BLM Montana State Office (address above).

3. In accordance with 43 CFR 2091.6, at 9 a.m. on May 12, 2004, the lands withdrawn by the public land orders listed in Paragraph 1 above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 12, 2004, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 27, 2004.

Howard A. Lemm,

Deputy State Director, Division of Resources.

[FR Doc. 04–8154 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–ET; MIES–50214]

Public Land Order No. 7600; Partial Revocation of Executive Order Dated July 24, 1875; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 2.35 acres of public land reserved for use by the United States Coast Guard for the Point Betsie Light Station. This order makes the land available for conveyance under the Recreation and Public Purposes Act.

EFFECTIVE DATE: June 5, 2004.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1671.

SUPPLEMENTARY INFORMATION: The land is no longer needed by the United States Coast Guard and the partial revocation would allow for conveyance of the land under the Recreation and Public Purposes Act.

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. The Executive Order dated July 24, 1875, which reserved public land for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Michigan Meridian

T. 18 N., R. 14 E.,
Sec. 4, lot 12.

The area described contains 2.35 acres in Benzie County as shown by the supplemental survey dated July 8, 1997.

2. The land described in Paragraph 1 is hereby made available for conveyance under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 (2000).

Dated: March 23, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–8159 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–033–03–1232–EA–NV15]

Temporary Closure of Public Lands—Recreation Special Events: Nevada, Carson City Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of affected public lands in Lyon, Storey, Churchill, Carson, Douglas, Mineral, Washoe, Nye, and Esmeralda Counties pursuant to regulation at 43 CFR 8364.1 and 43 CFR part 2930.

SUMMARY: Notice is hereby given that the Carson City Field Office announces the temporary closure of selected public lands under its administration in Lyon, Storey, Churchill, Carson, Douglas, Mineral, Washoe and Nye Counties effective March through November, 2004, subject to specific dates for recreation events. (Refer to Supplementary Information below.) By agreement with the Las Vegas and Battle Mountain Field Offices and the Tonopah Field Station, those lands affected by the Vegas to Reno OHV Race in Nye and Esmeralda Counties are included in this closure. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701, Telephone: (775) 885–6161.

SUPPLEMENTARY INFORMATION: This notice applies to closures on and adjacent to permitted, special events such as: Motorized Off Highway Vehicle, Mountain Bike and Horse Endurance competitive event sites and routes. Competitive events (races) are conducted along dirt roads, trails, washes, and areas approved for such use through the Special Recreation Permit application process. From March through November, 2004, the closure period is from 6:00 a.m. race day until race finish or until the event has cleared between affected check point locations; approximately 2 to 24 hour periods. The general public will be advised of each event and closure specifics via local newspapers and mailed public letters within seven (7) to thirty (30) days prior to the running of an event or if the event is cancelled. Events may be cancelled or rescheduled upon short notice. Contact the Carson City Field Office for event maps and information.

Locations most commonly used for permitted events include, but are not limited to:

1. Lemmon Valley MX Area—Washoe Co., T.21N R.19E Sec. 8.

2. Hungry Valley Off Highway Vehicle Area—Washoe Co., T.21–23N R.20E.

3. Pine Nut Mountains—Carson, Douglas & Lyon Counties: T.11–16N R.20–24E.

4. Virginia City/Jumbo Areas—Storey and Washoe Counties: T.16–17N R.20–21E.

5. Yerington/Weeks Areas—Lyon Co.: T.12–16N R.23–27E.

6. Fallon Area (Including Sand Mtn.)—Churchill Co.: T.14–18N R.27–32E.

7. Hawthorne Area—Mineral County: T.5–14N. R.31½–36E.

8. Vegas to Reno OHV Race Route: Nye, Esmeralda, Mineral, Churchill, and Lyon Counties: From Johnny to Dayton, Nevada—approximately 510 miles in the vicinity of Highway 95.

Marking and effect of closure. BLM lands to be temporarily closed to the public use include the width and length of those roads and trails identified as the race route by colorful flagging, chalk arrows in the dirt and directional arrows attached to wooden stakes. The authorized applicants or their representatives are required to post warning signs, control access to, and clearly mark the event routes during closure periods.

Public uses generally affected by a Temporary Closure include: Road and trail uses, camping, shooting of any kind of weapon including paint ball, and public land exploration.

Spectator and support vehicles may be driven on open roads only. Spectators may observe the races from specified locations as directed by event and agency officials.

Exceptions. Closure restrictions do not apply to race officials, medical/rescue, law enforcement, and BLM personnel monitoring the event.

Penalty. Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Authority: 43 CFR 8364.1 and 43 CFR part 2930.

Elayn M. Briggs,

Acting Manager, Carson City Field Office.

[FR Doc. 04–8157 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

[OR 125 and 128 –6334 PD; HAG 4–0104]

Seasonal Restrictions on Public Access to Federal Lands on the North Spit of Coos Bay and the New River Area of Critical Environmental Concern

AGENCIES: USDI, Bureau of Land Management, Coos Bay District, Umpqua and Myrtlewood Resource Areas, North Bend, Oregon; Department of Defense, U.S. Army Corps of Engineers, Coos Bay Field Office, Coos Bay, Oregon.

ACTION: Supplemental rule; seasonal closure.

SUMMARY: This document seasonally restricts public access to certain lands managed by the BLM and the ACOE in Coos County, and lands managed by the BLM in Curry County, Oregon, to protect the threatened population of Western Snowy Plovers from motorized and nonmotorized recreational use during their nesting season (15 March–15 September).

EFFECTIVE DATE: April 12, 2004.

ADDRESSES: Mail or personal delivery: District Manager, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459. Email: *coos_bay@or.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459. Telephone: (541) 756–0100. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

The BLM and ACOE find good cause to publish this closure notice effective upon publication, without providing for public comment, due to the immediate need to protect the Oregon coast population of threatened Western Snowy Plovers from recreational impacts during their nesting season. Western Snowy Plovers are very sensitive to disturbance and their cryptic eggs and young are easily trampled by unsuspecting visitors. The Coos Bay North Spit is the most important nesting area for Western Snowy Plovers on the Oregon coast and the loss of even a single nest at this site is considered significant under the Endangered Species Act. Lands managed by the BLM for Western Snowy Plovers at the New River ACEC are also vital for the recovery of this species in Oregon.

II. Background

The Pacific coast population of the Western Snowy Plover was listed as a Federally Threatened species on March 5, 1993, pursuant to the Endangered Species Act of 1973, as amended. Beach access restrictions are necessary to protect Western Snowy Plovers, their nests and young, and to comply with the Endangered Species Act and the U.S. Fish and Wildlife Service's Biological Opinion (BO) 1–7–00–F–421. The BO was prepared in response to the BLM's request for formal consultation on its Biological Assessment for Management of Federal Lands on the North Spit of Coos Bay During the 2000–2001 Western Snowy Plover Nesting Seasons (USDI 2000). The BO states that recreational activity within and adjacent to Western Snowy Plover areas can have significant adverse impacts to plovers, and concurred with BLM's proposed seasonal restrictions to be published in the **Federal Register**. Previous **Federal Register** notices, published in 1999 after the grounding of the New Carissa and its subsequent oil spill, restricted access to all or part of the beach and inland areas managed by the Bureau of Land Management on the North Spit of Coos Bay (64 FR 7904, Feb. 17, 1999; 64 FR 16479, April 5, 1999; 64 FR 45562, Aug. 20, 1999). These restrictions were implemented for public safety and the need to reduce disturbance to breeding and wintering Western Snowy Plovers during the lengthy clean-up process that followed the grounding of the New Carissa. A new notice is now warranted.

A previous notice for the New River area (16108 FR 61, April 11, 1996) restricted access only at the Floras Lake plover nest site. Based on current nest distribution, further restrictions are necessary for beaches and Habitat Restoration Area (HRAs) within the New River Area of Critical Environmental Concern (ACEC), and to comply with the New River ACEC Management Plan, the Endangered Species Act, and BLM Manual 6840.

III. Procedural Matters

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The lands described in this rule are only those public lands managed by either the BLM or the ACOE. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism [Replaces Executive Orders 12612 and 13083]

The proposed rule 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. This rule is in accordance with rules enforced by the State of Oregon for the lands in the North Spit and the Sixes River that are under the state's authority and jurisdiction. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, we have found that this final rule does not include policies that have tribal implications.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

IV. Closure

Pursuant to 43 CFR 3864.1 and 36 CFR 327.12(a), notice is hereby given

that the BLM and the ACOE are seasonally restricting access to portions of public lands. On the North Spit of Coos Bay, public access to the Western Snowy Plover HRAs is to be seasonally restricted as follows: the inland Western Snowy Plover HRAs totaling approximately 175 acres located in T. 25 S., R. 14 W., Sections 23, 24, 25, 26 and 35 are to be closed to all public access during the plover breeding season, 15 March–15 September. During the remaining portions of the year (16 September–14 March), these areas are open to non-vehicular recreational use, except for the fenced 1994 HRA and South Spoils area located in section 35. Also closed to all public access during the plover breeding season, 15 March–15 September, is the dry upper portion of the beach (above the mean high tide line) between the Federal Aviation Administration (FAA) tower and a point approximately 200 yards north of the Coos Bay North Jetty to the deflation plain east of the foredune (approx. 78 acres) located in T. 25 S., R. 14 W. Sections 13, 23, 24, 26 and 35. During the closure period, the area will be clearly posted. During the remaining portions of the year (16 September–14 March), these beach areas are open for recreational use, including motorized vehicles.

In addition to the above areas, this notice revises previously published access restrictions to public lands administered by the BLM within the New River Area of Critical Environmental Concern (ACEC). Public access to Western Snowy Plover nesting areas within the ACEC shall be seasonally restricted as follows: The dry upper portion of the beach (above the mean high tide line) to the deflation plain east of the foredune located in the north 0.4 mile of T. 31 S., R. 15 W., Section 8, and the dry upper portion of the beach (above the mean high tide line) to the deflation plain east of the foredune located in T. 30 S., R. 15 W., Sections 3, 10, 15, 21, 22, 28, 32, and 33. Also closed to public access during the plover breeding season is the Western Snowy Plover HRA on the New River Spit located in T. 30 S., R. 15 W., Sections 3, 10, 15, 21, 22, including untreated plover habitat in Sections 21, 28, 32, and 33. All Western Snowy Plover habitat listed above shall be closed to all public access during the plover breeding season, 15 March–15 September with the exception of BLM land located in the south 0.6 miles of T. 31 S., R. 15 W., Section 8, and the south 0.25 mile of T. 30 S., R. 15 W., Section 28. In the event that plovers nest on BLM lands within the New River ACEC not closed by this notice, BLM will exclose the nest(s), post the immediate area closed, and rope around it to limit disturbance. During the remaining portions of the year (16 September–14 March), these areas are open to non-vehicular public use.

Closure signs will be posted at main entry points to all locations affected by this Notice. Maps of the closure areas and further information may be obtained from the Coos Bay District Office. The described seasonal closures will remain in effect annually until further notice.

Under the authority found in 43 U.S.C. 1733, and 43 CFR 8364.1, the Bureau of Land Management will enforce the following rules on public lands in the area known as North Spit and New River; and under 16 U.S.C. 460d, and 36 CFR 327.12(a) the U.S. Army Corps of Engineers will enforce the following rules on lands administered by the U.S. Army Corps of Engineers in the area known as North Spit:

Supplemental Rules for North Spit and New River

Sec. 1 Prohibited acts.

(a) Prohibited acts. During the posted dates and within the closed areas, you must not:

(1) Operate any motorized vehicle.

(2) Enter by any non-motorized means, including but not limited to foot, bicycle, off road vehicle, horse, or non-powered aircraft.

(3) Discharge any firearm.

(4) Start, build or maintain any fire.

(5) Light or discharge any fireworks or incendiary devices.

(b) Exemptions. The following are exempt from prosecution under the prohibited acts:

1. Any person operating a motorized vehicle on a publicly maintained State or County road;

2. Any Federal, State or local officer or employee in the scope of their duties;

3. Members of any organized rescue or fire-fighting force in the performance of official duty; and

4. Any person authorized in writing by BLM.

Sec. 2 Penalties.

On public lands fitting the criteria in the Sikes Act (16 U.S.C. 670), under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 16 U.S.C. 670j(a)(2). If you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than $500 or imprisoned for no more than six months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

On all public lands under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7 if you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

On lands managed by the U.S. Army Corps of Engineers under 16 U.S.C. 460d and 36 CFR 327.25 if you violate any of these supplementary rules, you may be fined no more than $500 or imprisoned for not more than six months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Judy E. Nelson,

Acting Associate State Director, Oregon/Washington Bureau of Land Management.

Charles S. Markham,

Lieutenant Colonel, EN, Acting Commander, U.S. Army Corps of Engineers.

[FR Doc. 04–8156 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220–00 PD; G0–00]

Notice of Supplementary Rule for Public Lands in California

AGENCY: Bureau of Land Management, El Centro Field Office, California Desert District, Interior.

ACTION: Camping closure of selected Federal lands, Imperial County, CA.

SUMMARY: The Bureau of Land Management's (BLM) El Centro Field Office is issuing a supplementary camping closure rule. This rule will apply to public lands located in the East Mesa lying west of the Old Coachella Canal and north of Interstate 8 near Gordon's Well in Imperial County, CA. This rule is being issued to protect the flat-tailed horned lizard and will continue a current camping closure.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Resources Branch Chief, 1661 So. 4th St., El Centro, CA 92243, (760) 337–4420.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Supplementary Rule

BLM has determined this rule is necessary to support the decision record for the Western Colorado Desert Routes of Travel Designation (WECO ROT) Plan. Stakeholders participated in the development of this plan and have had opportunity to provide comments on this supplementary rule through the

development of the WECO ROT Plan. This rule is final upon publication and applies to public lands within: SBM, T.16S., R.19E., Secs. 3, 10, 11, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35; T.16S., R.20E., Secs. 30, 31 (those portions lying west of the Old Coachella Canal and north of Interstate 8).

II. Procedural Matters

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The rule does not represent a government action capable of interfering with Constitutionally-protected property rights. It is simply a ban on certain conduct that has implications to natural and cultural resource protection. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism (Replaces Executive Orders 12612 and 13083)

This rule 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. This rule does not come into conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule does not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (Replaces Executive Order 13084)

In accordance with Executive Order 13175, we have found that this rule does not include policies that have tribal implications. None of the lands included in this rule affects Indian lands or Indian rights. Coordination was conducted through preparation of the WECO ROT Plan with all affected tribes.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in this rule are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1) because Federal criminal investigations or prosecutions may result from this rule.

Authors

The principal author of this supplementary rule is Chief Ranger Robert Zimmer.

Supplementary Rule

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rule on the public lands within the East Mesa, El Centro Field Office, California Desert District. A more detailed explanation as to the need for such a rule may be found in the Western Colorado Desert Routes of Travel Designation dated October 2002 and signed January 31, 2003.

You must follow this rule:

1. No person may camp on the public lands within the "No Camping Zone" of the East Mesa Flat-tailed Horned Lizard Management Area. This "No Camping Zone" includes public lands within: SBM, T.16S., R.19E., Secs. 3, 10, 11, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35; T.16S., R.20E., Secs. 30, 31 (those portions lying west of the Old Coachella Canal and north of Interstate 8.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7 if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: December 29, 2003.

J. Anthony Danna,

Acting California State Director.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2004.

[FR Doc. 04–8145 Filed 4–9–04; 8:45 am]

BILLING CODE 4392–68–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220–00 PD; G0–00]

Notice of Supplementary Rule for Public Lands in California

AGENCY: Bureau of Land Management, El Centro Field Office, California Desert District, Interior.

ACTION: Camping closure of selected Federal lands, Imperial County, CA.

SUMMARY: The Bureau of Land Management's (BLM) El Centro Field Office is issuing a supplementary camping closure rule. This rule is being issued to protect the flat-tailed horned lizard and will apply to the public lands within the East Mesa Flat-tailed Horned Lizard Management Area and the West Mesa Flat-tailed Horned Lizard Management Area in Imperial County, California. Camping will be allowed only in those areas within fifty (50) feet of the centerline of an approved route.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Resources Branch Chief, 1661 So. 4th St., El Centro, CA 92243, (760) 337–4420.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Supplementary Rule

BLM has determined this rule is necessary to support the Decision Record for the Western Colorado Desert Routes of Travel Designation (WECO ROT) Plan. Stakeholders participated in the development of this plan and have had opportunity to provide comments on this supplementary rule through the development of the WECO ROT Plan. This rule is final upon publication and applies to public lands described below (all are San Bernardino Meridian).

East Mesa Flat-Tailed Horned Lizard Management Area

[East boundary] Beginning in Sec. 31 in T.16S., R.20E. at the intersection of Frontage Road and West Levee Road on the north side of the All-American Canal, then northwest along the West Levee Road (on west levee of Coachella Canal) to Highway 78 (Glamis Highway) in Sec. 35 in T.13S., R.17E.;

[North boundary] then west on Highway 78 to the intersection with an unnamed dirt road in NW¼NE¼NE¼ Sec. 2 in T.14S., R.16E.;

[West boundary] then south on this dirt road to the intersection with BLM Route A181 in Sec. 23 in T.14S., R.16E., then south on BLM Route A181 to BLM Route A3410 in Sec. 11 in T.15S., R.16E., then eastward and southward on BLM Route A3410 to BLM Route A357 in Sec. 18 in T.15S., R.17E, then east on BLM Route A357 for about 0.3 miles to the west side of Sec. 17

in T.15S., R.17E., then south on the west side of Sec. 17, 20, 29, 32 in T.15S., R.17E and Sec. 5, 8, and 17 in T.16S., R.17E to the Frontage Road on the north side of Interstate Highway 8 in Sec. 17 in T.16S., R.17E.;

[South boundary] then east on Interstate 8 Frontage Road to the west side of E½E½ Sec. 31 in T.16S., R.19E., then due north to the northern side of Sec. 31, then east 1.0 miles to the west side of E½E½ Sec. 32 in T.16S., R.19E., then due south to the Frontage Road, then east to the west side of Sec. 36 in T.16S., R.19E., then north to the N½ Sec. 36, then due east 1 mile to the east side of Sec. 36, then south to Frontage Road, then east on Frontage Road to the West Levee Road.

West Mesa Flat-Tailed Horned Lizard Management Area

[East boundary] Beginning in southeast corner of Sec. 30 in T.14S., R.13E. and north along the east side of Sec. 30, 19, 18, and 7 to the south side of N½ of Sec. 7, then west and north around SW¼NE¼ Sec. 7, then west and north around NW¼NE¼ Sec. 7, then west along the north side of N½ Sec. 7, then north about 0.15 miles along the east side of Sec. 13 in T.14S., R.12E. to the southeast corner of Sec. 12, then in Sec. 12, west and north around E½SE¼, then west and north and east around SW¼NE¼, then north along the west side of NE¼NE¼, then in Sec. 1 in T.15S, R.12E., north along the west side of SW¼SW¼, then west and north around NW¼SE¼, then west and north around E½NW¼, then west to the southeast corner of Sec. 35 in T.13S., R.12E., then north along the west side of Sec. 35 to the northeast corner of Sec. 35, then west and north around E½ of Sec. 26, then west along the northern side of Sec. 26 W½, 27, and 28 to the intersection with BLM Route SF291 (transmission power line service road), then northwest on BLM Route SF291 to the northern side of Sec. 28 in T.12S., R.11E., then west on the north side of Sec. 28 to the southeast corner of Sec. 20, then north on the east side of Sec. 20 to Highway 86, then northwest on Highway 86 to the northern side of Sec. 20, then west on the northern side of Sec. 20 to the southeast corner of Sec. 18 in T.12S., R.11E., then north along the east side of Sec. 18 to Highway 78;

[North boundary] then west on Highway 78 to the west side of Sec. 18 in T.12S., R.10E.;

[West boundary] then south on the west side of Sec. 18 in T.12S., R.10E., then west on the north side of Sec. 24 in T.12S., R.9E. to the west side of Tarantula Wash, then southeast along the west side of Tarantula Wash to the south side of Sec. 24, then east to the northwest corner of Sec. 30 in T.12S., R.10E., then south along the west side of Sec. 30 and east along the south side of Sec. 30, then south on the west side of Sec. 32 and east along the south side of Sec. 32 to Carrizo Wash near the northeast corner of Sec. 5 in T.13S., R.10E., then south along the west side of Carrizo Wash through Sec. 5, 8, 17, 20, 29, and 32 in T.13S., R.10E., and then south through Sec. 5, 8, 17, 20, 29, and 32 in T.14S., R.10E. to the intersection with BLM Route SF397 in NW¼ Sec. 32 in T.14S., R.10E., then southeast on BLM Route SF397 to an unnamed, east-west route along the northern side of the SW¼SE¼ Sec. 15 in T.15S, R.10E., then west about .25 miles to the boundary of the U.S. Navy Target 103 at about the northwest corner of SE¼SE¼ Sec. 15, then south along the boundary of Target 103 (approximately west side of SE¼SE¼ Sec. 15 and E½E½ Sec. 22 to the south side of Sec. 22 in T.15S, R.10E.;

[South boundary] then (along the boundary of Target 103) east on the south side of Sec. 22 and east and south around NW¼ of Sec. 26 in T.15S, R.10E., then east along the south side of NE¼ of Sec. 26 and N½ Sec. 25, in T.15S., R.10E., and N½ Sec. 30 and NW¼ Sec. 19, in T.15S., R. 11E., then north along the east side of NW¼ Sec. 19, then north and east around the S½SW¼ Sec. 20, then north along the east side of Sec. 20 and 17, then east along the south side of Sec. 9, then north along the east side of Sec. 9, then east along the north side of Sec. 10, then north along the east side of Sec. 3, in T.15S., R.11E and along the east side of Sec. 34 and 27 in T.14S., R.11E, then diagonally from the southeast corner to the northwest corner across Sec. 22, the west along the north side of Sec. 21, then north on the east side of Sec. 17 to the 120-ft. contour line, then northwest on this contour line to the intersection with BLM Route SF274 in Sec. 17 T.14S., R.11E., then northwest on BLM Route SF274 to the intersection with BLM Route SF391 in Sec. 6 T.14S., R.11E., then southwest on BLM Route SF391 to the boundary of U.S. Navy Target 101 in Sec. 32 T.14S., R.12E., then southeast along the boundary of Target 101 to the southwest corner of Sec. 34 in T.14S., R.12E., then west on the south side of Sec. 34, 35, and 36 in T.14S., R.12E., then south along the west side of Sec. 30 in T.14S., R. 13E., then along the south side of Sec. 30 to the southeast corner of Sec. 30.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This supplementary rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This supplementary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This supplementary rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?
2. Does the supplementary rule contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM prepared an "Environmental Assessment and Draft Plan Amendment for Western Colorado Desert Routes of Travel Designation" (EA) dated October 2002 that anticipates this supplementary rule. This was followed by a December 13, 2002, "Proposed Amendment to the California Desert Conservation Area Plan for Western Colorado Desert Routes of Travel Designation and Errata Sheet for the Environmental Assessment." In these documents, BLM found that the supplementary rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The Finding of No Significant Impact was signed January 31, 2003. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that

Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect commercial or business activities of any kind. Therefore, BLM has determined under the RFA that this supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This supplementary rule is not a "major rule" as defined at 5 U.S.C. 804(2). The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

This supplementary rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does it have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect tribal, commercial, or business activities of any kind. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rule does not represent a government action capable of interfering with Constitutionally-protected property rights. It simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect anyone's property rights. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rule 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. The supplementary rule does not come into conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that the supplementary rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that the supplementary rule does not include policies that have tribal implications. None of the lands included in this rule affects Indian lands or Indian Rights. Coordination was conducted through preparation of the WECO ROT Plan with all affected tribes.

Paperwork Reduction Act

The supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in this rule are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from this rule and are exempt from the Paperwork Reduction Act.

Authors

The principal author of this supplementary rule is Chief Ranger Robert Zimmer.

Supplementary Rule

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rule on public lands in Imperial County, CA, within the jurisdiction of the El Centro Field Office, California Desert District. A more detailed explanation as to the need for such a rule may be found in the Western Colorado Desert Routes of Travel Designation dated October 2002 and signed January 31, 2003.

You must follow this rule:

1. Within the East and West Mesa Flat-tailed Horned Lizard Management Areas, persons may vehicle-camp only within fifty (50) feet of the centerline of approved routes of travel as identified in the Western Colorado Desert Routes of Travel Designation Decision Record, dated January 31, 2003.

2. This rule does not supercede other rules or regulations or allow camping within any areas where camping is further restricted by other rules or regulations.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7) if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2004.

Dated: December 29, 2003.

J. Anthony Danna,

Acting California State Director.

[FR Doc. 04–8147 Filed 4–9–04; 8:45 am]

BILLING CODE 4392–68–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220–00 PD; G0–00]

Notice of Supplementary Rule for Public Lands in California

AGENCY: Bureau of Land Management, El Centro Field Office, California Desert District, Interior.

ACTION: Camping closure of selected Federal Lands, Imperial County, CA.

SUMMARY: The Bureau of Land Management's (BLM) El Centro Field Office is issuing a supplementary camping closure rule. This rule is being issued to protect the flat-tailed horned lizard and will apply to public lands along the entire length of Kane Spring Road within Imperial County, CA.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Resources Branch Chief, 1661 So. 4th St., El Centro, CA 92243 (760) 337–4420.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Supplementary Rule

This rule is needed to support the Decision Record for the Western Colorado Desert Routes of Travel Designation (WECO ROT) Plan. Stakeholders participated in the development of this plan and have had opportunity to provide comments on this supplementary rule through the development of the WECO ROT Plan. This rule is final upon publication and applies to public lands within: SBM, T.12S., R.10E., Secs. 26, 33, 34, 35; T.12S., R.11E., Secs. 20, 30; T.13S., R.10E., Secs. 3, 4, 5, 6.

II. Procedural Matters

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule does not represent a government action capable of interfering with Constitutionally-protected property rights. It is simply a ban on certain conduct that has implications to natural and cultural resource protection. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism [Replaces Executive Orders 12612 and 13083]

This rule 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. This rule does not come into conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, we have found that this rule does not include policies that have tribal implications. None of the lands included in this rule affects Indian lands or Indian Rights. Coordination was conducted through preparation of the WECO ROT Plan with all affected tribes.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in the proposed rule are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from this rule and are exempt from the Paperwork Reduction Act.

Authors

The principal author of this rule is Chief Ranger Robert Zimmer.

Supplementary Rule

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rule on public lands in Imperial County, CA, El Centro Field Office, California Desert District. A more detailed explanation as to the need for such a rule may be found in the Western Colorado Desert Routes of Travel Designation Decision Record signed January 31, 2003.

You must follow this rule:

1. No person may camp on public lands located along either side of Kane Spring Road (Route T670084) within Imperial County, CA. This rule applies to public lands within: SBM, T.12S., R.10E., Secs. 26, 33, 34, 35; T.12S., R.11E., Secs. 20, 30; T.13S., R.10E., Secs. 3, 4, 5, 6.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: December 29, 2003.

J. Anthony Danna,

Acting California State Director.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2004.

[FR Doc. 04–8148 Filed 4–9–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220–00 PD; G0–00]

Notice of Supplementary Rule for Public Lands in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Camping closure of selected Federal lands, Imperial County, CA.

SUMMARY: The Bureau of Land Management's (BLM) El Centro Field Office is issuing a supplementary camping closure rule. This rule applies to public lands in the Elliot Mine area in Imperial County, CA. This rule is being issued in order to protect the flat-tailed horned lizard and will continue a current camping closure.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Resources Branch Chief, 1661 So. 4th St., El Centro, CA 92243 (760) 337–4420.

I. Discussion of the Supplementary Rule

This rule is needed to support the Decision Record for the Western Colorado Desert Routes of Travel Designation (WECO ROT) Plan. Stakeholders participated in the development of this plan and have had opportunity to provide comments on this supplementary rule through the development of the WECO ROT Plan. This rule is final upon publication and applies to public lands within: SBM, T.18S., R.9E., Secs. 5, 7, 8.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This supplementary rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This supplementary rule

will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This supplementary rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?
2. Does the supplementary rule contain technical language or jargon that interferes with their clarity?
3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?
4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM prepared an "Environmental Assessment and Draft Plan Amendment for Western Colorado Desert Routes of Travel Designation" (EA) dated October 2002 that anticipates this supplementary rule. This was followed by a December 13, 2002, "Proposed Amendment to the California Desert Conservation Area Plan for Western Colorado Desert Routes of Travel Designation and Errata Sheet for the Environmental Assessment." In these documents, BLM found that the supplementary rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The Finding of No Significant Impact was signed January 31, 2003. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect commercial or business activities of any kind. Therefore, BLM has determined under the RFA that this supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This supplementary rule is not a "major rule" as defined at 5 U.S.C. 804(2). The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

This supplementary rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does it have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect tribal, commercial, or business activities of any kind. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rule does not represent a government action capable of interfering with Constitutionally-protected property rights. It simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect anyone's property rights. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rule 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. The supplementary rule does not come into conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that the supplementary rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that the supplementary rule does not include policies that have tribal implications. None of the lands included in this rule affects Indian lands or Indian Rights. Coordination was conducted through preparation of the WECO ROT Plan with all affected tribes.

Paperwork Reduction Act

The supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in this rule are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from this rule and are exempt from the Paperwork Reduction Act.

Authors

The principal author of this rule is Chief Ranger Robert Zimmer.

Supplementary Rule

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rule on public lands in Imperial County, CA, El Centro Field Office, California Desert District. A more

detailed explanation as to the need for such a rule may be found in the Western Colorado Desert Routes of Travel Designation Decision Record signed January 31, 2003.

You must follow this rule:

1. No person may camp on public lands more than 25 feet from the centerline of designated routes in the Elliot Mine area within Imperial County, CA. This rule applies to public lands within: SBM, T.18S., R.9E., Secs. 5, 7, 8.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8360.0–7) if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: December 29, 2003.

J. Anthony Danna,

Acting California State Director.

[FR Doc. 04–8161 Filed 4–9–04; 8:45 am]

BILLING CODE 4392–68–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220–00 PD; G0–00]

Notice of Supplemental Rule for Public Lands in California

AGENCY: Bureau of Land Management, El Centro Field Office, California Desert District, Interior.

ACTION: Supplemental rule; camping rule for selected Federal lands, Imperial County, CA.

SUMMARY: The Bureau of Land Management's (BLM) El Centro Field Office is issuing a supplementary camping rule. This rule is being issued to protect the flat-tailed horned lizard and will apply to public lands within the Yuha Basin Area of Critical Environment Concern (ACEC). Camping will only be allowed in the non-Wilderness portions of the ACEC within the boundaries of a designated camping area.

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Resources Branch Chief, 1661 So. 4th St., El Centro, CA 92243, (760) 337–4420.

I. Discussion of the Supplementary Rule

This rule is needed to support the Decision Record for the Western Colorado Routes of Travel Designation (WECO ROT) Plan dated October 2002 and signed January 31, 2003. Stakeholders participated in the development of this plan and have had opportunity to provide comments on this supplementary rule through the development of the WECO ROT Plan. This rule is final upon publication and applies to public lands within: SBM, T16S, R10E, S25–S28, S33–S36; T16½S, R10E, S1–S4; T17S, R10E, S1–S3, S10–S15, S23–S25; T16S, R11E, S19–S35; T16½, R11E, S1–S6; T17S, R11E, S1–S15, S17–S30; T16S, R12E, S19, S29–S34; T16½S, R12E, S3–S6; T17S, R12E, S1–S15, S17–S30; T17S, R13E, S18–S19.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This supplementary rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This supplementary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This supplementary rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this supplementary rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rule clearly stated?

2. Does the supplementary rule contain technical language or jargon that interferes with their clarity?

3. Does the format of the supplementary rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?

4. Is the description of the supplementary rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rule? How could this description be more helpful in making the supplementary rule easier to understand?

Please send any comments you have on the clarity of the rule to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM prepared an "Environmental Assessment and Draft Plan Amendment for Western Colorado Desert Routes of Travel Designation" (EA) dated October 2002 that anticipates this supplementary rules. This was followed by a December 13, 2002, "Proposed Amendment to the California Desert Conservation Area Plan for Western Colorado Desert Routes of Travel Designation and Errata Sheet for the Environmental Assessment." In these documents, BLM found that the supplementary rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The Finding of No Significant Impact was signed January 31, 2003. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect commercial or business activities of any kind. Therefore, BLM has determined under the RFA that this supplementary rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This supplementary rule is not a "major rule" as defined at 5 U.S.C. 804(2). The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

This supplementary rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor does it have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rule simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect tribal, commercial, or business activities of any kind. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rule does not represent a government action capable of interfering with Constitutionally-protected property rights. It simply bans camping in certain areas in order to protect natural and cultural resources, and does not affect anyone's property rights. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rule 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. The supplementary rule does not come into conflict with any state law or regulation. Therefore, in accordance with Executive Order 13132, BLM has determined that the supplementary rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that the supplementary rule does not include policies that have tribal implications. None of the lands included in this rule affects Indian lands or Indian Rights. Coordination was conducted through preparation of the WECO ROT Plan with all affected tribes.

Paperwork Reduction Act

The supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in this rule are exempt from the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3518(c)(1). Federal criminal investigations or prosecutions may result from this rule and are exempt from the Paperwork Reduction Act.

Authors

The principal authors of this supplementary rule are Chief Ranger Robert Zimmer and Supervisory Ranger Robert Haggerty.

III. Supplementary Rule

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following rules on public lands in Imperial County, CA, within the Yuha Basin Area of Critical Environmental Concern (ACEC) as identified in the Western Colorado Desert Routes of Travel Designation Plan, El Centro Field Office, California Desert District. A more detailed explanation as to the need for such rules may be found in the Western Colorado Desert Routes of Travel Designation dated October 2002 and signed January 31, 2003. *You must follow this rule:*

1. No person may camp outside the established campgrounds within the non-Wilderness Areas of the Yuha Basin Area of Critical Environmental Concern.

2. The established campgrounds are described as follows:

a. Dunaway Campground: SBM, T16S, R11E, S24, W½ (within); located off BLM Route 357 and approximately 5.9 acres in size. Access to this campground is off Dunaway Road, south of Interstate 8.

b. Shell Beds Campground: SBM, T16S, R11E, S27, W½ (within); located off BLM Route 274 and approximately 22.8 acres in size. Access to this campground is from Dunaway Road to BLM Route 274 for approximately 2 miles; BLM Route 274 will head towards the right; stay left to go to campground.

c. Overlook Campground: SBM, T16S, R11E, S29, NE¼ (within); located directly off BLM Route 274 and approximately 5.1 acres in size. Best access to this campground is from Dunaway Road; take BLM Route 274 to campground.

d. De Anza Campground: SBM, T16½S, R10E, S2, S½ (within), T17S, R10E, S1, W½ (within); located off BLM Route 274 and approximately 26.9 acres in size. Access to this campground is from Highway 98 to BLM Route 274; follow BLM Route 274 for approximately 1 mile. Campground is along the rim and to the east of BLM Route 274.

e. Coyote Campground: SBM, T17S, R10E, S23, NE¼ (within); located off BLM Route 282 and approximately 22.3 acres in size. Access to this campground is from Highway 98 to BLM Route 282; follow BLM Route 282 for approximately 3 miles to the campground.

f. Little Sunrise Campground: SBM, T17S, R11E, S22, NW¼ (within); located off BLM Route 389 and approximately 4.5 acres in size. Access to this campground is from Highway 98 to BLM Route 389; follow BLM Route 389 for approximately 1.5 miles to campground.

IV. Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 if you violate this supplementary rule on public lands within the boundaries established in the rule, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: December 29, 2003.

J. Anthony Danna,

Acting California State Director.

Editorial Note: This document was received in the Office of the Federal Register on April 6, 2004.

[FR Doc. 04–8162 Filed 4–9–04; 8:45 am]

BILLING CODE 4392–68–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 93245]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service has asked the Secretary of the Interior to withdraw 390 acres of National Forest System land to preserve the unique resource of quartz crystals in the Crystal Park Recreational Mineral Collection Area Addition. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all activities currently consistent with applicable Forest plans and those related to exercise of valid existing rights.

DATES: Comments and requests for a public meeting must be received by July 12, 2004.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Beaverhead-Deerlodge National Forest, 420 Barrett Street, Dillon, Montana 59725.

FOR FURTHER INFORMATION CONTACT: Sandra Ware, Bureau of Land Management at (406) 896–5052 or Scott Bixler, USDA Forest Service at (406) 329–3655.

SUPPLEMENTARY INFORMATION: The Forest Service has filed an application to withdraw the following-described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Principal Meridian, Montana

Beaverhead-Deerlodge National Forest
T. 4 S., R. 12 W.,
sec. 8, E½SE¼;
sec. 9, SW¼;
sec. 16, N½NW¼, NE¼SW¼NW¼, N½SE¼NW¼; and
sec. 17, NE¼NE¼.

The area described contains 390 acres in Beaverhead County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Beaverhead-Deerlodge National Forest, at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a newspaper having a general circulation in the vicinity of the land at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include all activities currently consistent with applicable Forest plans and those related to exercise of valid existing rights, including public recreation and other activities compatible with preservation of the character of the area.

Authority: 43 U.S.C. 1714.

Dated: February 19, 2004.

Howard A. Lemm,

Deputy State Director, Division of Resources.

[FR Doc. 04–8153 Filed 4–9–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Federal Register Notice of Submission of United States Park Police Personal History Statements Questionnaire to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: National Park Service, The Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Public Law, 104–13,44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved information collection clearance (OMB 1024–0245). Comments are invited on (1) the need for the information including whether the information has practical utility; (2) the accuracy of this reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected on respondents, including the use of automated collection techniques or other forms of information technology. This program will measure performance in meeting goals as required by the 1995 Government Performance and Results Act.

Executive Order 12968 establishes investigative standards for all United States Government civilian and military personnel. 5 CFR Part 731 establishes criteria and procedures for making determinations of suitability for employment in positions in competitive service. The Position of Police Officer in the United States Park Police is Critical Sensitive. The purpose of the United States Park Police Personal History Statement Questionnaire is to collect detailed information that will be used principally as a basis for an investigation to determine suitable applicants for the position of United States Park Police Office. There were no public comments received as a result of publishing in the **Federal Register** a 60-day notice of intention to request clearance of information collection for this questionnaire.

DATES: Public Comments on the Information Collection Request will be accepted on or before May 12, 2004 to be assured of consideration. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore to ensure maximum consideration, OMB should receive comments 30 days from the date of publication in the **Federal Register.**

ADDRESSES: You may submit comments directly to the Desk Office for the Department of the Interior (OMB 1024–0245), Office of Information and Regulatory Affairs, OMB, by fax at (202) 395–6566 or by electronic mail at *oira_docket@omb.eop.gov.* E-mail or fax a copy of your comments to Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20024, via fax at (202) 619–7479, or via e-mail at *Charles_A_Orton@nps.gov.* All comments will become a matter of public record.

For Further Information or a Copy of the United States Park Police Personal History Statements Questionnaire Submitted for OMB Review, Contact:

Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive SW., Washington, DC 20024, via fax at (202) 619–7479, or via e-mail at *Charles_A_Orton@nps.gov* or via telephone at (202) 619–7001.

SUPPLEMENTARY INFORMATION:

Title: United States Park Police Personal History Statements Questionnaire.

OMB Number: 1024–0245.

Expiration Date: 02/29/04.

Type of request: Extension of a currently approved collection.

Description of need: The NPS uses the information collections to hire adequately screened applicants for the position of United States Park Police Officer.

Respondents: Individual applicants to the position of United States Park Police Officer.

Respondents: Individual applicants to the position of United States Park Police Officer.

Estimated Number of Respondents: NPS estimates that there are 600 respondents. This is the gross number of respondents for all of the elements included in this information collection. The net number of applicants in this information collection annually are 600 applicants. Applicants complete the application each time a vacancy announcement is published.

Estimated average number of Applicant responses: 600 annually.

Estimated average burden hours per Applicant response: 8 hours.

Estimated Annual Burden on Respondents: 4,800 Hours.

Dated: February 26, 2004.

Leonard E. Stone,

Acting NPS Information Collection Officer, Washington Administrative Program Center.

[FR Doc. 04–8163 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–59–M

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection; Request for Extension

AGENCY: National Park Service, Interior.

ACTION: Notice of request for a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to request an extension of a currently approved information collection (OMB Control #1204–0029) under 36 CFR part 51 relating to Concessioner Annual Financial Reports. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 12, 2004, in order to be assured of consideration.

ADDRESSES: You may submit comments to the Desk Officer for the Department of the Interior, (OMB #1024–0029), Office of Information and Regulatory Affairs, OMB, via facsimile at (202) 395–6566, or via e-mail at *OIRA_DOCKET@omb.eop.gov.* Also, send a copy of your comments to Cynthia L. Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or electronically to *cindy_orlando@nps.gov.* All comments will become a matter of public record. Copies of the proposed Information Collection Request can be obtained from Erica Smith-Chavis, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240.

For Further Information or a copy of the Study Package Submitted for OMB Review Contact:

Erica Smith-Chavis, 1849 C Street, NW. (2410), Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

Title: Concessioner Annual Financial Report.

OMB Control Number: 1024–0029.

Expiration Date of Approval: February 29, 2004.

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

Abstract: The Office of Management and Budget (OMB) regulations at 4 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 13200.8(d)). NPS has submitted a request to OMB to renew approval of the collection of information contained in Concessioner Annual Financial Reports. NPS is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is 1024–0029, and is identified in 36 CFR part 51. As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on November 19, 2003 (Page 65311). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

The regulations at 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which requires that the Secretary of the Interior exercise authority in a manner constituent with a reasonable opportunity for a concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed. It also requires that franchise fees be determined with consideration to the opportunity for net profit in relation to both gross receipts and capital invested. The financial information being collected is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be exercised and franchise fees determined in a timely manner and without an undue burden on the concessioner.

Bureau Form Number: 10–356, 10–356a, 10–356b.

Frequency of Collection. Annually.

Description of Respondents: National Park Service concessioners.

Total Annual Responses: 500.

Estimate of Burden: Approximately 7 hours per response.

Total Annual Burden Hours: 3,800.

Total Non-hour Cost Burden: None.

Send comments on (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; (4) and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1024–0029 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the record a respondent's

identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 26, 2004.

Leonard E. Stowe,

NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 04–8164 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Information Collection; Request for Extension

AGENCY: National Park Service, Interior.

ACTION: Notice of request for extension of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to request an extension of a currently approved information collection (OMB Control #102–0231) under 36 CFR part 51, § 51.47, regarding the appeal of a preferred offeror determination, §§ 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and § 51.98 concerning recordkeeping requirements with which concessioners must comply. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 12, 2004, in order to be assured of consideration.

ADDRESSES: You may submit comments directly to Ms. Ruth Salomon, Desk Officer for the Department of the Interior (OMB #1024–0231), OMB Office of Information and Regulatory Affairs, via facsimile at (202) 395–6566, or via e-mail at *OIRA_DOCKET@omb.eop.gov.* Also, you may mail or handcarry a copy of your comments to Cynthia L. Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or electronically to *cindy_orlando@nps.gov.*

All comments will become a matter of public record. Copies of the proposed Information Collection Request can be obtained from Erica Smith-Chavis, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240.

For Further Information or a Copy of the Study Package Submitted for OMB Review, Contact: Erica Smith-Chavis, (202) 513–7144, National Park Service, 1849 C St, NW. (2410), Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

Title: Concession Contract—36 CFR part 51.

OMB Control Number: 1024–0231.

Expiration Date of Approval: February 29, 2004.

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

Abstract: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 13200.8(d)). NPS has submitted a request to OMB to renew approval of the collection of information in 36 CFR part 51, § 51.47, regarding the appeal of a preferred offeror determination, §§ 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and § 51.98 concerning recordkeeping requirements with which concessioners must comply. NPS is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is 1024–0231, and is identified in 36 CFR 51.104. As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on December 5, 2003 (Page 68109–68110). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

The information is being collected to meet the requirements of Sections 403(7) and (8) of the NPS Concessions Management Improvement Act of 1998 (the Act), concerning the granting of a preferential right to renew a concession contract, Section 405 of the Act regarding the construction of capital improvements by concessioners, and Section 414 of the Act regarding recordkeeping requirements of concessioners. The information will be used by the agency in considering appeals concerning preferred offeror determinations, agency review and approval of construction projects and determinations with regard to the leasehold surrender interest value of such projects, and when necessary, agency review of a concessioner's books and records related to its activities under a concession contract.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: NPS concessioners, and, in the case of appeals of preferred offeror determinations, offerors in response to concession prospectuses.

Total Annual Responses: 758.

Total Annual Burden Hours: 3,276.

Send comments on (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; (4) and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1024–0231 in all correspondence.

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

Dated: February 24, 2004.

Leonard E. Stowe,

Acting NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 04–8165 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Task Force Meeting Notice

AGENCY: National Park Service, Jean Lafitte National Historical Park and Preserve.

ACTION: Notice of task force meetings.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.1, Section 10(a)(2), that the next three meetings of the Chalmette Battlefield Task Force Committee will be held at 3 p.m. at the following location and dates:

DATES: Meetings are scheduled Wednesday, May 26, 2004, Wednesday, June 16, 2004, and Wednesday, August 18, 2004. Each meeting will be announced in the local paper and/or through public service announcements.

ADDRESSES: The Council Chambers Meeting Room at the St. Bernard Parish Government Complex, 8201 W. Judge Perez Drive in Chalmette, LA 70043.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 419 Decatur Street, New Orleans, LA 70130, (504) 589–3882, extension 137 or 108 or from the park Web site at *http://www.nps.gov/jela.htm.*

SUPPLEMENTARY INFORMATION: The purpose of the Chalmette Battlefield Task Force Committee is to advise the Secretary of the Interior on suggested improvements at the Chalmette Battlefield site within Jean Lafitte National Historical Park and Preserve. The members of the Task Force are as follows: Ms. Elizabeth McDougall, chairperson, Ms. Faith Moran, Mr. Anthony A. Fernandez, Jr., Mr. Drew Heaphy, Mr. Alvin W. Guillot, Mrs. George W. Davis, Mr. Eric Cager, Mr. Paul V. Perez, Captain Bonnie Pepper Cook, Colonel John F. Pugh, Jr., and Geraldine Smith. The matters to be discussed are:

- The May 26, 2004 meeting is to include a review of the status of the Report Sub-committee, the status of the Louisiana State Historic Office representative's appointment, and a report from the Federal Designated Officer.
- The June 16, 2004 meeting is to include the draft report from the Report Sub-committee, and a review from the Federal Designated Officer on the status of the General Management Plan and Development Concept Plan.
- The August 18, 2004 meeting is to include the presentation of the final Chalmette Battlefield Task Force Report to the Federal Designated Officer.

These meetings will be open to the public; however facilities and space for accommodating members of the public are limited. Any member of the public may file with the committee a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at park headquarters at 419 Decatur Street, New Orleans, Louisiana for public inspection approximately 4 weeks after the meeting and on the park Web site at *http://www.nps.gov/jela.htm.*

Dated: March 16, 2004.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 04–8166 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–L6–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting; correction.

SUMMARY: The National Park Service published a document in the **Federal Register** of March 17, 2004, concerning a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. The day of the meeting was in error.

Correction: In the **Federal Register** of March 17, 2004, volume 69, number 52, page 12710, concerning a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission, the day of the meeting was in error.

SUMMARY: This notice announces a public meeting of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Correction

Meeting Date and Time: Saturday, May 1, 2004 at 9 a.m.

Address: Walpack Church, Walpack Center, New Jersey 07881.

The agenda will include reports from Citizen Advisory Commission members including Commission committees such as Recruitment, Natural Resources, Inter-Governmental Cultural Resources, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: March 23, 2004.

Doyle Nelson,

Acting Superintendent.

[FR Doc. 04–8168 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–MY–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Colorado College, Colorado Springs, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of The Colorado College. Colorado Springs, CO. The human remains and associated funerary object were removed from undocumented sites in the southwestern United States and Combe Wash, San Juan County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum,

institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary object was made by The Colorado College professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico.

On unknown dates, human remains representing 10 individuals were removed from sites in the southwestern United States. The human remains, believed to have been donated to The Colorado College, were a part of the former Colorado College museum collections, which were transferred to the Anthropology Department in the 1960s and 1970s. The human remains were curated from 1981 until 1989 in the Anthropology Department Archaeology Laboratory in Palmer Hall. In 1989, the human remains were moved to the Biological Anthropology Classroom/Laboratory of Barnes Science Center. No known individuals were identified. No associated funerary objects are present.

The specific proveniences are unknown, but a physical anthropological assessment indicates that the human remains are ancestral Puebloan based on the type of cranial deformation. Pueblo oral traditions and archeological evidence indicate that ancient Puebloan societies have a relationship of shared group identity with modern Pueblo communities in the southwestern United States.

On an unknown date, human remains representing one infant individual were removed from a site near Comb Wash, San Juan County, UT. The specific provenience is unknown, but records from the former Colorado College museum indicate that the human remains are probably from this area. The human remains, believed to have been donated to The Colorado College, were a part of the former Colorado College museum collections, which were transferred to the Anthropology Department in the 1960s and 1970s. The human remains were curated from 1981 until 1989 in the Anthropology Department Archaeology Laboratory in Palmer Hall. In 1989, the human remains were moved to the Biological Anthropology Classroom/Laboratory of Barnes Science Center. No known individual was identified. The one associated funerary object is a woven fiber bag that encases the naturally mummified infant.

A physical anthropological assessment of the human remains indicates that the human remains are ancestral Puebloan based on the type of cranial deformation. The type and style of associated funerary object is also ancestral Puebloan. A relationship of shared group identity can reasonably be traced between ancestral Puebloan peoples and modern Puebloan peoples based on oral tradition and scientific studies.

Officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 11 individuals of Native American ancestry. Officials of The Colorado College also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of The Colorado College have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Hopi Tribe of Arizona; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Joyce Eastburg, Legal Assistant, The Colorado College, 14 East Cache La Poudre Street, Colorado Springs, CO 80903, telephone (719) 389–6703, before May 12, 2004. Repatriation of the human remains and associated funerary object to the Hopi Tribe of Arizona; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Colorado College is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma; Pueblo of Cochiti; Pueblo of Isleta; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Nambe; Pueblo of Picuris; Pueblo of Pojoaque; Pueblo of San Felipe; Pueblo of San Ildefonso; Pueblo of San Juan; Pueblo of Sandia; Pueblo of Santa Ana; Pueblo of Santa Clara; Pueblo of Santo Domingo; Pueblo of Taos; Pueblo of Tesuque; Pueblo of Zia; Ysleta del Sur Pueblo; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: February 25, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–8169 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Kennedy Museum of Art, Ohio University, Athens, OH

AGENCY: National Park Service.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act, 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the Kennedy Museum of Art, Ohio University, Athens, OH, which meets the definitions of sacred object and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a Knifewing god ceremonial altar from the Little Fire Fraternity of the Zuni Tribe. The altar, dating from the 1930s or 1940s, consists of two pieces of wood painted red,

yellow, blue, and black. One piece is approximately 14 inches wide, 15 inches long, and 4 inches deep; the other is 15 inches wide, 6 inches long, and 1/2 inch deep. The altar is decorated with feathers tentatively identified as flicker, blue jay, and eagle feathers.

The object was discovered in the museum's storage area in 2001 by the curator, who recognized it as a Zuni altar. The Zuni Tribe of the Zuni Reservation, New Mexico was then notified. Information provided by Zuni tribal representatives confirms that a relationship of shared group identity exists between the original makers of the ceremonial altar and the Zuni Tribe of the Zuni Reservation, New Mexico. There are no museum records or other documentation pertaining to the altar's collection history or acquisition by the museum.

Representatives of the Zuni Tribe of the Zuni Reservation, New Mexico indicated during consultation that the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Representatives of the Zuni Tribe of the Zuni Reservation, New Mexico have also provided evidence that this cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual tribal or organizational member. Evidence presented by Zuni representatives during consultation indicates that rites of the Little Fire Fraternity are still performed in the Zuni Tribe. Altars for the ceremonies should only be in the possession of a member of the Little Fire Fraternity capable of understanding the altar's use and function. In Zuni tradition, altars can only be cared for by an individual; they are not property that can be owned.

Officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Kennedy Museum of Art, Ohio University have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the cultural item has ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 25 U.S.C. 3001 (2) there is a relationship of shared group identity that can be reasonably traced between the sacred object/object of cultural patrimony and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object/object of cultural patrimony should contact Dr. Jennifer McLerran, Curator, Kennedy Museum of Art, Ohio University, Lin Hall, Athens, OH 45701, telephone (740) 593–0952 or (749) 593–1304, facsimile (740) 593–1305, before May 12, 2004. Repatriation of this object to the Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Kennedy Museum of Art, Ohio University is responsible for notifying the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: February 25, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–8170] Filed 4–9–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Cleveland National Forest, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of Agriculture, Forest Service, Cleveland National Forest, San Diego, CA. The human remains were removed from San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Cleveland National Forest professional staff in consultation with representatives of Ewiiaapaayp Band of Kumeyaay Indians, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; and the Native American Heritage Commission, Sacramento, CA.

In August 1986, human remains representing a minimum of two individuals were removed from archeological site 05–02–54–262 (CA-SDI–8534) located in the Cleveland National Forest, San Diego County, CA, during salvage excavations conducted by Forest Service archeologists in response to looting. No known individuals were identified. No associated funerary objects are present.

Site 05–02–54–262 is a Late Prehistoric Period settlement in the Laguna Mountains. Archeological evidence uncovered during salvage excavations demonstrates that a range of activities occurred at the site including gathering and milling acorns and grass seeds, making arrowheads and other tools from obsidian and other types of stone, and ritual activities. Extended family groups probably occupied this site during the late summer and fall of each year, then dispersed to settlements at lower elevations during the winter. This occupational activity reconstruction is consistent with the Kumeyaay seasonal settlement system. Both the Kwaaymii and the Saykur kin groups of Kumeyaay Indians were tentatively associated with the settlement of piLyakai'. The Saykur kin group was relocated to the Ewiiaapaayp Reservation. The Kwaaymii kin group was relocated to the Laguna reservation in the 1800s. The Laguna Band was terminated in 1947.

Officials of the Cleveland National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Cleveland National Forest have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, Calfornia; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande

Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Anne S. Fege, Forest Supervisor, Cleveland National Forest, 10845 Rancho Bernardo Road, Suite 200, San Diego, CA 92127, telephone (858) 673–6180, before May 12, 2004. Repatriation of the human remains to the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, Calfornia; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The Cleveland National Forest is responsible for notifying the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, Calfornia; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of Viejas Reservation, California; and the Native American Heritage Commission, Sacramento, CA, that this notice has been published.

Dated: March 1, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–8172 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Cleveland National Forest, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of Agriculture, Forest Service, Cleveland National Forest, San Diego, CA. The human remains were removed from Cleveland National Forest, Riverside County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Cleveland National Forest professional staff in consultation with representatives of the Luiseno Council of Elders; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; and the Native American Heritage Commission, Sacramento, CA.

In June 1990, human remains representing a minimum of one individual were removed from the Tenaja Knoll site, 05–02–52–82 (CA-RIV–3973), Cleveland National Forest, Riverside County, CA. No known individual was identified. No associated funerary objects are present.

Excavated material culture, such as a Cottonwood projectile point and a Tizon brownware pottery sherd, date the site to the time of European contact. The site has been tentatively linked with the ethnographically identified village of Palasakeuana. Ethnographic research has provisionally identified the cultural affiliation of Palasakeuana as Juaneno. Although no Juaneno groups are federally recognized, they are closely related to Luiseno tribes, with whom they share language, culture, and religion, and occupied adjacent traditional lands.

Officials of the Cleveland National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Cleveland National Forest have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; and Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Anne S. Fege, Forest Supervisor, Cleveland National Forest, 10845 Rancho Bernardo Road, Suite 200, San Diego, CA, 92127 telephone (858) 673–6180, before May 12, 2004. Repatriation of the human remains to the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; and Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California may proceed after that date if no additional claimants come forward.

The Cleveland National Forest is responsible for notifying the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California; Luiseno Council of Elders; Pala Band of Luiseno Mission Indians of the Pala Reservation, California; Pauma Band of Luiseno

Mission Indians of the Pauma & Yuima Reservation, California; Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California; Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California; and the Native American Heritage Commission, Sacramento, CA, that this notice has been published.

Dated: March 1, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–8173 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Kennedy Museum of Art, Ohio University, Athens, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act, 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the Kennedy Museum of Art, Ohio University, Athens, OH, which meets the definitions of sacred object and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a Knifewing god ceremonial altar from the Little Fire Fraternity of the Zuni Tribe. The altar, dating from the 1930s or 1940s, consists of two pieces of wood painted red, yellow, blue, and black. One piece is approximately 14 inches wide, 15 inches long, and 4 inches deep; the other is 15 inches wide, 6 inches long, and 1/2 inch deep. The altar is decorated with feathers tentatively identified as flicker, blue jay, and eagle feathers.

The object was discovered in the museum's storage area in 2001 by the curator, who recognized it as a Zuni altar. The Zuni Tribe of the Zuni Reservation, New Mexico was then notified. Information provided by Zuni tribal representatives confirms that a relationship of shared group identity exists between the original makers of the ceremonial altar and the Zuni Tribe of the Zuni Reservation, New Mexico. There are no museum records or other documentation pertaining to the altar's collection history or acquisition by the museum.

Representatives of the Zuni Tribe of the Zuni Reservation, New Mexico indicated during consultation that the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Representatives of the Zuni Tribe of the Zuni Reservation, New Mexico have also provided evidence that this cultural item has ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual tribal or organizational member. Evidence presented by Zuni representatives during consultation indicates that rites of the Little Fire Fraternity are still performed in the Zuni Tribe. Altars for the ceremonies should only be in the possession of a member of the Little Fire Fraternity capable of understanding the altar's use and function. In Zuni tradition, altars can only be cared for by an individual; they are not property that can be owned.

Officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Kennedy Museum of Art, Ohio University have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the cultural item has ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 25 U.S.C. 3001 (2) there is a relationship of shared group identity that can be reasonably traced between the sacred object/object of cultural patrimony and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object/object of cultural patrimony should contact Dr. Jennifer McLerran, Curator, Kennedy Museum of Art, Ohio University, Lin Hall, Athens, OH 45701, telephone (740) 593–0952 or (749) 593–1304, facsimile (740) 593–1305, before May 12, 2004. Repatriation of this object to the Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Kennedy Museum of Art, Ohio University is responsible for notifying the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: February 25, 2004.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 04–8171 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Realty Action Notice

AGENCY: National Park Service, Interior.

ACTION: Notice of Realty Action—Proposed exchange of interests in federally-owned land for privately-owned land in Camden County, State of Georgia, Cumberland Island National Seashore.

SUMMARY: The following described federally-owned land acquired by the National Park Service has been determined to be suitable for disposal by exchange. The selected Federal land is within the boundary of Cumberland Island National Seashore. The authority for this exchange is section 2 of Public Law 92–536 (86 Stat. 1066), which authorized the Secretary of the Interior to acquire lands, waters, and interests therein on the Cumberland Island National Seashore by purchase, donation, or exchange, and section 5 of the Land and Water Conservation Fund Act Amendments in Pub. L. 90–401 (80 Stat. 356), approved July 15, 1968. This notice is published pursuant to Section 11.5.1 of the National Park Service Land Acquisition Procedures Manual.

DATES: Comments on this proposed land exchange will be accepted until May 27, 2004.

ADDRESS: Detailed information concerning this exchange including the precise legal descriptions, Land Protection Plan, and environmental assessment are available at Cumberland Island National Seashore, P.O. Box 806, St. Marys, Georgia 31558. Comments may also be mailed to this address.

FOR FURTHER INFORMATION CONTACT: Superintendent, Cumberland Island National Seashore, P.O. Box 806, St. Marys, Georgia 31558, Telephone: 912–882–4336, E-mail: *Cuis_Superintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Fee ownership of the following federally-

owned property is to be exchanged: Tract Number 02–213 is a 32.14-acre upland tract in the southern portion of Cumberland Island National Seashore. This tract includes a life estate (15.1 acres, with dwelling) and is located immediately to the north of, and contiguous to, a private tract of 206.13 acres owned by Greyfield Land Corp. In exchange for the foregoing lands, the United States of America will acquire a 52.2-acre tract (NPS Tract No. 02–212) containing 21 acres of upland. This tract is owned by Greyfield Ltd. and lies within an area designated by Congress as potential wilderness.

The terms of the exchange are set forth in a contract by and among Greyfield Ltd., The Nature Conservancy, and the National Park Service. The parties agreed to the exchange in order to resolve a dispute that arose during the sale of the former Greyfield North tract to The Nature Conservancy for eventual conveyance to the National Park Service. As a result of the exchange agreement, the parties completed the final phases of the Greyfield North transaction in 1999, with the understanding that the land exchange was to be completed by July 1, 2004.

An archeological survey completed in 2003 revealed that the exchange tract contains potentially significant archeological resources that may be eligible for listing in the National Register of Historic Places. The National Park Service has determined that the proposed exchange would have an adverse effect on these resources. Accordingly, the National Park Service proposes to mitigate this adverse effect by conducting extensive data recovery from the site, with curation, prior to the exchange.

The value of the properties to be exchanged shall be determined by a current fair market appraisal and if they are not appropriately equal, the values shall be equalized by payment of cash as circumstances require.

Interested parties may submit written comments to the address listed in the **ADDRESSES** paragraph. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: January 5, 2004.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 04–8167 Filed 4–9–04; 8:45 am]

BILLING CODE 4310–L6–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1041 (Final)]

Certain Wax and Wax/Resin Thermal Transfer Ribbons From Korea

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On April 5, 2004, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation (69 FR 17645). Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning certain wax and wax/resin thermal transfer ribbons from Korea (investigation No. 731–TA–1041 (Final)) is terminated.

EFFECTIVE DATE: April 6, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

Issued: April 7, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–8200 Filed 4–9–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Tuesday, April 13, 2004.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.
2. Reports from the Chairman. Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Approval of Revised Parole Form F–2.
4. Approval of Rules and Procedures Memorandum 2003–01.
5. Discussion of Proposal to Amend 28 CFR 2.12(a).

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: April 7, 2004.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 04–8288 Filed 4–8–04; 9:54 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b)

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Tuesday, April 13, 2004.

PLACE: U.S. Parole Commission, 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Closed—Meeting.

MATTERS TO BE CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately two cases decided by the

National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: April 7, 2004.

Rockne Chickinell,

General Counsel.

[FR Doc. 04–8289 Filed 4–8–04; 9:54 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA) Section 167, the National Farmworker Jobs Program (NFJP)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of formula allocations for the Program Year (PY) 2004 NFJP, request for comments.

SUMMARY: Under section 182(d) of the WIA of 1998, ETA is publishing the PY 2004 allocations for the NFJP authorized under Section 167 of the WIA. The allocations are distributed to the states by a formula that estimates, by state, the relative demand for NFJP services. The allocations in this notice apply to the PY beginning July 1, 2004.

DATES: Comments must be submitted on or before May 31, 2004.

ADDRESSES: Comments should be sent to Ms. Alina M. Walker, Chief, Division of Seasonal Farmworker Programs, Room S–4206, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, e-mail address: *walker.alina@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Alina M. Walker, Chief, Division of Seasonal Farmworker Programs, Room S–4206, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2706 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. *Background.* On May 19, 1999, we published a notice of a new formula for allocating funds available for the NFJP in the **Federal Register** at 64 FR 27390. The notice explains how the formula achieves its purpose of distributing funds geographically by state service area on the basis of each area's relative share of farmworkers who are eligible for enrollment in the NFJP. The formula consists of a rational combination of multiple data sets that were selected to yield the relative share distribution of eligible farmworkers. The combined-data formula is substantially more relevant to the purpose of aligning the allocations with the eligible population than the allocations determined by the prior formula.

Under the notice of May 19, 1999, the implementation schedule for the allocation formula provided that, following PY 2002, the formula would be applied without adjustment for the hold-harmless provisions described in Section IV of that notice. However, House Report No. 108–188 related to the Consolidated Appropriations Act for PY 2004, requires that in PY 2004, no area receive less than 85 percent of its 1998 level. Section III explains the methodology used for PY 2004 to allocate funds under the formula and to satisfy the 85 percent requirement. This methodology produces a more equitable result than the one applied for each of the four years of the hold-harmless phase. The methodology under the hold-harmless phase (PYs 1999 through 2002) funded *all* states at their required minimum level before allocating the remaining funds in accordance with the formula.

II. Limitations on Uses of Section 167 Funds. In appropriating the funds for PY 2004, Congress provided in its Consolidated Appropriations Act 108–199 as follows: "That, notwithstanding any other provision of law or related regulation, $77,330,000 shall be for carrying out discretionary purposes. * * *" The Act includes a 0.59 percent across-the-board rescission requirement. A total of $71,786,943 for formula grants is allocated as a result of applying this requirement.

III. PY 2004 Allocation Formula. The first step of the formula for PY 2004 distributes the total formula funds of $71,786,943 on the basis of the relative share of eligible farmworkers as determined by the combined datasets of the formula described in the May 19, 1999, notice. Congress provided in House Report 108–188, which concerns the appropriations for PY 2004, that those states impacted by formula reductions would receive no less than 85 percent of their comparable 1998 allocation levels. Consequently, the amount for each state calculated in step one was compared to an amount equal to 85 percent of each state's PY 1998 allocation. If the 1998 comparison level was higher for a state, that amount was assigned to that state. All such states' assigned 1998 comparison levels were added and these states were removed from the remaining calculations. For the remaining states whose formula amounts were higher than their PY 1998 allocations, their formula amounts were added and the total was compared to the total amount of remaining funds. Since there were less funds remaining available, each remaining state's formula amount was reduced by the same proportion the total remaining available funds bore to the total remaining states' formula amounts. This reduced distribution was again tested against the 1998 comparison level and the above process was repeated until there were no remaining states being assigned the 1998 comparison level. Each state's final allocation was either the assigned 1998 comparison level or the final proportionally reduced formula amount.

IV. State Combinations. We anticipate a single plan of service for operating the PY 2004 NFJP in the jurisdiction comprised of Delaware and Maryland and the jurisdiction comprised of Rhode Island and Connecticut.

PY 2004 Allocation: The "Allocation Table" provides the allocations for the NFJP in PY 2004. NFJP grantees will use these figures in preparing in PY 2004 grant plans.

Signed at Washington, DC, this 29th day of March 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

BILLING CODE 4510–30–M

U. S. Department of Labor
Employment and Training Administration
National Farmworker Jobs Program
PY 2004 Allocations to States

State	Allocation
Total	$71,786,943
Alabama	673,060
Alaska	0
Arizona	1,648,433
Arkansas	992,298
California	19,240,521
Colorado	951,549
Connecticut	291,174
Delaware	120,711
Dist of Columbia	0
Florida	3,936,703
Georgia	1,454,873
Hawaii	213,866
Idaho	1,034,710
Illinois	1,366,190
Indiana	888,991
Iowa	1,117,235
Kansas	1,034,325
Kentucky	1,149,721
Louisiana	676,627
Maine	278,287
Maryland	348,797
Massachusetts	298,373
Michigan	905,509
Minnesota	1,083,559
Mississippi	1,231,687
Missouri	936,141
Montana	567,111
Nebraska	1,047,378
Nevada	170,676
New Hampshire	96,797
New Jersey	669,757
New Mexico	896,446
New York	1,573,067
North Carolina	2,555,103
North Dakota	584,378
Ohio	1,212,381
Oklahoma	1,224,269
Oregon	1,392,460
Pennsylvania	1,486,108
Puerto Rico	2,696,308
Rhode Island	37,232
South Carolina	918,090
South Dakota	588,939
Tennessee	814,129
Texas	6,421,730
Utah	276,233
Vermont	181,164
Virginia	880,975
Washington	2,168,988
West Virginia	186,426
Wisconsin	1,044,821
Wyoming	222,637

[FR Doc. 04–8196 Filed 4–9–04; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Notice of Open Meeting

AGENCY: U. S. National Commission on Libraries and Information Science.

ACTION: Notice of meetings.

SUMMARY: The U.S. National Commission on Libraries and Information Science is holding an open business meeting to discuss Commission programs and administrative matters. Topics will include a discussion of how the Commission works with the Institute for Museum and Library Services and with the Library of Congress. Leaders of several professional associations will describe their interest in the Commission and its work from their organizations' particular perspectives. Also, Commissioners will review and discuss the NCLIS Strategic Work Plan and the Commission's plans for future activities.

DATE AND TIME: NCLIS Business Meeting—April 21, 2004, 1 p.m. until 5 p.m. April 22, 2004, 9 a.m. until 10:30 p.m., continuing April 22 from 1 p.m. until 5 p.m. April 23 2004, 9 a.m. until 1 p.m.

ADDRESSES: 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3552

STATUS: Open meeting.

SUPPLEMENTARY INFORMATION: The business meeting is open to the public, subject to space availability. To make special arrangements for physically challenged persons, contact Madeleine McCain, Director of Operations, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005, e-mail *mmccain@nclis.gov*, fax 202–606–9203 or telephone 202–606–9200.

Dated: April 5, 2004.

Madeleine C. McCain,

Director of Operations.

[FR Doc. 04–8192 Filed 4–9–04; 8:45 am]

BILLING CODE 7527–$$–P

MARINE MAMMAL COMMISSION

Meeting of Advisory Committee on Acoustic Impacts on Marine Mammals

AGENCY: Marine Mammal Commission.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Marine Mammal Commission (Commission) will hold the second meeting of its Advisory Committee on Acoustic Impacts on Marine Mammals (Committee) April 28–30, 2004, in Arlington, VA.

DATES: The Committee will meet Wednesday, April 28, 2004, from 9 a.m. to 5 p.m.; Thursday, April 29, from 8:30 a.m. to 5 p.m.; and Friday, April 30, from 8:30 a.m. to 12 p.m. This meeting is open to the public. These times and the agenda topics described below are subject to change. Please refer to the Commission's Web site (*www.mmc.gov*) for the most up-to-date meeting information. The Committee's third public meeting is tentatively scheduled for July 27–29, 2004, in San Francisco, California. Further information on that meeting will be published in the **Federal Register** and posted on the Commission's Web site.

ADDRESSES: The April 28–30 meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202, phone (703) 486–1111, fax (703) 769–3955, *http://www.starwood.com/sheraton/search/hotel_detail.html?propertyID=741*.

FOR FURTHER INFORMATION CONTACT: Erin Vos, Sound Project Manager, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814, e-mail: *evos@mmc.gov*, tel.: (301) 504–0087, fax: (301) 504–0099; or visit the Commission Web site at *www.mmc.gov*.

SUPPLEMENTARY INFORMATION: This meeting is to be held pursuant to the directive in the Omnibus Appropriations Act of 2003 (Pub. L. 108–7) that the Commission convene a conference or series of conferences to "share findings, survey acoustic 'threats' to marine mammals, and develop means of reducing those threats while maintaining the oceans as a global highway of international commerce." The meeting agenda includes presentations and panel discussions on (1) past and present efforts to assess the risk to marine mammals from anthropogenic sound, (2) examples of risk assessment methods, and (3) the NOAA Fisheries Noise Exposure Criteria as an emerging approach to risk assessment. The agenda also includes two public comment sessions. Guidelines for making public comments, background documents, and the meeting agenda, including the specific times of public comment periods, will be posted on the Commission's Web site prior to the meeting. Written comments may be submitted at the meeting.

Dated: April 6, 2004.

David Cottingham,

Executive Director.

[FR Doc. 04–8210 Filed 4–9–04; 8:45 am]

BILLING CODE 6820–31–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, April 15, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Proposed Rule: Section 701.36 of NCUA's Rules and Regulations, Federal Credit Union Ownership of Fixed Assets.
3. Proposed Rule: Part 705 of NCUA's Rules and Regulations, Community Development Revolving Loan Program for Credit Unions.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, April 15, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), 9(A)(ii), and 9(B).

Becky Baker,

Secretary of the Board.

[FR Doc. 04–8406 Filed 4–8–04; 3:55 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB Clearance of this collection for no longer than 3 years.

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 on respondents, including through the use of automated collection techniques or other forms of information technology; 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: Written comments should be received by June 11, 2004, to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send E-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of NSF's Math and Science Partnerships (MSP) Program.

OMB Control No.: 3145–NEW.

Expiration Date of Approval: Not applicable.

1. Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Math and Science Partnership (MSP) Program. The goals for the program are to (1) ensure that all K–12 students have access to, are prepared for, and are encouraged to participate and succeed in challenging curricula and advanced mathematics and science courses; (2) enhance the quality, quantity, and diversity of the K–12 mathematics and science teacher workforce; and (3) develop evidence-based outcomes that contribute to our understanding of how students effectively learn mathematics and science. The motivational force for realizing these goals is the formation of partnerships between institutions of higher education (IHEs) and K–12 school districts. The role of IHE content faculty is the cornerstone of this intervention. In fact, it is the rigorous involvement of science, mathematics, and engineering faculty-and the expectation that both IHEs and K–12 school systems will be transformed-that distinguishes MSP from other education reform efforts.

The components of the overall MSP portfolio include active projects whose initial awards were made in prior MSP competitions, as well as those to be awarded in the current MSP competition: (1) Comprehensive Partnerships that implement change in mathematics and/or science educational practices in both higher education institutions and in schools and school districts, resulting in improved student achievement across the K–12 continuum; (2) Targeted Partnerships that focus on improved K–12 student achievement in a narrower grade range or disciplinary focus within mathematics or science; (3) Institute Partnerships: Teacher Institutes for the 21st Century that focus on the development of mathematics and science teachers as school- and district-based intellectual leaders and master teachers; and (4) Research, Evaluation and Technical Assistance (RETA) projects that build and enhance large-sale research and evaluation capacity for all MSP awardees and provide them with tools and assistance in the implementation and evaluation of their work.

The MSP online monitoring system, comprised of four web-based surveys, will collect a common core of data about each component of MSP. The web application for MSP will be developed with a modular design that incorporates templates and self-contained code modules for rapid development and ease of modification. A downloadable version will also be available for respondents who prefer a paper version that they can mail or fax to Westat. Information from the system will be used to document the Partnerships' annual progress toward meeting the Key features of MSP projects, such as developing partnerships between IHEs and local school districts, increasing teacher quality, quantity, and diversity, providing challenging courses and curricula, utilizing evidence-based design and outcome measures, and implementing institutional change and sustainability.

2. Expected Respondents

The expected respondents are principal investigators of all projects: STEM and education faculty members and administrators who participated in MSP; school districts and IHEs that are partners in an MSP project.

3. Burden on the Public

During the first year of data collection, Cohort 1 projects will be asked to report baseline data (*i.e.*, for 2001–02) as well as two years of activity data (2002–2004). Cohort 2 will be asked to report for its baseline (2002–03) and one year of activity data (2003–04). The total elements for this first year collection are 33,951 burden hours for a maximum of 2,995 participants, assuming a 100% response rate. The average annual reporting burden is approximately 11 hours per respondent. In subsequent data collection cycles (2004–05) the burden will decline substantially since each project will only report for that current year. Therefore, in subsequent years it is expected that the total elements will be 12,915 burden hours for a maximum of 2,293 participants. The average annual reporting burden will drop to about 6 hours per respondent. The burden on the public is negligible because the study is limited to project participants that have received funding from the MSP Program.

Dated: April 6, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–8174 Filed 4–9–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 5372, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the 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 should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (703) 292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: Medical Clearance Process for Deployment to Antarctica.

OMB Number: 3145–0177.

Type of Request: Intent to seek approval to renew an information collection for three years.

Abstract

A. Proposed Project

All individuals who anticipate deploying to Antarctica and to certain regions of the Arctic under the auspices of the United States Antarctic Program are required to take and pass a rigorous physical examination prior to deploying. The physical examination includes a medical history, medical examination, a dental examination and for those persons planning to winter over in Antarctica a psychological examination is also required. The requirement for this determination of physical status is found in 42 U.S.C. 1870 (Authority) and 62 FR 31522, June 10, 1997 (Source), unless otherwise noted. This part sets forth the procedures for medical screening to determine whether candidates for participation in the United States Antarctic (Page 216) Program (USAP) are physically qualified and psychologically adapted for assignment or travel to Antarctica. Medical screening examinations are necessary to determine the presence of any physical or psychological conditions that would threaten the health or safety of the candidate or other USAP participants or that could not be effectively treated by the limited medical care capabilities in Antarctica.

(b) Presidential Memorandum No. 6646 (February 5, 1982) (available from the National Science Foundation, Office of Polar Programs, room 755, 4201 Wilson Blvd., Arlington, VA 22230) sets forth the National Science Foundation's overall management responsibilities for the entire United States national program in Antarctica.

B. Use of the Information

1. *Form NSF–1420,* National Science Foundation Polar Physical Examination—(Antarctica/Arctic/Official Visitors) Medical History, will be used by the individual to record the individual's family and personal medical histories. It is a five-page form that includes the individual's and the individual's emergency point-of-contact's name, address, and telephone numbers. It contains the individual's e-mail address, employment affiliation and dates and locations of current and previous polar deployments. It also includes a signed certification of the accuracy of the information and understandings of refusal to provide the information or providing false information. The agency's contractor's reviewing physician and medical staff complete the sections of the form that indicated when the documents were received and whether or not the person qualified for polar deployment, in which season qualified to deploy and where disqualified the reasons.

2. *Form NSF–1421,* Polar Physical Examination—Antarctica/Arctic, will be used by the individual's physician to document specific medical examination results and the overall status of the individual's health. It is a two-page form which also provides for the signatures of both the patient and the examining physician, as well as contact information about the examining physician. Finally, it contains the name, address and telephone number of the agency's contractor that collects and retains the information.

3. *Form NSF–1422,* National Science Foundation Polar Physical Examination (Antarctica/Arctic/Official Visitors) Medical History Interval Screening, will only be used by individuals who are under the age of 40 and who successfully took and passed a polar examination the previous season or not more than 24 months prior to current deployment date. It allows the otherwise healthy individual to update his or her medical data without having to take a physical examination every year as opposed to those over 40 years of age who must be examined annually.

4. *Form NSF–1423,* Polar Dental Examination—Antarctica/Arctic/Official Visitors, will be used by the examining dentist to document the status of the individual's teeth and to document when the individual was examined. It will also be used by the contractor's reviewing dentist to document whether or not the individual is dentally cleared to deploy to the polar regions.

5. *Medical Waivers:* Any individual who is determined to be not physically qualified for polar deployment may request an administrative waiver of the medical screening criteria. This information includes signing a Request for Waiver that is notarized or otherwise legally acceptable in accordance with penalty of perjury statutes, obtaining an Employer Statement of Support. Individuals on a case-by-case basis may also be required to submit additional medical documentation and a letter from the individual's physician(s) regarding the individual's medical suitability for Antarctic deployment.

6. *Other information requested:* In addition to the numbered forms and other information mentioned above, the USAP medical screening package includes the following:

—Medical Risks for NSF-Sponsored Personnel Traveling to Antarctica—multi-copy form
—NSF Privacy Notice
—NSF Medical Screening for Blood-borne Pathogens/Consent for HIV Testing (multi-copy)
—NSF Authorization for Treatment of Field-Team Member/Participant Under the Age of 18 Years (multi-copy). This should only be sent to the individuals who are under 18 years of age.
—*Dear Doctor* and *Dear Dentist* letters, which provide specific laboratory and x-ray requirements, as well as other instructions.

7. *There are two other, non-medical forms included in the mailing:*

—Personal Information Form—NSF Form Number 1424 includes a Privacy Act Notice. This form is used to collect information on current address and contact numbers, date and place

of birth, nationality, citizenship, social security number, passport number, emergency point of contact information, travel dates, clothing sizes so that we may properly outfit those individuals who deploy, worksite information and prior deployment history.

—Participant Notification—Important Notice for Participants in the United States Antarctic Program. This form provides information on the laws, of the nations through which program participants must transit in route to Antarctica, regarding the transport, possession and use of illegal substances and the possibility of criminal prosecution if caught, tried and convicted.

Estimate of Burden: Public reporting burden for this collection of information varies according to the overall health of the individual, the amount of research required to complete the forms, the time it takes to make an appointment, take the examination and schedule and complete any follow-up medical, dental or psychological requirements and the completeness of the forms submitted. The estimated time is up to six weeks from the time the individual receives the forms until he or she is notified by the contractor of their final clearance status. An additional period of up to eight weeks may be required for the individual who was disqualified to be notified of the disqualification, to request and receive the waiver packet, to obtain employer support and complete the waiver request, to do any follow-up testing, to return the waiver request to the contractor plus any follow-up information, for the contractor to get the completed packet to the National Science Foundation, for the NSF to make and promulgate a decision.

Respondents: All individuals deploying to the Antarctic and certain Arctic areas under the auspices of the United States Antarctic Program must complete these forms. There are approximately 3,000 submissions per year, with a small percentage (c. 3%) under the age of 40 who provide annual submissions but with less information.

Estimated Number of Responses per Form: Responses range from 2 to approximately 238 responses.

Estimated Total Annual Burden on Respondents: 28,728 hours.

Frequency of Responses: Individuals must complete the forms annually to be current within 12 months of their anticipated deployment dates. Depending on individual medical status some persons may require additional laboratory results to be current within two to six-weeks of anticipated deployment.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 6, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–8175 Filed 4–9–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Committee on Education and Human Resources; Sunshine Act Meeting

DATE AND TIME: April 21, 1 p.m.–2 p.m.

PLACE: The National Science Foundation, Stafford II Building, Room 517, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, April 21, 2004

Open Session (1 p.m. to 2 p.m.)

Consideration of the Committee on Education and Human Resources' Broadening Participation in Science and Engineering Research and Education recommendations.

FOR FURTHER INFORMATION CONTACT: Jean Pomeroy, Senior Policy Analyst, NSB (703) 292–7000, *http://www.nsf.gov/ndb.*

Michael P. Crosby,

Executive Officer.

[FR Doc. 04–8337 Filed 4–8–04; 1:10 pm]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: OPM Forms 1496 and 1496A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. OPM Forms 1496 and 1496A, Application for Deferred Retirement (Separations before October 1, 1956) and Application for Deferred Retirement (Separations on or after October 1, 1956) are used by eligible former Federal employees to apply for a deferred Civil Service annuity. Two forms are needed because there is a major revision in the law effective October 1, 1956; this affects the general information provided with the forms.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, 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; 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.

Approximately 3,000 OPM Forms 1496 and 1496A will be completed annually. We estimate it takes approximately 1 hour to complete both forms. The annual burden is 3,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–8267 Filed 4–9–04; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Investigation of Claim for Possible Days of Employment.

Under section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accures to the claimant. Also section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding.

Form ID–5S(SUP), Report of Cases for Which All Days Were Claimed During a Month Credited Per an Adjustment Report, collects required information about compensation credited to an employee during a period when the employee claimed either unemployment or sickness benefits from a railroad employer. The request is generated as a result of a computer match which compares data that is maintained in the RRB's RUIA Benefit Payment file with data maintained in the RRB's records of service. The ID–5S(SUP) is generated annually when the computer match indicates that an employee(s) of the railroad employer was paid unemployment or sickness benefits for every day in one or more months for which creditable compensation was adjusted due to the receipt of a report of creditable compensation adjustment (RRB FORM BA–4, OMB Approved 3220–0008) from their railroad employer.

The computer generated Form ID–5S(SUP) includes pertinent identifying information, the BA–4 adjustment process date and the claimed months in question. Space is provided on the report for the employer's use in supplying the information requested in the computer generated transmittal letter, Form ID–5S, which accompanies the report. To our knowledge no other agency uses forms similar to Form ID–5S(SUP). Completion is voluntary. One response is requested of each respondent. The RRB estimates that 80 are completed annually.

The RRB proposes no changes to Form ID–5S(SUP).

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–8144 Filed 4–9–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26411; File No. 812–13024]

Integrity Life Insurance Company, et al.

April 6, 2004.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the "Act").

APPLICANTS: Integrity Life Insurance Company ("Integrity"), Separate Account I of Integrity Life Insurance Company ("Integrity Separate Account I"), Separate Account II of Integrity Life Insurance Company ("Integrity Separate Account II"), National Integrity Life Insurance Company ("National Integrity;" together with Integrity, the "Integrity Companies"), Separate Account I of National Integrity Life Insurance Company ("National Integrity Separate Account I"), and Separate Account II of National Integrity Life Insurance Company (National Integrity Separate Account II") (collectively, the "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of shares of Fidelity VIP Asset Manager: Growth Portfolio with Fidelity VIP Asset Manager Portfolio, Fidelity VIP Aggressive Growth Portfolio and Janus Growth Portfolio with Fidelity VIP Growth Portfolio, Janus Mid Cap Growth Portfolio with Fidelity VIP Mid Cap Growth Portfolio, Janus International Growth Portfolio and Janus Worldwide Growth Portfolio with Scudder EAFE Equity Index Fund, MFS Investors Trust Portfolio with MFS Capital Opportunities Portfolio, MFS Research Portfolio with MFS Investors Growth Stock Portfolio, and Putnam New Opportunities Fund with Putnam Voyager Fund (the "Substitution").

FILING DATE: The application was filed on September 30, 2003, and amended on April 1, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 6, 2004, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for

the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, P.O. Box 740074, Louisville, Kentucky, 40202–3319.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of Ohio. Integrity is a subsidiary of Western and Southern Life Insurance Company, a mutual life insurance company originally organized under the laws of Ohio in 1888.

2. Integrity Separate Account I was established under Ohio law in 1986. Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. Three variable annuity contracts funded by Integrity Separate Account I are affected by this application.

3. Integrity Separate Account II was established under Ohio law in 1992. Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. One variable annuity contract funded by Integrity Life Separate Account II is affected by this application.

4. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern Life Insurance Company.

5. National Integrity Separate Account I was established under New York law in 1986. National Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. Three variable annuity contracts funded by National Integrity Separate Account I are affected by this application.

6. National Integrity Separate Account II was established under New York law in 1992. National Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. One variable annuity contract funded by National Integrity Separate Account II is affected by this application (all eight variable annuities contracts affected by this application are hereinafter collectively referred to as the "Contracts").

7. Purchase payments under the Contracts are allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Integrity or National Integrity, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Integrity or National Integrity, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Integrity or National Integrity, as applicable. Accordingly, all of the assets of each of Integrity and National Integrity are available to meet its obligations under its Contracts.

8. Each of the Contracts permits allocations of accumulation value to available subaccounts that invest in specific investment portfolios of underlying mutual funds. Each Contract offers between 53 and 60 portfolios.

9. Each of the Contracts permits transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges described below. No sales charge applies to such a transfer of accumulation value among subaccounts.

10. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 may be imposed on transfers in excess of twelve transfers in a contract year. Transfers must be at least $250, or, if less, the entire amount in the subaccount from which value is to be transferred. A variety of automatically scheduled transfers are permitted without charge and are not counted against the twelve free transfers in a contract year.

11. Each of the Contracts reserves the right, upon notice to contract owners and compliance with applicable law, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount, and this reserved right is disclosed in each Contract's prospectus.

12. On an ongoing basis, the Integrity Companies review the performance of the portfolios underlying the Contracts. During the past several years, the Replaced Portfolios have not maintained the level of performance that was the basis for their inclusion in the Contracts. These unfavorable performance records have occurred on an absolute basis, as well as relative to comparable portfolios with other investment advisers. This performance record may be attributable to certain changes that were occurring at the investment adviser to the Replaced Portfolios.

13. Due to poor performance of the Replaced Portfolios in recent years, Applicants propose the following substitutions of shares:

Replaced Portfolio	Replacement Portfolio
Fidelity VIP Asset Manager: Growth Portfolio	Fidelity VIP Asset Manager Portfolio.
Fidelity VIP Aggressive Growth Portfolio	Fidelity VIP Growth Portfolio.
Janus Growth Portfolio	Fidelity VIP Growth Portfolio.
Janus Mid Cap Growth Portfolio	Fidelity VIP Mid Cap Growth Portfolio.
Janus International Growth Portfolio	Scudder EAFE Equity Index Fund.
Janus Worldwide Growth Portfolio	Scudder EAFE Equity Index Fund.
MFS Investors Trust Portfolio	MFS Capital Opportunities Portfolio.
MFS Research Portfolio	MFS Investors Growth Stock Portfolio.
Putnam New Opportunities Fund	Putnam Voyager Fund.

14. Janus Capital Corporation serves as the investment adviser for each of the Janus Portfolios. Fidelity Management and Research Corporation ("FMR") serves as the investment advisor for each of the Fidelity Portfolios. Massachusetts Financial Services Company ("MFSC") is the investment advisor to the MFS Funds. Deutsche Asset Management, Inc. ("DeAM") serves as the investment advisor for the Scudder Portfolios. None of the Applicants are affiliated with any of the Replaced or Replacement Portfolios or their respective investment advisers.

15. The 2003 expenses for each of the Replaced and Replacement Portfolios are shown in Chart A. Historical performance as of December 31, 2003 is shown in Chart B.

Substitution 1

16. Replaced Portfolio: Fidelity VIP Asset Manager: Growth Portfolio

Fidelity VIP Asset Manager: Growth Portfolio is an asset allocation fund that seeks to maximize total return over the long term through investments in stocks, bonds, and short-term money market instruments. The Portfolio has a neutral mix, which represents the way the Portfolio's investments will generally be allocated over the long term. The range and approximate neutral mix for each asset class are shown below:

	Range (percent)	Neutral mix (percent)
Stock Class	50–100	70
Bond Class	0–50	25
Short-Term/ Money Market Class	0–50	5

Since first being offered as an investment option more than two years ago, the Portfolio had only attracted about $875,000 in net new sales and transfers at December 31, 2003.

17. Replacement Portfolio: Fidelity VIP Asset Manager Portfolio

Fidelity VIP Asset Manager Portfolio seeks high total return with reduced risk over the long-term by allocating its assets among stocks, bonds and short-term money market instruments. The Portfolio has a neutral mix, which represents the way the Portfolio's investments will generally be allocated over the long term. The range and approximate neutral mix for each asset class are shown below:

	Range (percent)	Neutral mix (percent)
Stock Class	30–70	50
Bond Class	20–60	40
Short-Term/ Money Market Class	0–50	10

Substitution 2

18.a. Replaced Portfolio: Janus Growth Portfolio

Janus Growth Portfolio seeks long-term growth of capital in a manner consistent with the preservation of capital. It is a diversified portfolio that pursues its objective by investing primarily in common stocks selected for their growth potential. Although the Portfolio can invest in companies of any size, it generally invests in larger, more established companies. When the Janus market timing scandal surfaced in early September 2003 more than $1.4 million was redeemed from this Portfolio in less than one month, leaving it with assets at December 31, 2003 of only approximately $3.6 million.

18.b. Replaced Portfolio: Fidelity VIP Aggressive Growth Portfolio

Fidelity VIP Aggressive Growth Portfolio seeks capital appreciation. FMR invests the Portfolio's assets in companies FMR believes offer potential for accelerated earnings or revenue growth. FMR focuses investments in medium-sized companies but may also invest substantially in larger or smaller companies.

Fidelity VIP Aggressive Growth Portfolio was opened as a portfolio option on May 1, 2001 and closed exactly one year later because it was frequently being used by market timers. At December 3, 2003, it had approximately $56,000 invested in it via the Integrity Companies.

19. Replacement Portfolio: Fidelity VIP Growth Portfolio

Fidelity VIP Growth Portfolio seeks capital appreciation. FMR invests the Portfolio's assets in companies FMR believes have above-average growth potential. Growth may be measured by factors such as earnings or revenue. Companies with high growth potential tend to be companies with higher than average price/earnings (P/E) ratios. Companies with strong growth potential often have new products, technologies, distribution channels or other opportunities or have a strong industry or market position. The stocks of these companies are often called "growth" stocks.

Substitution 3

20.a. Replaced Portfolio: Janus International Growth Portfolio

Janus International Growth Portfolio seeks long-term growth of capital. It invests, under normal circumstances, at least 80% of its net assets in securities of issuers from at least five different countries, excluding the United States. Although the Portfolio intends to invest substantially all of its assets in issuers located outside the United States, it may invest in U.S. issuers and it may at times invest all of its assets in fewer than five countries, or even a single country. When the Janus market timing scandal surfaced in early September 2003 more than $1.3 million was redeemed from this Portfolio in less than one month, leaving it with assets of only approximately $3.3 million at December 31, 2003.

20.b. Replaced Portfolio: Janus Worldwide Growth Portfolio

Janus Worldwide Growth Portfolio seeks long-term growth of capital in a manner consistent with the preservation of capital. It is a diversified portfolio that pursues its objective by investing primarily in common stocks of companies of any size throughout the world. The Portfolio normally invests in issuers from at least five different countries, including the United States. The Portfolio may at times invest in fewer than five countries or even a single country. Following redemptions of more than $1.4 million in less than one month after the Janus market timing scandal surfaced in September 2003, and net transfers and redemptions for the year ended December 31, 2003 of $7.3 million, approximately $25 million was invested in this Portfolio's two service classes as of December 31, 2003.

21. Replacement Portfolio: Scudder EAFE Equity Index Fund

The EAFE Equity Index Fund seeks to match, as closely as possible (before expenses are deducted), the performance of the EAFE Index, which measures international stock market performance. The Fund attempts to invest in stocks and other securities that are representative of the EAFE Index as a whole.

Substitution 4

22. Replaced Portfolio: Janus Mid Cap Growth Portfolio

Janus Mid Cap Growth Portfolio seeks long-term growth of capital. It is a non-diversified portfolio that pursues its objective by normally investing at least 80% of its equity assets in securities issued by medium-sized companies.

Medium-sized companies are those whose market capitalization falls within the range of companies in the S&P MidCap 400 Index. Market capitalization is a commonly used measure of the size and value of a company. The market capitalizations within the Index will vary, but as of December 31, 2003, they ranged from approximately $695 million to $17 billion. The Portfolio had only approximately $3.1 million invested in it via the Integrity Companies at December 31, 2003.

23. Replacement Portfolio: Fidelity VIP Mid Cap Portfolio

FMR normally invests the Portfolio's assets primarily in common stocks. FMR normally invests at least 80% of the Portfolio's total assets in securities of companies with medium market capitalizations. Medium market capitalization companies are those whose market capitalization is similar to the capitalization of companies in the S&P Mid Cap 400 at the time of the investment. Companies whose capitalization no longer meets this definition after purchase continue to be considered to have a medium market capitalization for purposes of the 80% policy.

Substitution 5

24. Replaced Portfolio: MFS Investors Trust Portfolio

MFS Investors Trust Portfolio seeks mainly to provide long-term growth of capital, with a secondary objective of current income, by normally investing at least 65% of its net assets in common stocks and related securities. While the Portfolio may invest in companies of any size, it generally focuses on companies with larger market capitalizations that MFS believes have sustainable growth prospects and attractive valuations based on current and expected earnings or cash flow. The Portfolio will also seek to generate gross income equal to approximately 90% of the dividend yield on the Standard & Poor's 500 Composite Index. The Portfolio had only approximately $3.5 million invested in it via the Integrity Companies at December 31, 2003.

25. Replacement Portfolio: MFS Capital Opportunities Portfolio

MFS Capital Opportunities Portfolio seeks capital appreciation by normally investing at least 65% of its net assets in common stocks and related securities. The Portfolio focuses on companies that MFS believes have favorable growth prospects and attractive valuations based on current and expected earnings or cash flow.

Substitution 6

26. Replaced Portfolio: MFS Research Portfolio

The MFS Research Portfolio seeks to provide long-term growth of capital and future income. The Portfolio invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depository receipts. The Portfolio focuses on companies that MFS believes have favorable prospects for long-term growth, attractive valuations based on current and expected earnings or cash flow, dominant or growing market share, and superior management. The Portfolio may invest in companies of any size. The investments may include securities traded on securities exchanges or in the over-the-counter markets. The Portfolio may invest in foreign securities (including emerging market securities), through which it may have exposure to foreign currencies. MFS Research Portfolio was first offered as a portfolio option by the Integrity Companies on May 1, 2001, but had garnered only approximately $858,000 in assets in the Contracts at December 31, 2003.

27. Replacement Portfolio: MFS Investors Growth Stock Portfolio

MFS Investors Growth Stock Portfolio seeks to provide long-term growth of capital and future income rather than current income by investing, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depositary receipts for those securities, of companies which MFS believes offer better than average prospects for long-term growth. MFS looks particularly for companies which demonstrate: (a) A strong franchise, strong cash flows and a recurring revenue stream: (b) a strong industry position where there is potential for high profit margins or substantial barriers to new entry in the industry; (c) a strong management with a clearly defined strategy; and (d) new products or services.

Substitution 7

28. Replaced Portfolio: Putnam New Opportunities Fund

Putnam New Opportunities Fund seeks long-term capital appreciation by investing mainly in common stocks of U.S. companies, with a focus on growth stocks in sectors of the economy that Putnam Management believes have high growth potential. Growth stocks are issued by companies that Putnam Management believes are fast-growing and whose earnings it believes are likely to increase over time. At December 31, 2003, Putnam New Opportunities Fund had attracted only about $7.2 million in investments through the Integrity Companies since it was offered in all Contracts in January 2003.

29. Replacement Portfolio: Putnam Voyager Fund

Putnam Voyager Fund seeks capital appreciation by investing mainly in common stocks of U.S. companies, with a focus on growth stocks. Growth stocks are issued by companies that Putnam Management believes are fast-growing and whose earnings it believes are likely to increase over time.

CHART A.—2003 PORTFOLIO EXPENSES

Portfolio	Mgmt. Fee (Percent)	12b–1 Fee (Percent)	Other Expenses (Percent)	Total Annual Operating Expenses (Percent)	Fee Reduction (Percent)	Net Total Annual Expenses (Percent)
Service Class Shares or Class B Shares to Service Class 2 Shares:						
Fidelity Asset Manager: Growth	0.58	0.25	0.22	1.05	N/A	1.05
Fidelity Asset Manager	0.53	0.25	0.13	0.91	N/A	0.91
Janus Growth	0.65	0.25	0.02	0.92	N/A	0.92
Fidelity Aggressive Growth	0.63	0.25	2.26	3.14	1.89	1.25
Fidelity Growth	0.58	0.25	0.09	0.92	N/A	0.92
Janus Worldwide Growth	0.65	0.25	0.06	0.96	N/A	0.96

CHART A.—2003 PORTFOLIO EXPENSES—Continued

Portfolio	Mgmt. Fee (Percent)	12b–1 Fee (Percent)	Other Expenses (Percent)	Total Annual Operating Expenses (Percent)	Fee Reduction (Percent)	Net Total Annual Expenses (Percent)
Janus International Growth	0.65	0.25	0.11	1.01	N/A	1.01
Scudder EAFE Equity Index	0.45	0.25	0.67	1.37	0.47	[1] 0.90
Janus Mid Cap Growth	0.65	0.25	0.02	0.92	N/A	0.92
Fidelity Mid Cap	0.58	0.25	0.12	0.95	N/A	0.95
MFS Investors Trust	0.75	0.25	0.12	1.12	N/A	1.12
MFS Capital Opportunities	0.75	0.25	0.19	1.19	0.04	1.15
MFS Research	0.75	0.25	0.13	1.13	N/A	1.13
MFS Investors Growth Stock	0.75	0.25	0.13	1.13	N/A	1.13
Putnam New Opportunities	0.59	0.25	0.08	0.92	N/A	0.92
Putnam Voyager Fund	0.55	0.25	0.07	0.87	N/A	0.87
Service Class to Service Class Shares:						
Fidelity Asset Manager: Growth	0.58	0.10	0.17	0.85	N/A	0.85
Fidelity Asset Manager	0.53	0.10	0.11	0.74	N/A	0.74
Institutional Class or Class A to Initial Class Shares:						
Fidelity Asset Manager: Growth	0.58	0.00	0.15	0.73	N/A	0.73
Fidelity Asset Manager	0.53	0.00	0.10	0.63	N/A	0.63
Janus Growth	0.65	0.00	0.02	0.67	N/A	0.67
Fidelity Growth	0.58	0.00	0.09	0.67	N/A	0.67
Janus Worldwide Growth	0.65	0.00	0.06	0.71	N/A	0.71
Janus International Growth	0.65	0.00	0.11	0.76	N/A	0.76
Scudder EAFE Equity Index	0.45	0.00	0.64	1.09	0.44	[2] 0.65
Janus Mid Cap Growth	0.65	0.00	0.02	0.67	N/A	0.67
Fidelity Mid Cap	0.58	0.00	0.12	0.70	N/A	0.70

[1] The Advisor has contractually agreed to waive its fees and/or reimburse expenses of the Fund, to the extent necessary, to limit all expenses to .90% of the average daily net assets of the Fund until April 30, 2005.

[2] The Advisor has contractually agreed to waive its fees and/or reimburse expenses of the Fund, to the extent necessary, to limit all expenses to .65% of the average daily net assets of the Fund until April 30, 2005.

CHART B.—PORTFOLIO PERFORMANCE AVERAGE ANNUAL RETURNS AS OF DECEMBER 31, 2003

Portfolio	1 year (Percent)	3 year (Percent)	5 year (Percent)
Service Class Shares, Service Class 2 or Class B Shares:			
Fidelity Asset Manager Growth	23.03	(1.48)	(0.78)
Fidelity Asset Manager	17.66	0.78	1.71
Janus Growth	31.49	(10.22)	(2.47)
Fidelity Aggressive Growth	30.28	(7.86)	N/A
Fidelity Growth	32.54	(8.79)	(1.55)
Janus Worldwide Growth	23.68	(10.74)	(0.47)
Janus International Growth	34.53	(8.55)	2.86
Scudder EAFE Equity Index	32.97	(7.94)	(3.76)
Janus Mid Cap Growth	34.76	(16.36)	(2.28)
Fidelity Mid Cap	38.25	6.27	18.97
MFS Investors Trust	21.84	(6.94)	(3.03)
MFS Capital Opportunities	27.11	(12.03)	(0.69)
MFS Research	24.37	(9.71)	(2.80)
MFS Investors Growth Stock	22.60	(12.03)	N/A
Putnam New Opportunities	32.43	(13.69)	(0.06)
Putnam Voyager Fund	24.91	(10.70)	(1.25)
Service Class Shares:			
Fidelity Asset Manager Growth	23.15	(1.19)	(0.54)
Fidelity Asset Manager	17.91	1.06	1.97
Institutional Class Shares, Initial Class or Class A Shares:			
Fidelity Asset Manager Growth	23.34	(1.19)	(0.54)
Fidelity Asset Manager	17.97	1.06	1.85
Janus Growth	31.73	(10.01)	(2.16)
Fidelity Growth	32.85	(8.56)	(1.32)
Janus Worldwide Growth	23.99	(10.52)	(0.13)
Janus International Growth	34.91	(8.31)	3.38
Scudder EAFE Equity Index	33.35	(7.66)	(3.49)
Janus Mid Cap Growth	35.10	(16.15)	(1.95)
Fidelity Mid Cap	38.64	6.54	19.25

30. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the subaccounts. Accordingly, there will be no financial impact on any contract owner. The Substitution will be effected by having each of the subaccounts that invests in the Replaced Portfolios redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Portfolios at the net asset value calculated on the same date.

31. The Substitution will be described in supplements to the prospectuses for the Contracts ("Stickers") filed with the Commission and mailed to contract owners. The Stickers will give contract owners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Stickers will also inform contract owners with assets allocated to a subaccount investing in the Replaced Portfolios that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected contract owners that they will have the opportunity to reallocate accumulation value:

- Prior to the Substitution from the subaccounts investing in the Replaced Portfolios, and
- For 30 days after the Substitution from the subaccounts investing in the Replacement Portfolios subaccounts investing in other portfolios available under the respective Contracts,

without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

32. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitution. Each contract owner will be provided with a prospectus for the Replacement Portfolios before the Substitution. Within five days after the Substitution, the Integrity Companies will each send affected contract owners written confirmation that the Substitution has occurred.

33. The Integrity Companies will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by contract owners. Affected contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

34. Applicants believe that their request satisfies the standards for relief pursuant to section 26(c) of the Act, as set forth below, because the affected contract owners will have:

(a) contract values allocated to a subaccount invested in a Replacement Portfolio with an investment objective and policies substantially similar to the investment objective and policies of the Replaced Portfolio;

(b) for the three years ended December 31, 2003 all but three of the Replacement Portfolios have superior three year performance to that of the Replaced Portfolio. In the three exceptions, the performance difference is small or the five year performance is superior; and

(c) current total annual expenses are lower than those of the substituted portfolio, except in two cases where total annual expenses of the Replacement Portfolio are higher than those of the Replaced Portfolio, but by only 3 basis points in each case (in these two cases, as discussed below, the Integrity Companies propose to eliminate this difference through an expense reduction at the Separate Account level).

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contract owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. Substitutions have been common where the substituted portfolio has investment objectives and policies that are similar to those of the eliminated portfolio, current expenses that are similar to or lower than those of the eliminated portfolio, and performance that is similar to or better than that of the eliminated portfolio.

5. In all cases the investment objectives and policies of the Replacement Portfolios are sufficiently similar to those of the corresponding Replaced Portfolios that contract owners will have reasonable continuity in investment expectations. Accordingly, the Replacement Portfolios are appropriate investment vehicles for those contract owners who have contract values allocated to the Replaced Portfolios.

6. For the three years ended December 31, 2003 all but three of the Replacement Portfolios have superior performance to that of the Replaced Portfolios. The Replacement Portfolios have demonstrated superior performance over the last three years during a time of substantial market fluctuation and uncertainties. Applicants believe this superior performance shall continue to the benefit of shareholders. In addition, as noted previously, none of these three Replaced Portfolios bas attracted significant assets, and two of the three are in the large cap asset class, where the Applicant has an overabundance of subaccount offerings.

7. In the first of the three exceptions, the proposed substitution of MFS Capital Opportunities Portfolio to replace MFS Investors Trust Portfolio, the performance of MFS Capital Opportunities Portfolio for both the five- and one-year periods ended December 31, 2003 was superior to that of MFS

Investors Trust Portfolio. The MFS Capital Opportunities Portfolio portfolio management team was replaced in October 2002, resulting in a significant turnaround in the Portfolio's performance since then.

8. In the second of the three exceptions, the proposed substitution of Fidelity Growth Portfolio to replace Fidelity Aggressive Growth Portfolio, the performance of Fidelity Growth Portfolio for the one-year period ended December 31, 2003 was superior to that of Fidelity Aggressive Growth Portfolio by more than 200 basis points. Moreover, Fidelity Aggressive Growth Portfolio has not been offered by the Applicants since May 2002, and had only about $56,000 invested in it at December 31, 2003.

9. In the last of the three exceptions, the proposed substitution of MFS Investors Growth Stock Portfolio to replace MFS Research Portfolio, the MFS Research Portfolio outperformed the MFS Investors Growth Stock Portfolio on an absolute basis for both the one- and three-year periods ended December 31, 2003. Importantly, however, the MFS Investors Growth Stock Portfolio provided better relative performance, according to Morningstar. MFS Investors Growth Stock Portfolio's three-year return places it in the 74th percentile among large cap growth funds, while MFS Research Portfolio's three-year return placed it in the 94th percentile among large cap blend funds.

10. MFS Research Portfolio's poor relative performance against its peers is an important consideration in Applicant's decision to seek to substitute it. Another is that MFS Investors Growth Stock Portfolio is considered a "flagship" fund by MFS and receives significant investment and marketing support. MFS Investors Growth Stock Portfolio supplemented its existing portfolio manager with two additional managers in October 2003, and saw favorable performance results for the year. Its return during 2003 placed it in the 28th percentile among its large cap growth peers, as compared to MFS Research Portfolio's 2003 return, which placed it in the 81st percentile among its large cap blend peers.

11. Finally, MFS Investors Growth Stock Portfolio has simply been a more attractive fund to investors. Though the inception date for both funds was May 2000, MFS Investors Growth Stock Portfolio (Service Class) has about $209.2 million invested in it, while MFS Research (Service Class) has only about $6.7 million invested in it. Similarly, since first being offered in Applicants' products in May 2000, MFS Investors Growth Stock Portfolio has more than $8 million invested in it via the Applicants, while MFS Research Portfolio has only about $858,000 invested in it since first being offered by the Applicants in May 2002.

12. In all cases but two, the Replacement Portfolios will have lower annual expenses than the Replaced Portfolios. In the two substitutions that do not provide for lower expenses, the differences are *de minimis*. In each of these cases, the Replacement Portfolio's net total annual operating expenses as of the fiscal year ended December 31, 2003 were only 3 basis points higher than those of the corresponding Replaced Portfolio. To compensate for this small increase in expenses, Applicants propose the following. If, on the last day of each fiscal quarter (or, to the extent that Replacement Portfolio expense information is not available on a quarterly basis, on the last day of each fiscal semi-annual period) applicable to the 12 month period following the Substitution, the total operating expenses of either Replacement Portfolio (taking into account any expense waiver or reimbursement) exceed on an annualized basis the net expense level of the corresponding Replaced Portfolio for the fiscal year ended December 31, 2003, the Integrity Companies will, for each Contract outstanding on the date of the Substitution, reimburse the Separate Account as of the last day of such fiscal quarter (or, as applicable, fiscal semi-annual period), to the extent necessary so that the amount of the Replacement Portfolio's net expenses for such period, together with those of the corresponding Separate Account will, on an annualized basis, be no greater than the sum of the net expenses of the corresponding Replaced Portfolio and the expenses of the Separate Account for the 2003 fiscal year. In addition, for 12 months following the Substitution, the Integrity Companies will not increase asset-based fees or charges for Contracts outstanding on the day of the Substitution.

13. Importantly, in connection with assets held under Contracts affected by the Substitutions, the Integrity Companies will not receive, for three years from the date of the Substitutions, any direct or indirect benefits from the Replacement Portfolios, their advisors or underwriters (or their affiliates) at a rate higher than that which they had received from the Replaced Portfolios, their advisors or underwriters (or their affiliates), including without limitation 12b–1, shareholder service, administration or other service fees, revenue sharing or other arrangements in connection with such assets. The Integrity Companies represent that the Substitutions and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid by the Replacement Funds, their advisors or underwriters, or their respective affiliates.

14. The Substitution will not result in the type of costly forced redemption that section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each of the Replacement Portfolios is an appropriate portfolio to which to move contract owners with values allocated to the Replaced Portfolios because the portfolios have substantially similar investment objectives and policies.

(b) The costs of the Substitution, including any brokerage costs, will be borne by the Integrity Companies and will not be borne by contract owners. No charges will be assessed to effect the Substitution.

(c) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contract owner's accumulation value.

(d) The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution and will result in contract owners' contract values being moved to a Portfolios with the same or lower current total annual expenses, except in the case of two Replacement Portfolios where, as discussed above, the Integrity Companies propose to eliminate the difference in expenses through an expense reduction at the Separate Account level.

(e) All contract owners will be given notice of the Substitution prior to the Substitution and will have an opportunity for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the contract owner's free transfers in a contract year.

(f) Within five days after the Substitution, the Integrity Companies will send to its affected contract owners written confirmation that the Substitution has occurred.

(g) The Substitution will in no way alter the insurance benefits to contract owners or the contractual obligations of the Integrity Companies.

(h) The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

Conclusion

Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8176 Filed 4–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49531; File No. SR–Amex–2003–105]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Exceptions to the Exchange's Quote Rule

April 6, 2004.

I. Introduction

On December 1, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to amend Amex Rule 958A to clarify the application of the rule's exceptions to different series within the same option class. The proposed rule change was published for comment in the **Federal Register** on December 29, 2003.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48948 (December 18, 2003), 68 FR 74989 ("Notice").

II. Description

Amex Rule 958A requires each responsible broker or dealer to promptly communicate its best bid, offer, and size, and to execute any order presented to it, at a price at least as favorable as its best bid or offer in any amount up to the size of that bid or offer, subject to certain exceptions. In this filing, Amex proposes to amend Amex Rule 958A to clarify that a transaction in one option series would enable a responsible broker or dealer to avail itself of the exception provided in Amex Rule 958A(c)(ii) for that same series of options only, rather than for the entire class of options.

III. Discussion

On November 17, 2000, the Commission adopted several amendments to Rule 11Ac1–1 under the Act ("Quote Rule") to apply it to options exchanges and options market makers.[4] Under the Quote Rule, an options exchange must provide to quotation vendors the best bid and the best offer for each options series traded on the exchange, subject to certain exceptions. In addition, the Quote Rule requires responsible brokers and dealers to honor their bids and offers for each options series, subject to certain exceptions. One exception to the Quote Rule would relieve a responsible broker or dealer of its obligation to be firm for its bid or offer for a particular options series if, at the time an order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such options series and immediately revises its bid or offer after the completion of such transaction.[5]

The options exchanges, including the Amex, subsequently amended their rules for the purpose of conforming to the requirements of the Quote Rule.[6] The Amex amended its rules to, among other things, incorporate the exceptions to the requirement that a responsible broker or dealer be firm for its quotations set forth under Rule 11Ac1–1(c)(3) under the Act. Specifically, Amex Rule 958A(c)(ii)(A)(2) currently provides that a responsible broker or dealer shall not be obligated to execute a transaction for any listed option if, at the time an order is presented, the responsible broker or dealer was in the process of effecting a transaction in "such class and/or series" of option and immediately thereafter communicates a revised quotation size. Similarly, Amex Rule 958A(c)(ii)(A)(4) provides that a responsible broker or dealer shall not be obligated to execute a transaction for any listed option if, at the time an order is presented, the responsible broker or dealer was in the process of effecting a transaction in "such class and/or series" of option and immediately thereafter communicates a revised bid or offer. The Amex has misinterpreted these provisions as to relieve specialists and registered options traders of their obligations to execute orders in multiple series of an options class at the disseminated bid or offer. Accordingly, the Amex now proposes to amend Amex Rule 958A to clarify that a transaction in one series of an options class would enable a responsible broker or dealer to avail itself of the exception provided in Amex Rule 958A only for that same series of option.

The Commission believes that it was clear at the time the Amex amended its rules to conform to the requirements of the Quote Rule that the exceptions contained in paragraph (c)(3) of the Quote Rule apply to each option series individually and not to the entire option class. In approving the option exchanges' rules in June 2001, the Commission noted that the Amex and the Chicago Board Options Exchange, Inc. ("CBOE")[7] incorporated into their own rules the exceptions from the Quote Rule regarding revised bids, offers and quotation sizes.[8] The Commission, however, approved Amex Rule 958A and the comparable CBOE rule, stating that it "believes that including such provisions in the exchanges' rules is consistent with the Exchange Act, provided that the Exchanges interpret them in a manner consistent with paragraph (c)(3) of Rule 11Ac1–1 under the Act."[9] The CBOE represents that it has correctly interpreted, and enforced compliance with, its rule in a manner consistent with the Quote Rule, namely, to treat

[4] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) (the "Adopting Release").

[5] *See* SEC Rule 11Ac1–1(c)(3).

[6] *See* Securities Exchange Act Release Nos. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (notice and order granting partial accelerated approval for a pilot program with respect to File Nos. SR–Amex–2001–18; SR–CBOE–2001–15; SR–ISE–2001–07; SR–PCX–2001–18; and SR–Phlx–2001–37) ("SRO Rules Pilot Program Approval Order"); and 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (approval of File Nos. SR–Amex–2001–18; SR–CBOE–2001–15; SR–ISE–2001–07; SR–PCX–2001–18; and SR–Phlx–2001–37) ("SRO Rules Final Approval Order").

[7] The language in the Amex rule and the CBOE rule were similar in that the CBOE rule also included the language "such class and/or series."

[8] *See* SRO Rules Final Approval Order, *supra* note 6.

[9] *See* Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (approving File Nos. SR–Amex–2001–18; SR–CBOE–2001–15; SR–ISE–2001–07; SR–PCX–2001–18; and SR–Phlx–2001–37).

each options series as a separate security and to apply the exception on a series basis.[10] Moreover, the CBOE amended its rule to clarify that the exceptions to the Quote Rule apply to each options series and not to an entire options class.[11] The Amex, however, interpreted its rule in a manner inconsistent with the Quote Rule.

In the instant proposal, the Amex suggests that, "[t]he exceptions to the Quote Rule as set forth in Rule 11Ac1–1(c)(3) apply to 'subject security' and it was unclear at the time the Amex amended Rule 958A whether the exceptions [to the Quote Rule] applied to an option class, option series or both."[12] In support of its assertion, the Amex notes that the term, "subject security," is defined in SEC Rule 11Ac1–1(a)(25) under the Act as an "exchange-traded security" meeting certain executed volume thresholds. The Amex then notes that the term, "exchange traded security," is defined in SEC Rule 11Ac1–1(a)(10) under the Act as any "covered security" or "class of covered securities" listed or registered on an exchange. Finally, the Amex states that the term, "covered security," is defined in SEC Rule 11Ac1–1(a)(20) under the Act as any "reported security," which means any security or class of securities. Accordingly, the Amex appears to believe that it is unclear from the use of these definitions whether the exceptions in paragraph (c)(3) of the Commission's Quote Rule would apply to an entire options class or to individual options series, because the definitions in the Quote Rule refer to the phrase "class of securities," instead of the phrase "series of securities."

The Commission, however, believes that it is clear that the obligations and exceptions to those obligations under the Quote Rule are intended to apply to each option series listed on an exchange. For example, in several places in the Adopting Release, the Commission stated that, "an options exchange would be required to establish by rule and periodically publish the size for which its best bid or offer in each option series that is listed on the exchange is firm."[13] In addition, the Commission understood that the options exchanges, including the Amex, would be applying the Quote Rule to each options series individually. For example, in the purpose section of the SRO Rules Pilot Program Approval Order, the Amex stated that it proposed to define the term, "responsible broker or dealer," to mean the specialist and any registered options traders constituting the trading crowd in "a given options series."[14] These examples demonstrate that an option series is a separate security for which a responsible broker or dealer must communicate a separate bid, offer, and size, and be firm for such quotation.

The plain language of the Commission's Quote Rule further indicates that the exceptions to the Quote Rule apply on an individual options series basis. When amending the Quote Rule to apply it to options exchanges and options market makers, the Commission set forth its expectations with respect to the application of the Quote Rule to listed options in paragraph (d) of the Quote Rule.[15] Specifically, paragraph (d) of Rule 11Ac1–1 under the Act provides that an options exchange may "establish[] by rule and periodically publish[] the quotation size for which such responsible brokers or dealers are obligated to execute an order to buy or sell an *options series that is a subject security* at its published bid or offer under paragraph (c)(2) of this section."[16] The use of phrase "options series" in the Quote Rule, in conjunction with the reference to paragraph (c)(2), provides additional clarity that the obligations of a responsible broker or dealer under paragraph (c)(3) of the Commission's Quote Rule apply on a series-by-series basis, because paragraph (c)(3) of the Quote Rule provides that the exceptions to the Quote Rule apply to "any subject security as provided in paragraph (c)(2)" and, as discussed above, the term "subject security" in paragraph (c)(2) refers to an options series that is a subject security.[17]

In its suggestion that the exceptions under paragraph (c)(3) of the Commission's Quote Rule are unclear, the Amex makes the illogical assertion that the definition of the term "subject security" could have a different meaning in paragraph (c)(3) than it has in all of the other provisions of the rule. In an earlier proposal to amend Amex Rule 958A,[18] the Amex describes paragraph (c)(i)(A) of Amex Rule 958A, which was intended to conform to the requirements of paragraph (c)(2) of the Quote Rule. In that proposal, the Amex states that, "[t]he operation of Exchange Rule 958A in paragraph (c)(i)(A) requires that each responsible broker or dealer execute customer orders in *an options series* in an amount up to its published quotation size."[19] However, in the instant proposal, the Amex asserts that the exceptions to the Quote Rule, which Amex codified in Amex Rule 958A(c)(ii), "should apply to the entire class as well as each individual series in a given options class." In effect, the Amex asserts that the same term, "subject security," in the Quote Rule should have different meanings in interrelated and contiguous paragraphs of the same rule. Accordingly, the Commission rejects Amex's assertion that it is unclear whether the term, "subject security," in the Commission's Quote Rule applies to an options class, options series, or both.

Moreover, the Commission considered a proposal by the CBOE that generally would have provided that when multiple orders for the *same class* from the same beneficial owner are represented at the trading station at approximately the same time, only the first of such orders would be entitled to an execution.[20] At the same time, the Commission considered a similar proposal by the Philadelphia Stock Exchange, Inc. ("Phlx").[21] These proposals would have relieved a responsible broker or dealer of its obligation to be firm for its quotation for all series within a class because of a transaction within the same options class. In the SRO Rules Pilot Program Approval Order, which also approved

[10] The CBOE stated that, "it has always interpreted CBOE Rule 8.51(d)(6) such that each series of option was deemed a separate security." *See* Securities Exchange Act Release No. 48525 (September 23, 2003), 68 FR 56355 (September 30, 2003) (notice and immediate effectiveness of File No. SR–CBOE–2003–38).

[11] *Id.*

[12] *See* Notice, *supra* note 3.

[13] *See* Adopting Release, *supra* note 4.

[14] *See* Securities Exchange Act Release Nos. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (approving pilot program regarding File Nos. SR–Amex–2001–18; SR–CBOE–2001–15; SR–ISE–2001–07; SR–PCX–2001–18; and SR–Phlx–2001–37).

[15] 17 CFR 240.11Ac1–1(d).

[16] *Id.* (emphasis added).

[17] 17 CFR 240.11Ac1–1(c)(3).

[18] *See* Securities Exchange Act Release No. 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR–Amex–2003–24) (amending Amex Rule 958A to provide that, with respect to a customer limit order representing the best bid or offer, responsible brokers or dealers would no longer be required to disseminate a quotation size of at least 10 contracts when the actual size is less than 10 contracts, but would be permitted to disseminate the actual size of such customer limit orders).

[19] *Id.* (emphasis added).

[20] *See* SRO Rules Pilot Program Approval Order and SRO Rules Final Approval Order, *supra* note 6.

[21] *Id.* The Phlx proposal would have prohibited a customer from "unbundling" an order for the primary purpose of availing upon the requirement that responsible brokers and dealers execute the order up to a minimum of the disseminated size. Prohibiting "unbundling" would have prevented entry of multiple orders for different series within the same options class that would cumulatively exceed the firm quote size for one such series. Thus, a responsible broker or dealer would have been relieved of its obligations to be firm for its quotation for all series within a class because of a transaction within the same options class.

Amex Rule 958A on a pilot basis, the Commission stated that the provisions proposed by the CBOE and the Phlx would be inconsistent with the Commission's Quote Rule and could not be used to relieve exchange members from their obligations under the Quote Rule.[22] The Commission, however, specifically solicited comment on whether to grant an exemption from the Quote Rule that would allow such relief, and noted that neither the CBOE nor the Phlx provided a basis for why such proposals would be consistent with the Quote Rule.[23] Ultimately, in the SRO Rules Final Approval Order, the Commission declined to grant exemptive relief in this regard.[24]

Accordingly, 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.[25] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.[26] The Commission believes that the proposed rule change is necessary to conform the exceptions in Amex Rule 958A more closely to the exceptions in the Quote Rule set forth in Rule 11Ac1–1(c)(3) under the Act. The Commission also believes that the proposed rule change should help to ensure that the Amex refrains from interpreting its rules in a manner that is inconsistent with Commission rules, including Rule 11Ac1–1 under the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Amex–2003–105) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8204 Filed 4–9–04; 8:45 am]

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[22] *See* SRO Rules Pilot Program Approval Order, *supra* note 6.

[23] *Id.*

[24] *See* SRO Rules Final Approval Order, *supra* note 6.

[25] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49530; File No. SR–CHX–2003–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc., Relating to the Price Improvement of Orders Executed Automatically on the Exchange

April 6, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The CHX filed Amendment No. 1 to the proposal on March 30, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend CHX Article XX, Rule 37, to revise its rules governing price improvement for orders executed automatically by the CHX's MAX® execution system. The text of the proposed rule change appears below. Additions are *italicized*; deletions are bracketed.[4]

ARTICLE XX

Regular Trading Sessions

* * * * *

Guaranteed Execution System and Midwest Automated Execution System

Rule 37

* * * * *

(d) Super MAX [2000]

[SuperMAX 2000 shall be a voluntary automatic execution program within the MAX System. SuperMAX 2000 shall be available for any security trading on the Exchange in decimal price increments.] A specialist may *elect, on a security-by-security basis, to enable the SuperMAX program, which will provide automated price improvement to orders automatically executed within the MAX System* [choose to enable this voluntary program within the MAX System on a security-by-security basis].

(1) Pricing

[(a) In the event that an order to buy or sell at least 100 shares is received in a security in which SuperMAX 2000 has been enabled, such order shall be executed at the ITS Best Offer or NBO (for a buy order) or the ITS Best Bid or NBB (for a sell order) if the spread between the ITS Best Bid and the ITS Best Offer (or NBB and NBO, for Nasdaq/NM issues) in such security at the time the order is received is less than $.02.

(b) In the event that an order to buy or sell 100 shares is received in a security in which SuperMAX 2000 has been enabled, and the spread between the ITS Best Bid and the ITS Best Offer (or NBB and NBO, for Nasdaq/NM issues) in such security at the time the order is received is $.02 or greater, such order shall be executed *(subject to the short sale rule)* at a price at least $.01 lower than the ITS Best Offer or NBO (for a buy order) or at least $.01 higher than the ITS Best Bid or NBB (for a sell order).

(c)] In the event that an order to buy or sell *100 shares or more* [more than 100 shares] is received in a security in which SuperMAX [2000] has been enabled, such order shall be executed *(subject to the short sale rule)* at the ITS Best Offer *(or NBO for Nasdaq/NM securities)*, or better (for a buy order) or the ITS Best Bid (or NBB *for Nasdaq/NM securities*), or better (for a sell order) as the specialist may designate and as is approved by the Exchange.

[(d) Odd Lot Market Orders. In the event that a market order to buy or sell less than 100 shares (or a market order otherwise deemed an odd lot by the Exchange) is received in a security in which SuperMAX 2000 has been enabled, and the spread between the ITS Best Bid and the ITS Best offer (or NBB and NBO, for Nasdaq/NM issues) in such security at the time the order is received is (A) less than $.05, such order shall be executed at the ITS Best Offer or NBO (for a buy order) or the ITS Best Bid or NBB (for a sell order); or (B) $.05 or greater, such order shall be executed at a price at least $.01 lower than the ITS Best Offer or NBO (for a buy order) or at least $.01 higher than the ITS Best Bid or NBB (for a sell order)].

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety. See letter from Kathleen M. Boege, Vice President and Associate General Counsel, CHX, to Nancy J. Sanow, Division of Market Regulation ("Division"), Commission, dated March 29, 2004.

[4] With the CHX's consent, the Commission made minor technical changes to indicate language being added to the text of the proposed rule. Telephone conversation between Kathleen M. Boege, Vice President and Associate General Counsel, CHX, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 31, 2004.

(2) Operating Time. SuperMAX [2000] will operate each day that the Exchange is open for trading from the commencement of the Primary Trading Session until the close of the Primary Trading Session; provided, however, that preopening orders shall not be eligible for SuperMAX [2000] price improvement. A specialist may enable or remove SuperMAX [2000] for a particular security only on one given day each month, as determined by the Exchange from time to time. Notwithstanding the previous sentence, during unusual market conditions, individual securities or all securities may be removed from SuperMAX [2000] with approval of two members of the Committee on Floor Procedure.

(3) Timing. Orders entered into SuperMAX [2000] shall be immediately executed upon completion of the [foregoing] price improvement algorithm without any delay (*i.e.*, in 0 seconds).

(4) Applicability to Odd Lots Generated by OLES. Although an order generated by the Odd-Lot Execution Service ("OLES") is a professional order (because it is deemed to be for the account of a broker-dealer), it is nonetheless eligible for SuperMAX [2000] execution if (i) the order is for 100 to 199 shares and (ii) the order is an OLES passively-driven system-generated market order (and not an actively managed order).

(5) Out of Range. Notwithstanding anything herein to the contrary, SuperMAX 2000 will not automatically execute an order if such execution would result in an out of range execution.

(6) Other. Any eligible order in a security for which SuperMAX [2000] has been enabled which is manually presented at the post by a floor broker must also be guaranteed an execution by the specialist pursuant to the pricing criteria set forth in paragraph (1) above. If the contra side order which would better a SuperMAX [2000] execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX [2000] criteria must be adjusted to the better price.

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 CHX 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 CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend CHX Article XX, Rule 37, which governs the price improvement of orders executed automatically on the CHX. Specifically, as described more fully below, the CHX seeks to amend CHX Article XX, Rule 37 to (i) delete rule provisions mandating different treatment for orders of 100 shares or less; and (ii) update the name of the automated price improvement program described in the rule from "SuperMAX 2000" to "SuperMAX."

SuperMAX 2000 is a voluntary CHX program under which CHX specialists may elect to provide price improvement of orders that are executed automatically by the CHX's MAX® execution system. Specialists may engage SuperMAX 2000 on an issue-by-issue basis.[5] Currently, under the SuperMAX 2000 rules, orders of 100 shares receive automatic price improvement of $.01 or better when the BBO spread is $.02 or greater. Larger orders may receive automatic price improvement of $.01 or better.[6]

When it was adopted in 2000,[7] SuperMAX 2000 represented the Exchange's efforts to combine five different price improvement programs that formerly were contained in the CHX rules. Each of these programs was based on factors including order size and BBO spread. The CHX hoped that SuperMAX 2000, as a distillation of the essential attributes of the five price improvement programs that preceded it, would eliminate the confusion that often resulted from the formerly labyrinthine CHX price improvement rules. Largely for marketing reasons, and to avoid concerns that SuperMAX 2000 represented too significant of a departure from the previous price improvement structure, SuperMAX 2000 contained separate provisions for price improvement of 100-share orders to establish a minimum threshold of price improvement for small orders.

At this juncture, several years after the adoption of the SuperMAX 2000 rules, the CHX believes that separate treatment of 100-share orders is no longer warranted. Indeed, the CHX believes that the elimination of any special treatment in the rules for 100-share orders may operate to reduce confusion, to the benefit of order-sending firms and the investing public. The CHX believes that it is appropriate for the CHX specialist to exercise the same discretion with respect to 100-share orders that he currently exercises with respect to larger orders in determining the level of price improvement that he is willing to provide for each issue.[8] Although this discretion would permit a CHX specialist to give a 100-share order a worse execution price than would be due under the current version of the rule, the Exchange does not believe that the proposed rule change would result in widespread specialist refusal to price improve 100-share orders.[9] Moreover, even if a number of CHX specialists do decline to price improve 100-share orders, the Exchange's rules still obligate CHX specialists to execute such orders at a price no worse than the national best bid or offer.

The proposed rule change also would delete CHX Article XX, Rule 37(d)(1)(d), the rule provision that deals specifically with price improvement of odd lot orders. In lieu of the deleted provision, CHX Article XXXI governs execution prices due odd lot orders.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[11] in that it is designed

[5] According to the CHX, all CHX specialist firms rely on the SuperMAX 2000 price improvement program to provide customers with execution prices that are superior to the national best bid or offer. The CHX estimates that SuperMAX 2000 is enabled for over 90% of the issues traded on the CHX.

[6] Price improvement of larger orders is effected by the SuperMAX 2000 system in accordance with algorithms designated by each CHX specialist on an issue-by-issue basis. The CHX specialist has the discretion to set price improvement algorithms to provide varying levels of price improvement for each issue, based on factors including order size, the bid/offer spread at the time the order was received, and other objective market factors. The CHX specialist may not use SuperMAX 2000 to provide for different price improvement outcomes based on the identity of the order sending firm.

[7] *See* Securities Exchange Act Release No. 43742 (December 19, 2000), 65 FR 83119 (December 29, 2000) (order approving File No. SR–CHX–00–37).

[8] The CHX specialist's discretion is limited by the CHX Article XX, Rule 37(d)(2), which prohibits changing SuperMAX 2000 price improvement parameters more than once per month.

[9] In this regard, the CHX believes that specialist business considerations, including competitive forces in the securities markets, may dictate that CHX specialists continue to price improve most 100-share orders.

[10] 15 U.S.C. 78(f)(b).

[11] 15 U.S.C. 78f(b)(5).

to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX believes that no burden will be placed on competition as a result of the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CHX–2003–21. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–21 and should be submitted by May 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8177 Filed 4–9–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49527; File No. SR–NASD–2004–049]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Examination and Development Fees in Connection With Series 86/87 Fees for Research Analysts

April 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the NASD has prepared. On March 31, 2004, the NASD filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").[3] The NASD has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NASD pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing with the Commission a proposed rule change to amend Section 4 of Schedule A of the NASD By-Laws to establish the examination fee for the new Research Analyst Qualification Examination ("Series 86/87") program.[6] The proposed rule change also sets forth a pass-through examination development fee for the Series 86 and Series 87 examinations, to be collected by the NASD on behalf of the New York Stock Exchange ("NYSE").[7] The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Section 1 through 3—No Change.

Section 4—Fees

(a) through (b) No Change.

(c) There shall be an examination fee of $60.00 assessed as to each individual who is required to take an examination for registration as a registered representative pursuant to the provisions of the Rule 1030 Series, except that the examination fee for general securities representatives shall be $110.00. This fee is in addition to the registration fee described in Item (b). Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph [(j)] *(l)* of this Section.

(d) No Change.

(e) There shall be an examination fee of $105.00 assessed as to each individual who takes a Series 86 examination for registration as a research analyst pursuant to Rule 1050. There shall be an examination fee of

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Marc Menchel, Executive Vice President and General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 31, 2004. In Amendment No. 1, the NASD amended the effective date of proposed Section (f) of Section 4 of Schedule A to the NASD By-Laws to April 2, 2004.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] On January 28, 2004, NASD filed with the Commission for immediate effectiveness the Series 86/87 examination program. *See* Securities Exchange Act Release No. 49253 (February 13, 2004), 69 FR 8257 (February 23, 2004) (notice of filing and immediate effectiveness of File No. SR–NASD–2004–17). NASD previously filed with the Commission on January 16, 2004, a proposed rule change for immediate effectiveness that delayed the effective date of NASD Rule 1050 to "not later than March 30, 2004." *See* Securities Exchange Act Release No. 49119 (January 23, 2004), 69 FR 4337 (January 29, 2004) (notice of filing and immediate effectiveness of File No. SR–NASD–2004–10). NASD Rule 1050 became effective on March 30, 2004.

[7] *See supra* note 3.

$55.00 assessed as to each individual who takes a Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration fee described in paragraph (b). Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph (l) of this Section.

(f) There shall be a New York Stock Exchange examination development fee of $45.00 assessed as to each individual who takes a Series 86 or Series 87 examination for registration as a research analyst pursuant to Rule 1050. This fee is in addition to the registration and examination fees described in paragraphs (b) and (e) respectively.[8]

[(e)] *(g)* There shall be an examination fee of $110.00 assessed as to each individual taking the General Securities-Sales Supervisor Examination. There shall be an examination fee of $75.00 assessed as to each individual who is required to take any other examination for principals pursuant to the provisions of the Rule 1020 Series. Persons for whom an examination is waived pursuant to Rule 1070 shall pay a fee as set forth in paragraph [(j)] *(l)* of this Section.

[(f)] *(h)* There shall be a service charge fee of $15.00 in addition to those fees specified in (b), (c), [and] (d), *(e), and (f)* above for any examination taken in a foreign test center located outside the territorial limits of the United States.

(g) through (i) Renumbered as (i) through (k).

[(j)] *(l)* Each individual who is granted a waiver(s) for any qualification examination specified in paragraphs (c), [or] (e), *or (g)* of this section shall be assessed as an application fee the examination fee as set forth in paragraph (c), [or] (e), *(f), or (g)* for each qualification examination so waived.

(k) through (l) Renumbered as (m) through (n).

Section 5 through 13—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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to NASD Rule 1050, an associated person who functions as a research analyst must be registered and pass a qualification examination. To that end, the NASD and the NYSE jointly have developed a Research Analyst Examination program, a two-part examination that tests competency of fundamental analytical skills (Series 86) and applicable laws, rules, and regulations (Series 87).[9] NASD Rule 1050 became effective on March 30, 2004. The proposed rule change would amend Section 4 of Schedule A of the NASD By-Laws to establish a fee of $105.00 and $55.00 for an associated person to take the Series 86 and Series 87 examinations, respectively. These fees are based on the costs to the NASD to administer the examinations, including printing, delivery, and systems charges.

In addition, the proposed rule change authorizes a pass-through examination development fee of $45.00, to be collected by the NASD on behalf of the NYSE, each time an individual takes one of the examinations. The amount of the development fee was determined by the NYSE, and the NASD understands that a proposal to establish this fee is being filed with the Commission contemporaneously by the NYSE for immediate effectiveness.[10]

Accordingly, the total examination and development fees assessed on each individual who takes a Series 86 examination for registration as a research analyst will be $150.00. The total examination and development fees assessed on each individual who takes a Series 87 examination for registration as a research analyst will be $100.00. NASD proposes to implement the proposed rule change on March 30, 2004, except for proposed Section (f) of Section 4 of Schedule A to the NASD By-Laws, which will become effective on April 2, 2004.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[11] which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls. The Series 86/87 examination and development fees are equitably allocated to NASD members, and the NASD believes the fee levels are reasonable because they seek only the recovery of the costs associated with developing and administering the examination program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD neither solicited nor received written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2)[13] thereunder. Accordingly, the proposal has taken effect upon filing with the Commission. The NASD proposes to implement the proposed rule change on March 30, 2004, except for proposed Section (f) of Section 4 of Schedule A to the NASD By-Laws, which will become effective April 2, 2004.

At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate

[8] Amendment No. 1 establishes the effective date for proposed Section (f) of Section 4 to Schedule A of the NASD By-Laws as April 2, 2004.

[9] On February 2, 2004, NASD filed with the Commission a proposed rule change to amend NASD Rule 1050 to set forth certain prerequisites and exemptions for the requirement that all associated persons who function as research analysts be registered with NASD and pass a qualification examination. Specifically, the proposed rule change would (1) establish as a prerequisite to be registered as a research analyst the requirement that an applicant first be registered pursuant to NASD Rule 1032 as a General Securities Representative and (2) provide for an exemption from the Series 86 portion of the Research Analyst Examination for certain applicants who have passed both Levels I and II of the Chartered Financial Analyst Examination. *See* Securities Exchange Act Release No. 49314 (February 24, 2004), 69 FR 9888 (March 2, 2004) (notice of filing of File No. SR–NASD–2004–20). *See also* File No. SR–NYSE–2004–19 which establishes the exam development fee for the Series 86/87 exam for the NYSE.

[10] The NYSE represents that the NYSE will file the corresponding filing with the Commission on April 2, 2004. Telephone conversation between Bill Jannace, Director, Rule and Interpretive Standards, NYSE, and Katherine England, Assistant Director, and Elizabeth MacDonald, Attorney, Division, Commission, March 31, 2004.

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240 19b–4(f)(2).

the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2004–049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2004–049 and should be submitted by May 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8178 Filed 4–9–04; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). This notice reflects the realignment of functions within three divisions in the Office of Disability and Supplemental Security Income Systems in the Deputy Commissioner for Systems. It also retitles and redescribes the functions of a division. The new material and changes are as follows:

Subchapter S4R

Office of Disability and Supplemental Security Income Systems

Section S4R.10 *The Office Disability and Supplemental Security Income Systems*—(Organization):

Retitle F., the Division of SSI Information Systems (S4RC), to the Division of Management Information Systems (S4RC).

Section S4R.20 *The Office of Disability and Supplemental Security Income Systems*—(Functions):

E. The Division of SSI Management Systems (S4RB)

Delete "internal" from the first sentence of paragraph #1 after the words "including payment,".

Add an "s" after the word "interface" in the first sentence of paragraph #1.

Add "notices, queries" to the first sentence of paragraph #1 after the words "due process," and before the words "and redetermination operations."

Add "notices, queries," to the second sentence of paragraph #3 after the word "interfaces," and before the words "due process."

Delete "internal" from paragraph #5 after the word "redeterminations," and before the word "interfaces."

Add "queries," to paragraph #5 after the word "interfaces," and before the words "due process."

Retitle F, the Division of SSI Information Systems (S4RC) to the Division of Management Information Systems (S4RC).

Add an "s" to the word "title" in paragraph #1.

Delete "Notices, SSI Interfaces and SSI" from paragraph #1 after the words "XVI (SSI) and VIII" and before the words "Management Information."

Add "Disability, Appeals and Representative Payee" to paragraph #1 after the words "XVI (SSI) and VIII" and before the words "Management Information."

Add "Systems." to paragraph #1 after the words "Management Information."

Delete "Notices, SSI Interfaces and SSI" from the first sentence of paragraph #3 after the words "as they relate to SSI," and before the words "Management Information."

Add "Disability, Appeals and Representative Payee" to the first sentence of paragraph #3 after the words "as they relate to SSI," and before the words "Management Information."

Replace Paragraph 5 in its entirety as follows:

5. Produces automated solutions that provide management information (MI) supporting the Agency's Supplemental Security Income program. Designs, develops and maintains computer systems that collect, process and distribute SSI MI.

Renumber paragraph:

6. to 9.

7. to 10.

8. to 11.

Add:

6. Produces automated solutions that provide MI supporting the Agency's Disability Insurance program. Designs, develops and maintains computer systems that collect, process and distribute Disability MI.

7. Produces automated solutions that provide MI supporting the Agency's Hearings, Appeals and Litigation workloads. Designs, develops and maintains computer systems that collect, process and distribute Title II and Title XVI Hearings, Appeals and Litigation MI.

8. Produces automated solutions that provide MI supporting the Agency's Representative Payment program. Designs, develops and maintains computer systems that collect, process and distribute Representative Payment MI.

Delete "Notices, SSI Interfaces and SSI" in the first sentence of paragraph 9 after the words "affecting SSI" and before the words "Management Information."

Add ", Disability, Appeals, and Representative Payment" to the first sentence of paragraph 9 after the words "affecting SSI" and before the words "Management Information."

Delete "Notices, SSI Interfaces and SSI" in paragraph #10 after the words "existing SSI" and before the words "Management Information."

Add ", Disability, Appeals and Representative Payment" to paragraph #10 after the words "existing SSI" and before the words Management Information."

Add "systems" to paragraph #10 after the words "Management Information" and before the words "process with representatives".

Add an "es" to the word "process" in paragraph #10 after the words "Management Information systems" and before the words "with representatives."

I. The Division of Disability Information Systems (S4RH)

Replace paragraph #1 in its entirety as follows:

[14] 17 CFR 200.30–3(a)(12).

Plans, analyzes, designs, develops, tests, implements and maintains new or redesigned quality assurance systems in support of the Office of Quality Assurance. These systems support Title II, Title XVI and disability workloads and monitor all levels (initial, reconsideration and hearing) of Social Security program administration, including the federally legislated pre-effectuation (PER) review.

Delete paragraph #2 in its entirety.

Renumber paragraph:

3. to 2.
4. to 3.
5. to 4.
6. to 5.
7. to 6.
8. to 7.
9. to 8.
10. to 9.
11. to 10.

Add "and Quality Assurance" to the first sentence of paragraph #4 after the words "and Rep Payee" and before the second sentence.

Add "and Quality Assurance" to paragraph #6 after the words "for Rep Payee."

Add "and Quality Assurance" to the first sentence of paragraph #7 after the words "Rep Payee" and before the second sentence.

Add "and Quality Assurance" to paragraph #8 after the words "Rep Payee" and before the words "process with representatives."

Add an "es" to the word "process" in paragraph #8.

Add:

11. Coordinates the development and testing of Continuity of Operations Plans (COOP).

12. Manages routine and complex security-related compliance activities and develops sensitive standardized security profiles procedures.

13. Grants and approves the administrative and physical controls to SSA systems to prevent unauthorized access and physical damage, disclosure and destruction to SSA's system of records.

14. Develops and maintains system security risk assessments and security plans implementing security standards, regulations, requirements and any additional changes in legislative policy or procedure.

J. The Division of Electronic Processing Support (S4RJ)

Add the word "Disability" to paragraph #1 after the words "Hearings, Appeals, Litigation," and before the words "and Customer Help."

Add the word "Disability" to the first sentence in paragraph #3 after the words "Hearings, Appeals, Litigation," and before the words "and CHIP."

Add the word "Disability" to paragraph #5 after the words "Hearings, Appeals, Litigation," and before the words "and CHIP."

Add the word "Disability" to the first sentence in paragraph #6 after the words "Hearings, Appeals, Litigation," and before the words "and CHIP software."

Add the word "Disability" to paragraph #7 after the words "Hearings, Appeals, Litigation," and before the words "and CHIP processes."

Dated: April 5, 2004.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 04–8136 Filed 4–9–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4686]

Culturally Significant Objects Imported for Exhibition; Determinations: "Modigliani: Beyond the Myth"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 *note, et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "Modigliani: Beyond the Myth," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Jewish Museum, New York, New York, from on or about May 21, 2004, to on or about September 19, 2004, The Phillips Collection, Washington, DC, from on or about February 9, 2005, to on or about May 29, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: April 6, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–8216 Filed 4–9–04; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Request for Public Comments on the Possible Withdrawal, Suspension, or Limitation of GSP Benefits with Respect to Bangladesh

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for public comments.

SUMMARY: As part of an ongoing country practice review, the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) is considering whether to recommend that duty-free treatment accorded to imports from Bangladesh under the U.S. GSP program be withdrawn, suspended, or limited on the grounds that Bangladesh has not implemented long-standing commitments to the United States to allow its national labor law to be applied in its Export Processing Zones (EPZs). The GSP Subcommittee is seeking public comments on which products of Bangladesh should no longer be eligible for GSP duty-free treatment if the Subcommittee decides to recommend limiting Bangladesh's GSP benefits. All Public comments must be received by May 12, 2004.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, USTR Annex, 1724 F Street, NW., Room F220, Washington, DC 20508 (Tel. 202–395–6971). Public versions of all documents relating to this review are available for public inspection by appointment in the USTR public reading room (Tel. 202–395–6186).

SUPPLEMENTARY INFORMATION: The GSP program is authorized pursuant to Title V of the Trade Act of 1974, as amended ("the Trade Act") (19 U.S.C. 2461 *et seq.*). The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. Once granted, GSP benefits may be withdrawn, suspended, or limited by the President with respect to any country. (19 U.S.C. 2462(d)(1)). Bangladesh is a designated beneficiary

developing country under the GSP program. The Annex to this Notice lists currently GSP-eligible tariff items from the U.S. Harmonized Tariff Schedule (HTS) in which there were imports under GSP from Bangladesh during 2003.

I. Possible Withdrawal, Suspension, or Limitation of GSP Benefits for Bangladesh

The Government of Bangladesh does not provide freedom of association or the right to collective bargaining to workers in its EPZs. Among other commitments, Bangladesh had published a notice on January 1, 2001, stating that it would extend these rights to EPZs as of January 1, 2004. However, Bangladesh has failed to do so. In 1999, the AFL–CIO filed a petition seeking withdrawal or suspension of GSP benefits for Bangladesh. The TPSC accepted the petition for review, sought public comment on the petition, including whether withdrawal or suspension of benefits is warranted, and conducted a public hearing. The review of the petition was continued until this year; and, as a result, the GSP Subcommittee is considering recommending to the TPSC that duty-free treatment under GSP be withdrawn, suspended, or limited for Bangladesh, pursuant to 19 U.S.C. 2462(d)(1).

II. Opportunity for Public Comment

The GSP Subcommittee has already received comments on whether to withdraw or suspend GSP benefits for Bangladesh. If the Subcommittee recommends to the TPSC that the President limit GSP benefits for Bangladesh products, rather than withdraw or suspend duty-free treatment entirely, the Subcommittee will recommend a list of products for which duty-free treatment under the GSP program should be withdrawn. This notice solicits comments on which products to include on that list. All Public comments must be received by May 12, 2004.

Requirements for Submissions

All submissions must conform to the GSP regulations set forth at 15 CFR Part 2007, except as modified below. In order to facilitate prompt processing of submissions to this notice, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. Hand delivered submissions will not be accepted. These submissions should be single copy transmissions in English with the total submission not to exceed 50 single-spaced standard letter-size pages. E-mail submissions should use the following subject line: "Bangladesh GSP Product Review." Documents, in English, must be submitted in either of the following formats: WordPerfect (".WPD"), MSWord (".DOC"), or text (".TXT") files. Documents may not be submitted as electronic image or graphic files or contain imbedded images (for example, ".JPG", ".PDF", ".BMP", or ".GIF") as these graphic files are generally excessively large and inhibit distribution to the GSP Subcommittee. E-mail submissions containing such files may not be accepted. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files, formatted for printing only on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of each and every page of the document. The public version, which does not contain business confidential information, must also be clearly marked at the top and bottom of each and every page (either "PUBLIC VERSION" or "NON-CONFIDENTIAL"). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including identifying information on the sender, including sender's e-mail address. The e-mail address for these submissions is *FR0052@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Information submitted will be subject to public inspection shortly after the relevant due dates by appointment with the staff of the USTR public reading room, except for information submitted and properly marked that is granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. Public versions of all documents relating to this review will be available for review after the relevant due date by appointment in the USTR public reading room, 1724 F Street NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Steven Falken,

Executive Director for GSP, Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

ANNEX I: U.S. IMPORTS OF GSP-ELIGIBLE ITEMS FROM BANGLADESH

[The tariff nomenclature in the U.S. Harmonized Tariff Schedule (HTS) for the subheadings listed below is definitive; the product descriptions in this list are for informational purposes only.]

HTS sub-heading	Article description	2003 dollar value
95063900	Golf equipment (o/than golf footwear) nesoi and parts & accessories thereof	6,202,138
39239000	Articles nesoi, for the conveyance or packing of goods, of plastics	2,694,197
69111037	Porcelain or china (o/than bone china) household tabl. & kitch.ware in sets in which aggregate val. of arts./US note 6(b) o/$56 n/o $200.	1,186,144
69111010	Porcelain or china hotel, restaurant & nonhousehold table and kitchenware	755,777

ANNEX I: U.S. IMPORTS OF GSP-ELIGIBLE ITEMS FROM BANGLADESH—Continued

[The tariff nomenclature in the U.S. Harmonized Tariff Schedule (HTS) for the subheadings listed below is definitive; the product descriptions in this list are for informational purposes only.]

HTS sub-heading	Article description	2003 dollar value
41044150	Crust full grain unsplit/grain split bovine (except buffalo) nesoi and equine hides and skins, nesoi, w/o hair, tanned not further prepared.	479,703
63079098	National flags and other made-up articles of textile materials, nesoi	449,253
57029920	Carpets & other textile floor coverings, not of pile construction, woven, made up, of other textile materials nesoi	354,411
24012085	Tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, not from cigar leaf, described in addl. U.S. note 5 to chap 24.	353,724
94043080	Sleeping bags, not containing 20% or more by weight of feathers and/or down	349,637
42010060	Saddlery and harnesses for animals nesi, (incl. traces, leads, knee pads, muzzles, saddle cloths and bags and the like), of any material.	234,170
96020010	Unhardened gelatin, worked and articles thereof	220,421
69111052	Porcelain or china (o/than bone china) hsehld tabl/kit.ware n/in specif.sets, cups o/$8 but n/o $29/dz, saucers o/$5.25 but n/o $18.75/dz, etc.	205,202
24012083	Tobacco, partly or wholly stemmed/stripped, threshed or similarly processed, not from cigar leaf, not oriental or turkish, not for cigarett.	155,877
39269098	Other articles of plastic, nesoi	122,967
39249055	Household articles and toilet articles, nesoi, of plastics	118,667
65069900	Headgear (other than safety headgear), nesoi, of materials other than rubber, plastics, or furskins, whether or not lined or trimmed.	113,367
69111080	Porcelain or china (o/than bone china) household tableware & kitchenware, not in specified sets, nesoi	106,552
46021018	Baskets and bags of vegetable material, neosi	89,116
94060080	Prefabricated buildings, not of wood	60,515
46021080	Basketwork and other articles, neosi, of vegetables materials, nesoi	59,749
46021009	Baskets and bags of bamboo other than wickerwork	49,595
69111025	Bone china household table & kitchenware valued o/$31.50/doz. pcs	48,704
73269085	Iron or steel, articles, nesoi	45,255
03049090	Frozen fish meat (excluding fillets), other than in bulk or in immediate containers weighing with their contents over 6.8 kg each.	42,842
19059090	Bakers' wares communion wafers, empty capsules suitable for pharmaceutical use, sealing wafers, rice paper and similar products, nesi.	42,006
35030055	Gelatin sheets and derivatives, nesoi; isinglass; other glues of animal origin, nesoi	42,000
94043040	Sleeping bags, containing 20% or more by weight of feathers and/or down	41,705
69111045	Porcelain or china (o/than bone china) household mugs and steins w/o attached pewter lids	37,392
19041000	Prepared foods obtained by the swelling or roasting of cereals or cereal products	32,836
68029300	Monumental or building stone & arts. thereof, of granite, further worked than simply cut/sawn, nesoi	29,121
90141090	Direction finding compasses, other than optical instruments, gyroscopic compasses or electrical	28,812
69111035	Porcelain or china (o/than bone china) household tabl. & kitch.ware in sets in which aggregate val. of arts./US note 6(b) n/o $56.	27,276
61178085	Headbands, ponytail holders & similar articles, of textile materials other than containing 70% or more by weight of silk, knitted/crocheted.	25,924
39261000	Office or school supplies, of plastics	25,016
39232100	Sacks and bags (including cones) for the conveyance or packing of goods, of polymers of ethylene	24,893
44189045	Builders' joinery and carpentry of wood, including cellular wood panels, nesoi	24,749
69149080	Ceramic (o/than porcelain or china) arts. (o/than tableware/kitchenware/household & ornament. arts), nesoi	23,288
19049001	Cereals, other than corn, in grain form or form flakes or other worked grain (not flour, groat & meal), pre-cooked or otherwise prepared, nesoi.	21,795
10063090	Rice semi-milled or wholly milled, whether or not polished or glazed, other than parboiled	21,416
69111015	Bone china household table & kitchenware valued n/o $31.50/doz. pcs	19,635
74181950	Copper (o/than brass), table kitchen or other household articles and parts thereof, not coated or plated w/precious metals.	17,588
07108070	Vegetables nesi, uncooked or cooked by steaming or boiling in water, frozen, not reduced in size	17,108
33074100	Agarbatti and other odoriferous preparations which operate by burning, to perfume or deodorize rooms or used during religious rites.	16,249
39262090	Articles of apparel & clothing accessories, of plastic, nesoi	14,575
69111058	Porcelain or china (o/than bone china) hsehld tabl/kit ware n/in specif. sets, cups o/$29/dz, saucers o/$18.75/dz, bowls o/$33/dz, etc.	12,983
94055040	Non-electrical lamps and lighting fixtures nesoi, not of brass	11,528
20089990	Fruit nesi, and other edible parts of plants nesi, other than pulp and excluding mixtures, otherwise prepared or preserved, nesi.	11,013
20019045	Mangoes, prepared or preserved by vinegar or acetic acid	9,432
74181920	Copper-zinc alloy (brass), table, kitchen or other household articles and parts thereof, not coated or plated w/precious metals.	9,138
70199050	Glass fibers (including glass wool), nesoi, and articles thereof, nesoi	8,458
92059040	Wind musical instruments, o/than w/elect. sound or ampl., woodwind instruments (o/than bagpipes)	8,168
09109960	Spices, nesi	7,911
56089023	Hammocks, of cotton	7,845
64059020	Disposable footwear, nesoi, designed for one-time use	7,700
07102940	Leguminous vegetables nesi, uncooked or cooked by steaming or boiling in water, frozen	7,173
20019038	Vegetables (including olives) nesoi, prepared or preserved by vinegar or acetic acid	6,660

ANNEX I: U.S. IMPORTS OF GSP-ELIGIBLE ITEMS FROM BANGLADESH—Continued

[The tariff nomenclature in the U.S. Harmonized Tariff Schedule (HTS) for the subheadings listed below is definitive; the product descriptions in this list are for informational purposes only.]

HTS subheading	Article description	2003 dollar value
19019090	Flour-, meal-, starch-, malt extract-or dairy-based food preps not containing cocoa and not containing specific amounts of dairy, nesoi.	6,615
10063010	Rice semi-milled or wholly milled, whether or not polished or glazed, parboiled	6,565
46021016	Baskets and bags of rattan or palm leaf other than wickerwork	6,520
10062040	Husked (brown) rice, other than Basmati	6,434
07133920	Dried beans nesi, shelled, if entered for consumption from May 1 through August 31, inclusive, in any year	5,663
62171085	Headbands, ponytail holders and similar articles, of textile materials containing < 70% by weight of silk, not knit/crochet.	5,432
41079180	Full grain unsplit bovine (not buffalo) & equine leather, not whole, w/o hair on, nesoi, fancy, prepared after tanning or crusting, not 4114.	5,245
17049035	Sugar confections or sweetmeats ready for consumption, not containing cocoa, other than candied nuts or cough drops.	4,723
07112038	Olives, n/pitted, nesoi	4,419
63049925	Wall hangings of jute, excluding those of heading 9404	3,997
40159000	Articles of apparel and clothing accessories, excluding gloves, of vulcanized rubber other than hard rubber	3,411
17039030	Molasses, other than cane, imported for (a) the commercial extraction of sugar or (b) human consumption	3,340
04069025	Gjetost cheese, made from goats' milk, whey or whey obtained from a mixture of goats' & n/o 20% cows milk, not grated, powdered or processed.	3,084
56089030	Knotted netting of twine, cordage or rope or other made-up nets (not fish netting and nets) of textile materials (not cotton/manmade mat.).	2,985
17023040	Glucose and glucose syrup, not containing fructose or in the dry state less than 20 percent by weight of fructose, nesi.	2,808
07132020	Dried chickpeas (garbanzos), shelled	2,795
69139050	Ceramic (o/than porcelain, china or earthenware) ornamental articles, nesoi	2,770
46021045	Basketwork and other articles, neosi, of one or more of bamboo, rattan, willow or wood	2,762
41044120	Crust whole bovine hide and skin leather (not upper or lining), w/o hair on, surface n/o 2.6 sq m, tanned but not further prepared.	2,600
10064000	Broken rice	2,424
03037500	Dogfish and other sharks, frozen, excluding fillets, livers, roes and fish meat of 0304	2,396
20019060	Fruits, nuts, and other edible parts of plants, nesi, prepared or preserved by vinegar or acetic acid	2,198
19023000	Pasta nesi	2,100
50079030	Woven silk fabrics, containing 85 percent or more by weight of silk or silk waste, nesoi	1,732
39241020	Plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes and platters, of plastics.	1,501
39241040	Tableware and kitchenware articles, nesoi, of plastics	1,070
67010030	Articles of feathers or down (other than articles & apparel filled or stuffed with feathers/down and worked quills & scapes).	784
62141010	Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted, containing 70% or more silk or silk waste.	660
39264000	Statuettes and other ornamental articles, of plastics	389
62160046	Gloves, mittens & mitts, for sports use, incl. ski & snowmobile, of man-made fibers, not impregnated/coated with plastics or rubber.	315

Source: Compiled from data provided by the U.S. International Trade Commission, Department of Commerce, and Department of Homeland Security.

[FR Doc. 04–8203 Filed 4–9–04; 8:45 am]
BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of the Free Trade Negotiations With Certain Andean Countries; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to authority delegated by the President in Executive Order 13277 (67 FR 70305) and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States Free Trade Agreement with certain Andean countries (Colombia, Peru, Ecuador and Bolivia). The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than May 14, 2004.

ADDRESSES: *Submissions by electronic mail: FR0422@ustr.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to David J. Brooks, Office of Environment and Natural Resources, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On November 18, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with the Andean Countries of Colombia, Peru, Ecuador and Bolivia. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at *http://www.ustr.gov/new/fta/Andean/2003–11–18-notification_letter.pdf.*

The TPSC invited the public (69 FR 7532) to provide written comments and/or oral testimony at a public hearing that took place on March 17–18, 2004, to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

As a destination for U.S. exports, the Andeans collectively represented a market of about $7 billion in 2003. The stock of U.S. foreign direct investment in the Andean countries was $4.5 billion in 2003. The combination of the size of the market and the current barriers to market access point to significant unrealized potential for U.S. exporters and investors. Market access gains are expected in a broad range of agricultural and industrial sectors, as well as in services. The United States recognizes that economic development in the Andean region provides economic alternatives to the illegal drug trade, promotes socio-economic development and strengthens democratic institutions in the region.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the authority delegated by the President in Executive Orders 13277 (67 FR 70305) and 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "United States—Andean FTA Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the characters "P–". The "P–" or "BC–" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

USTR also welcomes and will take into account the public comments on Andean FTA environmental issues submitted in response to a previous notice—the **Federal Register** notice dated February 17, 2004 (69 FR 7532)—requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–8238 Filed 4–9–04; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Panama Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to authority delegated by the President in Executive Order 13277 (67 FR 70305) and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Panama Free Trade Agreement. The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the

promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than May 14, 2004.

ADDRESSES: Submissions by electronic mail: *FR0421@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to David J. Brooks, Office of Environment and Natural Resources, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On November 18, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with Panama. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at *http://www.ustr.gov/new/fta/Panama/2003-11-18-notification_letter.pdf*.

The TPSC invited the public (69 FR 8518) to provide oral testimony at a public hearing that took place on March 23, 2004, or written comments by April 5, 2004, to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

Two-way trade between the United States and Panama totaled $2.1 billion in 2003, with U.S. exports accounting for $1.8 billion of that amount. On average, nearly half of Panama's total imports come from the United States. In addition, the stock of U.S. foreign direct investment in Panama is approximately $20 billion, concentrated in sectors such as finance, maritime and energy. Plans for expansion of the Panama Canal will create many new government procurement opportunities. Panama serves as an important financial and commercial crossroads in the Western Hemisphere and has one of the most open economies in the region. Panama is also a reliable partner in the region, working closely with us to advance our common values and objectives in the World Trade Organization (WTO) and the Free Trade Area of the Americas (FTAA).

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the authority delegated by the President in Executive Orders 13277 (67 FR 70305) and 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "United States—Panama FTA Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the characters "P–". The "P–" or "BC–" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

USTR also welcomes and will take into account the public comments on Panama FTA environmental issues submitted in response to a previous notice—the **Federal Register** notice dated February 24, 2004 (69 FR 8518)—requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–8239 Filed 4–9–04; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Proposed United States-Thailand Free Trade Agreement Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to authority delegated by

the President in Executive Order 13277 (67 FR 70305) and consistent with Executive Order 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Thailand Free Trade Agreement. The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for U.S. environmental laws and regulations, and identification of complementarities between trade and environmental objectives such as the promotion of sustainable development. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATE: Public comments should be received no later than June 1, 2004.

ADDRESSES: *Submissions by electronic mail: FR0423@ustr.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to Alice L. Mattice or David J. Brooks, Environment and Natural Resources Section, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On February 12, 2004, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with Thailand. Ambassador Zoellick outlined specific U.S. objectives for these negotiations in the notification letters to Congress. Copies of the letters are available at: *http://www.ustr.gov/releases/2004/02/2004–02–12-letter-thailand-senate.pdf* and *http://www.ustr.gov/releases/2004/02/2004–02–12-letter-thailand-house.pdf.*

The TPSC invited the public (69 FR 9419) to provide written comments and/or oral testimony at a public hearing, which took place on March 30, 2004, to assist USTR in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

Thailand is the United States' 18th largest trading partner with $19.7 billion in total trade during 2002. The increased access to Thailand's market provided by an FTA would further boost trade in a wider range of both goods and services, enhancing employment opportunities in both countries. An FTA would encourage greater liberalization of foreign investment and build upon the preferential access already afforded U.S. companies under the U.S.-Thailand Treaty of Amity and Economic Relations. In these FTA negotiations, the United States will seek to address market access barriers faced by U.S. companies and service providers. The United States also will seek provisions on transparency, labor and environment.

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to the authority delegated by the President in Executive Orders 13277 (67 FR 70305) and 13141 (64 FR 63169) and its implementing guidelines (65 FR 79442).

Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "United States-Thailand FTA Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

USTR also welcomes and will take into account the public comments on Thailand FTA environmental issues submitted in response to a previous notice—the **Federal Register** notice dated February 27, 2004 (69 FR 9419), requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by

accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–8240 Filed 4–9–04; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34485]

Carrizo Gorge Railway, Inc.—Operation Exemption—San Diego and Arizona Eastern Railway Company

Carrizo Gorge Railway, Inc. (CZRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 70.01 miles of a line of railroad extending between milepost 59.60 at Division, CA, and milepost 129.61 near Plaster City, CA. The line is owned by the San Diego and Arizona Eastern Railway Company. CZRY certifies that its projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

The transaction was scheduled to be consummated on or after March 25, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34485, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: April 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–8205 Filed 4–9–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–167 (Sub–No. 1095X)]

Consolidated Rail Corporation—Abandonment Exemption—Lancaster and Chester Counties, PA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice to the parties.

SUMMARY: Pursuant to section 106 of the National Historic Preservation Act, the Surface Transportation Board's Section of Environmental Analysis announces the availability of the notice to the parties, which summarizes and responds to all comments received in response to the October 2003 notice and draft Memorandum of Agreement (MOA), including those that favor converting this railroad right-of-way to a trail, and presents the Final MOA to the parties and the public.

FOR FURTHER INFORMATION CONTACT: Christa Dean, (202) 565–1606. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), Federal agencies are required to consider the adverse effects of their decisions on historic properties. In this proceeding, the entire line proposed for abandonment exemption was determined to be historic by the Keeper of the National Register of Historic Places. As part of its effort to determine appropriate mitigation measures, the Section of Environmental Analysis (SEA) issued a notice to the parties and a proposed draft Memorandum of Agreement (MOA) for public review and comment, on October 20, 2003, and held two public meetings in Quarryville, PA, on November 19, 2003. After careful consideration of all comments received, SEA announces the availability of the notice to the parties, which: (1) Summarizes and responds to all oral and written comments received in response to the October 2003 notice and draft MOA, including those that favor converting this railroad right-of-way to interim trail use/railbanking pursuant to 16 U.S.C. 1247(d) (Trails Act), or a privately negotiated trail use agreement entered into after the abandonment is consummated, and (2) includes the Final MOA, which sets forth measures for mitigating adverse effects of the proposed abandonment on historic properties. SEA has circulated the Final MOA to the signatory and concurring parties for signature.

The complete notice to the parties is available on the Board's Web site at: *www.stb.dot.gov*.

Decided: April 12, 2004.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 04–8206 Filed 4–9–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB Forms 5130.9 and 5130.26, titled "Brewer's Report of Operations" and "Brewpub Report of Operations."

DATES: We must receive your written comments on or before June 11, 2004.

ADDRESSES: You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Title: Brewer's Report of Operations and Brewpub Report of Operations.

OMB Number: 1513–0007.

TTB Form Numbers: TTB F 5130.9 and 5130.26.

Abstract: Brewers periodically file these reports of their operations to account for activity relating to taxable commodities. TTB uses this information primarily for revenue protection, for audit purposes, and to determine whether activity is in compliance with the requirements of law. We also use this information to publish periodical statistical releases of use and interest to the industry.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,750.

Estimated Total Annual Burden Hours: 7,800.

Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: March 29, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–8129 Filed 4–9–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB Forms 5130.22, 5130.23, 5130.25, and 5130.27 titled "Brewer's Bonds and Continuation Certificates."

DATES: We must receive your written comments on or before June 11, 2004.

ADDRESSES: You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION: *Title:* Brewer's Bonds and Continuation Certificates.

OMB Number: 1513–0015.

TTB Form Numbers: TTB F 5130.22, 5130.23, 5130.25, and 5130.27.

Abstract: The Internal Revenue Code requires brewers to give a bond to protect the revenue and to ensure compliance with the requirements of law and regulations. Bonds and continuation certificates are required by law and are necessary to protect Government interests in the excise tax revenues that brewers pay.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,750.

Estimated Total Annual Burden Hours: 600.

Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: March 29, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–8130 Filed 4–9–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Currently, we are seeking comments on TTB Form 5300.28 and Recordkeeping Requirement 5300/28, titled "Application for Registration for Tax-Free Transactions Under 26 U.S.C. 4221."

DATES: We must receive your written comments on or before June 11, 2004.

ADDRESSES: You may send comments to Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 × 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Sandra Turner, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration for Tax-Free Transactions Under 26 U.S.C. 4421.

OMB Number: 1513–0095.

TTB Form and Recordkeeping Requirement Numbers: TTB F 5300.28 and TTB REC 5300/28.

Abstract: Businesses, State and local governments, and small businesses apply for registration to sell or purchase firearms or ammunition tax-free on this form. TTB uses the form to determine an applicant's qualification.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit and State and local governments.

Estimated Number of Respondents: 125.

Estimated Total Annual Burden Hours: 375.

Request for Comments

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of this information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Dated: March 29, 2004.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 04–8131 Filed 4–9–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its renewal, without change, of an information collection titled "Financial Subsidiaries and Operating Subsidiaries—12 CFR 5." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by May 12, 2004.

ADDRESSES: You should direct your comments to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Reference Room, Mailstop 1–5, Attention: 1557–0215, 250 E Street, SW., Washington, DC 20219. You are encouraged to submit your comments by facsimile transmission or electronic mail. Comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. Additionally, you may request copies of comments via electronic mail or CD–ROM by contacting the OCC's Public Reference Room at *http://www.foia.pa@occ.treas.gov*.

OMB: Mark Menchik, OMB Desk Officer, Control Number 1557–0215, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503. Alternatively, you may send a comment by facsimile transmission to (202) 395–6974 or by electronic mail to *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the information collection from John Ference, Acting OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Financial Subsidiaries and Operating Subsidiaries—12 CFR 5.

OMB Number: 1557–0215.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The regulatory requirements regarding this information collection are located as follows:

12 CFR 5.24(d)(2)(ii)(G)—Conversion: An institution must identify all subsidiaries that will be retained following a conversion and provide information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank

establishing each subsidiary pursuant to 12 CFR 5.34 or 5.39. The OCC will use the information to determine whether to grant the financial institution's request to convert to a national charter.

12 CFR 5.33(e)(3)(i) and (ii)—Business combinations: A national bank must identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. A national bank proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to 12 CFR 5.34 or 5.39.

The OCC needs this information regarding a subsidiary to be acquired to determine whether to approve the business combination. The OCC will use this information to confirm that the proposed activity is permissible for a national bank operating subsidiary and to ensure that a bank proposing to conduct activities through a financial subsidiary satisfies relevant statutory criteria.

12 CFR 5.34—Operating subsidiaries: A national bank must file a notice or application to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary. The application or notice provides the OCC with needed information regarding the activities and location(s) of the operating subsidiaries. The OCC will review the information to determine whether proposed activities are legally permissible, to ensure that the proposal is consistent with safe and sound banking practices and OCC policy, and that it does not endanger the safety and soundness of the parent national bank.

12 CFR 5.35(f)(1) and (2)—Bank service companies: Under 12 CFR 5.35(f)(1), a national bank that intends to make an investment in a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC.

Under 12 CFR 5.35(f)(2), a national bank that is well capitalized and well managed may invest in a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate OCC district office written notice within 10 days after the investment, if the bank service company engages only in the activities listed in 12 CFR 5.34(e)(5)(v). The OCC will review after-the-fact notices to confirm the permissibility of the national bank's investment in the bank service company.

12 CFR 5.36(e)—Other equity investments—Non-controlling investments: A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in 12 CFR 5.36(e)(2) by filing a written notice. The OCC will use the information provided in the notice to confirm that the national bank is well capitalized and well managed, and that the bank meets the requirements applicable to non-controlling investments.

12 CFR 5.39—Financial subsidiaries: A national must file a notice prior to acquiring a financial subsidiary or engaging in activities authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) through a financial subsidiary. A national bank that intends, directly or indirectly, to acquire control of, or hold an interest in, a financial subsidiary, or to commence a new activity in an existing financial subsidiary, must obtain OCC approval through the procedures set forth in 12 CFR 5.39(i)(1) and (2). The OCC will review this information to ensure that a proposed interest acquisition satisfies applicable statutory criteria.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 607.

Estimated Total Annual Responses: 607.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 607 burden hours.

Comments: The OCC has a continuing interest in the public's opinion regarding collections of information. All comments will become a matter of public record. The OCC received no comments in response to its initial **Federal Register** notice (69 FR 4203; January 28, 2004) regarding renewal of this information collection. Nevertheless, members of the public still are invited to submit comments regarding any aspect of this collection of information. Comments are invited specifically on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 5, 2004.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 04–8183 Filed 4–9–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (That Represents the States of North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Kansas, Missouri, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestion on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, May 10, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, May 10, 2004 from 3 p.m. to 4 p.m. c.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or 718–488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201.

The agenda will include the following: Various IRS issues.

Dated: April 6, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–8246 Filed 4–9–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
April 12, 2004

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 219

Control of Alcohol and Drug Use: Expanded Application of FRA Alcohol and Drug Rules to Foreign Railroad Foreign-Based Employees Who Perform Train or Dispatching Service in the United States; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA 2001–11068, Notice No. 5]

RIN 2130–AB39

Control of Alcohol and Drug Use: Expanded Application of FRA Alcohol and Drug Rules to Foreign Railroad Foreign-Based Employees Who Perform Train or Dispatching Service in the United States

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: In 2001, FRA proposed to make employees of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States who enter into the United States to perform train or dispatching service (foreign railroad foreign-based employees or "FRFB employees"). After a public hearing, a review of the comments, and consultations with the Canadian and Mexican governments, FRA is issuing a final rule that differs from the proposal in four ways; the two most significant revisions are summarized below.

First, the final rule allows FRFB employees to enter into the United States for a distance of up to 10 route miles and remain excepted, as before, from FRA's requirements for employee assistance programs, pre-employment drug testing, and random alcohol and drug testing. Second, the final rule allows FRA's Associate Administrator for Safety to recognize a foreign railroad's substance abuse program promulgated under the laws of its home country as a compatible alternative to the return-to-service requirements if the program includes equivalents to these FRA provisions, and testing procedures, criteria, and assays reasonably comparable in effectiveness to all applicable provisions of DOT's procedures for workplace drug and alcohol testing programs.

DATES: This rule is effective on June 11, 2004.

Any petition for reconsideration of this final rule must be submitted not later than June 11, 2004.

ADDRESSES: Petitions for reconsideration must reference the FRA docket and notice numbers (FRA Docket No. FRA 2001–11068, Notice No. 5). You may submit your petition and related material by only one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *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.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments, petitions for reconsideration, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all petitions received will be posted without change to *http://dms.dot.gov* including any personal information provided.

Docket: For access to the docket to read background documents, comments, or petitions received, go to *http://dms.dot.gov* at any time or to 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 FURTHER INFORMATION CONTACT: For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Summary of the Final Rule

Currently, employees of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States who enter into the United States to perform train or dispatching service (foreign railroad foreign-based employees or "FRFB employees") are subject only to the general conditions, prohibitions, and post-accident testing and reasonable suspicion testing requirements in FRA's alcohol and drug regulations (part 219). The NPRM proposed to apply all of part 219 to FRFB employees (unless their employer qualified as a small railroad) and to persons applying for such service by making them subject to FRA's employee assistance program requirements, pre-employment drug testing, and random alcohol and drug testing (respectively, subparts E, F, and G of part 219). (FRFB employees who enter the United States to perform signal service would not have been included because of their current *de minimis* impact on rail operations in the United States.) The final rule mirrors the NPRM with the following four significant revisions:

(1) Under the final rule, FRFB employees will be allowed to enter into the United States for a distance of up to 10 route miles (up to 20 train-miles round-trip) without being subject to the employee assistance program requirements, pre-employment testing,

and random testing requirements of part 219. FRA believes that allowing a 10-mile "limited haul exception" will facilitate the interchange of trains in the United States between Canadian and United States railroads, and between Mexican railroads and United States railroads, since 28 of the current 34 Canadian railroad operations in the United States will be excepted from full application of part 219, as will all six of the current Mexican railroad operations in the United States. (The current cross-border railroad operations originating from Canada and Mexico are listed at the end of this rule.) For the most part, existing cross-border railroad operations occur on short segments of track in the United States and proceed to the closest convenient location for handover of the operation from the foreign-based railroad crew to the United States-based railroad crew. Since the implementation of FRA's post-accident testing program in 1986, there have been few accidents or incidents reported on cross-border railroad operations significant enough to require post-accident testing, and there have been no positive test results. FRA will therefore except cross-border railroad operations of 10 route miles or less from full application of part 219 since the safety risks on these short movements appear to be small.

Current or new cross-border railroad operations that proceed more than 10 route miles into the United States will be subject to the employee assistance program requirements, pre-employment testing, and random testing requirements of part 219 unless a waiver is granted. (See discussion of waiver requests below.) In addition to the longer distances traveled in the United States, several of the current longer segments involve other significant risk factors, such as high volumes of hazardous material traffic or passage through heavily populated areas. For example, each of the two longest segments, where crews respectively operate 54 and 74 miles into the United States, runs through at least 70 public highway-grade crossings before terminating in the Detroit, Michigan, metropolitan area.

(2) A foreign railroad will be allowed to petition FRA to waive application of subparts E, F, and G of part 219 for any cross-border railroad operation that becomes subject to these subparts by virtue of this rule. FRA will consider each such petition to determine if waiving application of these subparts on the subject operation is consistent with railroad safety and in the public interest. If a petition for waiver with respect to existing cross-border railroad operations is filed within 120 days of the publication of this rule, the existing cross-border crew assignments on the operation subject to the petition will continue to be excepted from subparts E, F, and G until FRA decides the petition. FRA's determination process will include appropriate investigation and opportunity for public comment.

A foreign railroad beginning a new cross-border operation that proceeds more than 10 route miles into the United States, or expanding an existing cross-border operation beyond the 10-mile limited haul exception, may file a petition in accordance with FRA's rules of practice (49 CFR part 211) to waive the application of subparts E, F, and G on that operation not later than 90 days before commencing the cross-border operation for it to be considered by FRA. FRA will attempt to decide such petitions within 90 days. If no action is taken on the petition within 90 days, the petition remains pending for decision, and the cross-border crew assignments covered by the petition will be subject to subparts E, F, and G until FRA grants the petition should the petitioner commence the proposed operation.

(3) A foreign railroad will be allowed, at its option, to choose to comply with this part by conducting FRA-required testing entirely on United States soil. A Canadian or Mexican railroad required to comply in full with part 219 requirements will be permitted to collect FRA-required specimens in its home country or in the United States, so long as the DOT workplace testing procedures (49 CFR part 40) are observed and records are maintained as required. For a railroad to do so, testing must be conducted at a laboratory currently certified as meeting the standards contained in subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925) issued by the United States Department of Health and Human Services (HHS).[1] A foreign railroad will be allowed to fulfill FRA's random testing requirements without having to collect specimens in its home country by arranging to have contract collectors collect the required specimens while its employees are working in the United States.

As always, a foreign railroad will continue to be allowed to retain an employee who tests positive or refuses a part 219 test; although the foreign railroad may not use the employee for train or dispatching service in the United States for a period of nine months. Canadian and Mexican railroads will continue to remain otherwise free to handle their employees under the applicable law and agreements in their home countries.

(4) The final rule will add a provision allowing FRA's Associate Administrator for Safety to recognize a foreign railroad's workplace testing program promulgated under the laws of its home country as a compatible alternative to the return-to-service requirements in subpart B, and subparts E, F, and G of this part, with respect to the foreign railroad's foreign-based employees who perform train or dispatching service in the United States. To be recognized as a compatible alternative, the foreign railroad's program must include equivalents to these FRA provisions, and use testing procedures, criteria and assays reasonably comparable in effectiveness to those in DOT's procedures for drug and alcohol workplace testing programs (49 CFR part 40, incorporated by reference in subpart H of this part) in its equivalent provisions to the return-to-service requirements in subpart B, and subparts E, F, and G of this part. In approving a program under this section, the FRA Associate Administrator for Safety may impose conditions deemed necessary. Upon FRA's recognition of a foreign railroad's workplace testing program as a compatible alternative, the foreign railroad may comply with the standards of the recognized program while operating in the United States as an alternative to complying with the enumerated subparts of this part.[2] If its

[1] The Standards Council of Canada voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by DOT regulations. As of that date, the certification of those accredited Canadian laboratories has continued under DOT authority. The responsibility for conducting quarterly performance testing and periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the HHS, with the HHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes.

Other Canadian and foreign laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as United States laboratories do. Upon finding a foreign laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

[2] While operating in the United States the FRFB employees will continue to be subject to FRA's general prohibitions, post-accident testing, and reasonable suspicion testing requirements (subpart A, subpart B other than the return-to-service requirements in § 219.104(d), subpart C, mandatory reasonable suspicion testing in § 219.300 in subpart D, and subparts H, I, and J).

program has been recognized, the foreign railroad shall maintain a letter on file indicating that it has elected to extend specified elements of the recognized program to its operations in the United States. Once granted, program recognition remains valid so long as the program retains these elements and the foreign railroad complies with the program requirements.

II. Statutory Background: The Omnibus Transportation Employee Testing Act of 1991 and Its Implementation

In 1991, Congress passed the Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102–143 ("Omnibus Act"or "Act"). The Omnibus Act mandated FRA, the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA, whose Office of Motor Carrier Safety is now part of the Federal Motor Carrier Safety Administration (FMSCSA)), and the Federal Transit Administration, to add new alcohol and drug program requirements for their respective regulated industries. FRA subsequently fulfilled the Act's mandates by adding pre-employment testing and random alcohol testing to an already comprehensive drug and alcohol program that included random drug testing (59 FR 7613, February 15, 1994).

The Omnibus Act also mandated each agency to act consistent with the international obligations of the United States, and to take foreign countries' laws and regulations into account in fulfilling the Act's regulatory requirements. 49 U.S.C. 20140(e). In 1992, FRA published an advance notice of proposed rulemaking (ANPRM) asking for comment on international application of its alcohol and drug regulations to foreign railroad foreign-based railroad employees who cross into the United States to work. FRA received no comments and terminated its rulemaking in 1994.

FAA, which had simultaneously published a similar ANPRM with respect to its alcohol and drug rule, terminated its international application rulemaking in 2000, after deciding that application of its regulations to foreign-based flight personnel would be better handled through safety standards negotiated within the International Civil Aviation Organization (ICAO) (a specialized United Nations agency responsible for setting global standards for international civil aviation), than through a rulemaking. FHWA (as stated above, now FMCSA), which had also published a similar ANPRM, took a different approach and in 1995 issued a final rule applying all of its alcohol and drug regulations (including pre-employment and random drug testing) to truck and bus drivers and their employers who operate in the United States, regardless of domicile.

III. Proceedings in the Present Rulemaking

On December 11, 2001, FRA proposed to amend its regulation on the control of alcohol and drug use to narrow the scope of its existing exceptions for FRFB employees. 66 FR 64000. FRA also invited comments on whether it should expand the scope of events that trigger post-accident testing (subpart C) and reasonable suspicion testing (subpart D) to include events that occur outside the United States, and FRA raised for comment several practical issues associated with the extraterritorial application of part 219.

Currently, an FRFB employee who enters the United States to perform train, dispatching, or signal service is subject only to the provisions on general conditions, prohibitions, post-accident testing, reasonable suspicion testing (accident/incident testing and rule violation testing are authorized, but not required, for both FRFB and domestic rail employees), testing procedures, annual report, and recordkeeping of FRA's alcohol and drug rules (respectively, all of subparts A, B, C, and § 219.300 (reasonable suspicion testing) in subpart D, and subparts H. I, and J of part 219) under paragraph (c) of § 219.3. In the NPRM, FRA proposed to apply subparts E (identification of troubled employees), F (pre-employment testing), and G (random testing) to FRFB train and dispatching service employees, who had previously been excepted from these requirements, unless their employer qualified as a small railroad under the proposed § 219.3(b). FRA's proposal to narrow the current exceptions for FRFB employees arose from its concerns about the projected steady increase in the number and extent of cross-border train operations due to the continuing consolidation of North American railroads. Under this proposal, only FRFB signal service employees, who are currently few in number, would continue to be excepted from the requirements of subparts E, F, and G.

The most controversial part of the NPRM was its proposal to include random alcohol and drug testing as part of a more comprehensive testing program for FRFB employees who perform train or dispatching service in the United States. As noted in the preamble to the NPRM, alcohol or drug use has resulted in serious accidents in the United States (*e.g.*, marijuana use was implicated in a 1987 collision between two trains at Chase, Maryland, which killed 16 people and injured 174). FRA believes that random alcohol and drug testing is an effective and necessary deterrent to substance abuse by road train crews and road switching crews, who normally work independent of supervisory monitoring, and to dispatching service employees, who are critical to rail safety because they determine the movements and speed of trains. Train employees, in general, including engineers, conductors, switchmen, trainmen, brakemen, and hostlers, pose a significant safety risk to themselves and others if their judgment and motor skills are impaired by the use of alcohol or drugs.

FRA's experience with administering part 219 has shown that random alcohol and drug testing helps to deter alcohol and drug usage and to identify individuals who have a substance abuse problem. Since mandatory FRA random drug testing began in 1989, the positive drug rate for the United States rail industry has declined from 1.04 percent in 1990 to 0.77 percent in 2001. A positive drug test result can indicate on-duty impairment if the test was conducted shortly after the employee's ingestion of an illegal substance (since random testing may be conducted only when an employee is on duty). However, even if a test were conducted some time after the employee's ingestion, a positive result still provides valuable safety information since it establishes that the employee has a history of drug use. Use of controlled substances is typically compulsive behavior that is likely to be repeated, and the chronic and withdrawal effects of drugs are frequently as serious as the acute effects.

Through its Management Information System (subpart I of part 219, discussed below), FRA obtains data annually from the larger domestic railroads on the training and testing results of their alcohol and drug misuse prevention programs. FRA examines the collective data from these reports to gauge substance abuse trends in the rail industry, such as the overall industry positive rate, which determines the following year's minimum annual percentage rate for random drug and random alcohol testing. Because Transport Canada does not have comparable reporting requirements for Canadian railroads, similar data on the extent of substance abuse in the Canadian rail industry are not available.

In the NPRM, FRA also proposed to amend paragraphs (b)(2) and (3) of § 219.3 to take into account a railroad's

operations outside the United States in determining its size for two exceptions. Currently, § 219.3(b)(2) provides relief from subparts D, E, F, and G for certain small railroads. A small railroad is defined as one that (1) does not operate on the track of another railroad or otherwise engage in joint operations with another railroad except for purposes of interchange *and* (2) has 15 or fewer employees whose duties are covered by the hours of service laws. The other exception, at § 219.3(b)(3), provides relief from subpart I (annual reports) for a railroad with fewer than 400,000 employee-hours. FRA proposed to reduce the scope of the two exceptions at §§ 219.3(b)(2) and 219.3(b)(3) to provide relief only to relatively small railroads, as originally intended, by taking into account a railroad's operations outside the United States in determining the size of the railroad for purposes of those exceptions.

Finally, the NPRM also contained an invitation to discuss part 219 implementation issues, and a request for comment on whether FRA should expand the basis for requiring post-accident testing and reasonable suspicion testing to include events that occur outside the United States.

In a separate notice, FRA announced a public hearing on the NPRM (67 FR 3183, January 23, 2002). At the February 14, 2002 hearing, FRA heard testimony from the Canadian National Railway Company (CN), the Canadian Pacific Railway Company (CP), and two Canadian counterparts of American railroad unions, the Brotherhood of Locomotive Engineers (BLE-Can.) and the United Transportation Union (UTU-Can.). A transcript of this hearing is available in the public docket of this rulemaking. At the hearing, FRA also extended the comment period 30 days to allow interested parties time to supplement the record.

On July 10, 2002, several months after the comment period had closed, the Canadian Human Rights Commission (CHRC or Commission) issued a Policy Statement on Alcohol and Drug Testing (CHRC Policy). To consider the implications of this major statement, FRA published a notice (December 10, 2002, 67 FR 75996) inviting comment on the CHRC Policy and extending the comment period on the NPRM until further notice to enable the agency to consult further with the Governments of Canada and Mexico.

As discussed in detail below, FRA has since consulted with both Canada and Mexico on this rulemaking and other issues. In a July 28, 2003 notice (68 FR 44276), FRA outlined the likely revisions to the NPRM, based on these consultations and consideration of other public comments. FRA also announced that the comment period on this rulemaking would close on August 27, 2003, and invited comments on the changes to the NPRM that the agency was considering. The public comments filed in response to the notice will be discussed later in this preamble.

IV. FRA's Consultations With the Governments of Canada and Mexico

A. The Canadian Human Rights Commission Policy Statement on Alcohol and Drug Testing

In the CHRC Policy, the Commission found four types of testing not to be bona fide occupational requirements and, therefore, unacceptable types of testing in Canada: Pre-employment drug testing, pre-employment alcohol testing, random drug testing, and random alcohol testing of employees in non-safety-sensitive positions. Two of these four types of testing, namely pre-employment alcohol testing, which is authorized but not required by part 219, and random alcohol testing of non-safety-sensitive employees, which is neither authorized nor required by part 219, are not at issue here. The CHRC Policy did, however, recognize that Canadian trucking and bus companies wishing to do business in the United States present a special case and may be required to develop drug and alcohol-testing programs that comply with United States (FMCSA) alcohol and drug regulations applicable to Canadian truck and bus drivers who operate in the United States. Nevertheless, the programs would have to respect Canadian human rights laws.

FRA has attempted to harmonize the final rule to the Commission's concerns about pre-employment drug testing and random drug testing to the extent practicable. FRA has accordingly limited the application of pre-employment drug testing to FRFB employees so that a pre-employment drug test is required only when both of the following conditions apply: (1) The FRFB employee performs train or dispatching service for a railroad for the first time after the effective date of this rule, *and* (2) the FRFB performs such service on a cross-border operation beyond the 10-mile limited haul exception adopted in this rule. Thus, an FRFB employee who is currently performing train or dispatching service on a cross-border operation will be excepted from pre-employment drug testing, regardless of whether that operation falls within the 10-mile limited haul exception; conversely, an FRFB employee performing train or dispatching service on a cross-border operation for the first time will only be required to undergo a pre-employment drug test if that operation proceeds beyond the 10-mile limited haul exception.

With respect to random drug testing, however, FRA disagrees with the Commission's finding that this type of testing is not reasonably necessary to the accomplishment of a legitimate, safety-related purpose. Unlike Canada, the United States has adopted a policy recognizing that misuse of controlled substances is inconsistent with the obligations of transportation employees because of the acute, chronic, or withdrawal effects of such misuse. Random testing is a legitimate means of detecting and deterring such misuse. Again, however, FRA is willing to limit the impact of its random drug testing requirements by limiting application only to FRFB employees who operate more than 10 route miles into the United States. FRA notes too, that the Commission found cross-border trucking and bus operations to be "a special case" under which Canadian trucking and bus companies that conduct extensive cross-border operations may be required to develop drug and alcohol testing programs that comply with United States regulations, and employees of such companies may be found to have a bona fide occupational requirement in not being banned from driving in the United States.

B. FRA's Consultations With the Government of Canada

In a diplomatic note dated May 16, 2002, the Embassy of Canada (Embassy) requested that FRA "formally recognize the regulatory manner in which Canada deals internally with its substance use issues in the railway industry as providing a safety equivalent, if not identical, to that of the United States, and to withdraw the extra-territorial application portions of the current NPRM." As support for Canadian safety regulatory equivalence, the Embassy and CN and CP in their comments, cited the following safeguards: (1) The Canadian railroads' operating Rule G, which, like the longstanding United States rail industry rule, prohibits the use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty; (2) the Canadian railroads' implementation of comprehensive drug and alcohol programs that, except for random testing, are similar to those required by FRA; (3) the Railway Safety Management System Regulations, which

require Canadian railroads to implement and maintain safety programs; (4) the Canadian Railway Safety Act, which mandates regular medical examinations for all persons occupying safety-critical positions (including train crews), and which requires physicians and optometrists to notify the railroad's Chief Medical Officer if a person occupying a safety-critical position has a medical condition that could be a threat to safe railroad operations; and (5) Transport Canada's role in monitoring operating crew compliance with Rule G and auditing railroad safety programs.

The Embassy's note also stated that Canada does not believe that FRA has proven safety or security reasons to support the extraterritorial application of part 219 to the Canadian rail industry, or that FRA has jurisdiction to impose the rule in Canada. Furthermore, the Embassy stated, any requirement to conduct random drug testing of Canadian-based employees would likely be challenged under the privacy provisions of the Canadian Charter of Rights and Freedoms, and the Canadian Human Rights Act. For these reasons, the Embassy recommended that FRA withdraw the NPRM, and continue to work with Transport Canada to establish a Canada-United States rail safety working group that would explore areas of bilateral cooperation.

FRA has since consulted both formally and informally with Transport Canada on this rulemaking and other topics. FRA and Transport Canada meet annually to share information on regulatory initiatives, safety programs, and current issues; this year's joint session included a discussion of this rulemaking. FRA also discussed this rulemaking with Transport Canada and its Mexican counterpart, the Secretaria de Comunicaciones y Transportes, at another annual meeting, the Land Transportation Standards Subcommittee/Transportation Consultation Group (LTSS) meeting, an annual forum where representatives from DOT and the Canadian and Mexican governments discuss cross-border transportation issues. At the 2003 LTSS meeting, Transport Canada presented FRA with a list of four Part 219 rulemaking options for discussion. Transport Canada's options are listed in italics, with FRA's response below.

(a) *Continue the current exception for Canadian-based crews, in recognition of Canada's rail safety programs and as a reciprocal response to Transport Canada's limited exclusion of United States-based crews from Canadian medical examination requirements.* Transport Canada and FRA have reciprocally recognized each other's policies before (for example, each recognizes the other's engineer qualification requirements). Reciprocity is a significant objective of both the Canadian and United States Governments and benefits United States carriers conducting operations in Canada.

Transport Canada has allowed, on a case-by-case basis, United States-based crews to enter Canada for short distances without complying with Transport Canada's medical standards program, for which there is no FRA equivalent. Similarly, FRA will allow, through the 10-mile limited haul exception adopted in this rule, Canadian-based crews to enter the United States for short distances without complying with FRA's random testing program (or its employee assistance and pre-employment drug testing programs), for which there is no Transport Canada equivalent. Application of FRA's full alcohol and drug requirements will be limited to those cross-border operations that run more extensively into the United States, for which FRA believes the requirements are necessary to protect the safety of United States railroad operations. As will be discussed in the public comments section which follows, the Canadian regulatory program is not the functional equivalent to subparts E, F, and G of part 219.

The 10-mile limited haul exception recognizes the fact that most movements handled by Canadian-based crews are limited in distance and generally involve delivery in interchange to United States carriers. However, acquisition of Class I and Class II United States railroads by the two major Canadian railways makes it likely that this pattern will change over time, with longer "interdivisional" runs penetrating more deeply into the United States.

(b) *Automatically grandfather all Canadian cross-border operations existing as of January 1, 2004.* The 10-mile limited haul exception discussed above achieves the functional equivalent to grandfathering for all but the six longest Canadian cross-border routes, since 29 of the 35 current segments (listed at the end of this rule) extend into the United States 10 route miles or less. (The 10-mile limited haul exception also excepts all current Mexican cross-border railroad operations). The remaining six Canadian cross-border segments not only extend significantly farther into the United States (the longest three segments are 40, 54, and 78 miles long, respectively), but often pose other safety risks. Two of these segments carry large volumes of hazardous material, while the longest two segments run through Detroit, Michigan.

(c) *Grant waivers for Canadian-based crews in cross-border railroad operations in accordance with criteria similar to those adopted in FRA's rule on locational dispatching (49 CFR part 241).*[3]

As mentioned above, foreign-based railroads may petition for waivers of subparts E, F, and G of this part for the few cross-border operations that are fully subject to part 219 by virtue of extending more than 10 route miles into the United States. If FRA finds that a waiver of compliance is in the public interest and consistent with rail safety, FRA may grant the waiver subject to any conditions that FRA deems necessary. If a petition for a waiver with respect to existing cross-border operations is filed within 120 days of the publication date of this rule, the existing crew assignments covered by the petition will remain excepted from subparts E, F, and G while FRA until the waiver request is acted upon by FRA. If the waiver petition is filed beyond the 120-day period, the foreign railroad must comply with subparts E, F, and G while its petition for waiver is being considered by FRA.

A foreign railroad beginning a new cross-border operation that proceeds more than 10 route miles into the United States, or expanding an existing cross-border operation beyond the 10-mile limited haul exception, may file a petition in accordance with FRA's rules of practice (49 CFR part 211) to waive the application of subparts E, F, and G on that operation not later than 90 days before commencing the cross-border operation for it to be considered by FRA. FRA will attempt to decide such petitions within 90 days. If no action is taken on the petition within 90 days, the petition remains pending for decision and the cross-border crew assignments covered by the petition will be subject to subparts E, F, and G until FRA decides the petition should the petitioner commence the proposed operation.

(d) *Apply part 219 requirements to Canadian-based crews only while they are operating within the United States.*

Under this rule, only Canadian-based train and engine crews employed by foreign railroads who operate on

[3] The part 241 rulemaking (FRA Docket No. 2001–8728) dealt with the issue of whether FRA should permit extraterritorial dispatching (the act of dispatching of a railroad operation that occurs on trackage in the United States by a dispatcher located outside the United States). FRA issued part 241 as a final rule on December 10, 2002 (67 FR 75938).

extensive cross-border routes will be subject to FRA random testing. As discussed above, such testing will be allowed to be accomplished without requiring random testing specimens to be collected in Canada. Canadian railroads generally have United States subsidiaries that could easily manage such programs for collection and testing; FRA is committed to working with these railroads to develop and implement programs that meet FRA requirements.

C. FRA's Consultations With the Government of Mexico

At this year's LTSS meeting, the Secretaria de Comunicaciones y Transportes committed to making Mexico's drug and alcohol program for the railroad industry fully compatible with DOT requirements, including random alcohol and random drug testing, with the goal of complete mutual recognition between the two programs. The Mexican Constitution does not prohibit the Mexican Government from requiring random alcohol or drug testing of its citizens, and the Mexican Government routinely conducts its own alcohol testing during motor vehicle equipment checks (approximately two million tests annually, including a minimum of two random tests per year for each transportation employee). Mexico also conducts daily on-site fitness-for-duty checks. The Secretaria de Comunicaciones y Transportes anticipates expanding Mexico's program by requiring testing of FRFB employees as one condition to entry (visual and hearing acuity and other examinations would also be performed by physicians stationed at the border or in mobile medical units).

In general, Mexican-based train crews employed by Mexican railroads currently hand United States-bound trains off either at the border or within one mile of their entry into the United States. As Mexican railroads already have major United States participation in both capital and organization, this pattern will likely change over time, with Mexican-based crews operating longer runs into the United States. FRA anticipates that further integration of the North American rail networks may result in more extensive sharing of North American routes by affiliated or allied carriers. The final rule allows FRA's Associate Administrator for Safety to recognize a foreign railroad's alcohol and drug program as compatible to that of FRA if the foreign railroad's program contains the various elements covered by part 219.

IV. Public Comments and FRA's Response to Those Comments

A. Comments Filed in Response to the December 11, 2001 NPRM

Two domestic trade associations submitted written comments to the NPRM: The Association of American Railroads (AAR) and the Drug and Alcohol Testing Industry Association (DATIA). In addition to the Canadian Government, the Canadian commenters to the NPRM were the Railway Association of Canada (RAC), CN, CP, the BLE-Can., the UTU-Can., and Barbara Butler, a Canadian consultant. Of these comments, only those from DATIA fully supported FRA's proposal. There were no comments from the Government of Mexico or from Mexican railroads.

The Canadian comments all centered around random testing, which is controversial in Canada. CN supported FRA's proposal to require random testing of safety-sensitive employees, but only if such testing was also required by Transport Canada. Without Transport Canada's support, CN was concerned that its employees would likely challenge CN's implementation of FRA's proposed random testing requirements, and that such challenges under current Canadian human rights legislation could lead to significant costs and potential disruption to its rail operations. CN concluded that expansion of random testing to Canadian-based employees would best be done if Transport Canada promulgated regulations similar to those of FRA. CN therefore urged FRA to continue working with Transport Canada to achieve a similar regulatory scheme in Canada.

CP, the AAR, the BLE-Can., and the UTU-Can. opposed random testing. A detailed summary of their reasons for doing so, along with FRA's responses, is below. For the reasons stated above, FRA is not requiring FRFB employees performing cross-border train operations of 10 miles or less to be subject to random testing. FRA continues to believe in the proven deterrent effect of random testing, however, and FRFB employees who perform more extensive cross-border operations are subject to FRA's random testing requirements.

1. The Issue of Whether To Require Random Testing of FRFB Train and Dispatching Service Employees

The discussion below is a composite of the objections to random testing contained in the Canadian comments to the NPRM. For each item, the commenters' objection is in italics and followed by FRA's response.

a. *Canadian railroads operate with FRFB train crews for limited distances in the United States.* CP estimated that it operates an average of 27 trains a day into the United States using Canadian-based crews, while CN estimated that approximately 140 of its Canadian-based employees are currently in pools that operate into the United States, and that this total would increase to 400 FRFB employees if spareboard employees who occasionally work in the United States were included. The safety record of Canadian-based crews is good over current cross-border operations, most of which operate 10 miles or less into the United States (see current Canadian and Mexican cross-border operations are listed at the end of this rule) and therefore qualify for the limited haul exception contained in this rule.

FRA acknowledges the comments from CP attesting to the fact that its cross-border operations have been safely conducted for many years, but the nature of these operations can change in the future (for example, traffic levels in general and volumes of hazardous materials being handled) can greatly increase, thereby increasing the safety risk to the areas surrounding that track.[4]

FRA's decision to except cross-border operations of 10 miles or less means that only those employees who operate on the six longest current Canadian cross-border routes will be subject to random testing. FRA chose to set the limited haul exception at 10 miles because its main concern was and is the likely expansion of foreign railroad operations into United States territory, since FRA anticipates growth in both Canadian and Mexican cross-border operations due to trade expansion and recent trends in the organization of North American railroads as discussed in the preamble to the NPRM. Subsequent to the publication of the NPRM the Kansas City Railway Company (KCS) announced a series of agreements between separate parents whereby KCS would acquire the Texas-Mexican

[4] Between 1998 and 2002, the value of rail traffic moving between the United States and Canada has grown from $49.65 billion (United States dollars) to $60.94 billion, which is a 22.7 percent increase over the period or an annual rate of 5.3 percent. (Since the traffic mix has not changed significantly during this period, "value" can be considered a good proxy for physical units such as tons or carloads.) Traffic attributable to eastern gateways (Customs ports in United States border states of Michigan and eastward) has grown more slowly: $28.95 billion (United States dollars) to $33.00 billion, or 14.0 percent overall, or 3.3 percent per year. It is commonly expected that trade between the United States and Canada will continue to increase in the future. These data are based on USDOT, Bureau of Transportation Statistics, Transborder Surface Freight Data public files.

Railroad (Tex-Mex) and the Transportacion Ferroviaria Mexicana (TFM—a major rail carrier in Mexico), and bring all three under common control in a KCS holding company named NAFTA Rail. The acquisition of TFM is subject to approval by the Mexican Government and the Surface Transportation Board; KCS also needs to overcome TFM shareholder opposition to the KCS purchase offer. The approach in this rule seeks to minimize conflicts with foreign laws, by impacting only those employees who actually engage in extended rail operations in the United States.

b. *FRA should take the approach adopted by FAA rather than that adopted by FMCSA since the Canadian railroads' cross-border operations are very limited while cross-border trucking operations can be quite extensive.*

FRA does not agree that FAA's approach is more appropriate than that adopted by FMCSA. For example, data supplied by CP stated that in 1997 there were over 5.7 million trucks crossing from Canada into the United States. Despite such numbers (foreign-based truckers have access to over 3 million miles of highways in the United States through approximately 70 northern border locations), FMCSA has regulated and audited foreign Commercial Driver's License holders who operate in the United States with few problems since implementation of its program in 1995. Under FMCSA's program, a combination of Federal and state inspectors inspects vehicles engaged in cross-border operations.

Furthermore, FMCSA and FRA, unlike FAA, share cross-border concerns only with Canada and Mexico. As mentioned above, ICAO, an agency with 187 contracting foreign governments, sets international civil aviation standards for the aviation industry. There is no counterpart to ICAO in the rail industry. Lastly, FRA anticipates substantial growth in both Canadian and Mexican cross-border operations due to trade expansion and recent trends in the organization of North American railroads.

c. *There are no data on accidents in the United States involving Canadian-based train crews that would justify random alcohol and drug testing.* Since FRA's accident reporting system does not break out data on existing cross-border operations, FRA cannot determine from its existing records whether drugs or alcohol have contributed to accidents in the United States during cross-border train operations. As mentioned earlier, however, and as discussed more fully below, the efficacy of random testing as a deterrent program has been demonstrated in the United States by the consistent decline in the United States rail industry's positive rate since the implementation of random drug testing.

d. *Random drug testing detects only past drug use and not current levels of impairment.* Random testing is conducted to determine whether employees are misusing controlled substances. Misuse can have detrimental effects on employee fitness whether or not the employee is under the acute effects of the drug on the job. FRA's post-accident testing program has also identified accidents that have been caused by recent usage resulting in the employee's impairment at the time of the accident. The rate of positive drug testing results decreased significantly when domestic railroad employees became subject to FRA's random drug testing requirements. FRA sees no merit in the suggestion that FRA encourage Transport Canada to implement random testing. FRA has been in conversation with Transport Canada since the late 1980's, and has no reason to believe that this approach would be successful.

e. *Regulatory equivalency in Canada justifies the current exceptions of FRFB employees from random drug testing.* The additional deterrence that random testing would provide is unnecessary. The commenters cite to the following as five elements of the Canadian rail safety program: (1) The Canadian railroads' operating Rule G (Canadian Rule G), which prohibits the use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty; (2) the Canadian railroads' voluntary implementation of comprehensive drug and alcohol programs that provide for pre-employment and pre-placement (or pre-assignment) drug testing to risk-sensitive positions, reasonable cause testing, and return-to-service testing; (3) the Railway Safety Management System Regulations, which require Canadian railroads to implement and maintain safety programs; (4) the Canadian Railway Safety Act, which mandates regular medical examination every three to five years, depending upon the age of the employee, for all persons occupying safety-critical positions (including train crews), and which requires physicians and optometrists to notify the employing railroad's Chief Medical Officer if the employee has a medical condition that could be a threat to safe railroad operations; (5) Transport Canada's role in monitoring compliance with Canadian Rule G and auditing railroad safety programs; and (6) criminal prosecutions—under the Canadian Criminal Code it is an offense to operate railway equipment while impaired by alcohol or a drug, or to have a blood alcohol concentration level greater than .08 percent.[5]

CN indicated that despite the drug and alcohol measures that have been adopted in Canada, it believed that random drug testing is also needed. CN urged FRA to continue to press Transport Canada to adopt a random drug testing requirement. However, both CN and CP expressed concern that, under current Canadian human rights legislation, employees could challenge the application of part 219's random drug testing requirement to Canadian railroad employees (such as Canadian train crews operating in the United States), and such challenges would lead to significant costs and potential disruption to their rail operations.

FRA commends the Canadian railroads and Canadian Government for their efforts to stem drug and alcohol abuse by Canadian railroad employees. However, FRA believes that the measures that have been implemented to date in Canada are neither comparable to the requirements of part 219, nor adequate to safeguard United States railroad operations were Canadian train crews to engage in extensive train operations in the United States. FRA also notes that since July 1, 1997, Canadian trucking companies with drivers assigned to operate commercial motor vehicles in the United States have had to comply with United States Department of Transportation substance-testing requirements similar to part 219, and that compliance with part 219 (in the case of Canadian train crews that operate in the United States) may not be as troublesome as CN and CP anticipate.

Transport Canada has approved Canadian Rule G, which was developed by the Canadian railroad industry, but Transport Canada has not reviewed and approved individual railroad plans implementing Canadian Rule G. [6] Like

[5] Under the Canadian criminal code police officers (including railway police officers) are entitled to test for presence of alcohol through approved breathalyser machines on reasonable cause. Penalties for violation of the criminal code include the possibility of fines and imprisonment. CN reported that over the past five years there have been four CN employees charged with this offense, one of which was a member of a train crew; the others were engineering or mechanical employees operating on or off-track equipment. CP reported that, between January 1998 and February 2002, five of its employees were charged with this offense; seven others were investigated but no charges were filed after an arrest, or the individuals were cleared of the charge.

[6] The Canadian Rule G provides the following:

(a) The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited.

other aspects of the Canadian regulatory scheme, Canadian Rule G relies very much on self-regulation and implementation with broad oversight by the Canadian government. Such an approach is in stark contrast to part 219, which mandates very specific requirements that the testing plans of domestic railroads must include.

Canadian Rule G has several significant differences from part 219. First, it fails to provide for alcohol and drug testing of railroad employees to detect and deter violations. Prior experience with a Rule G approach in the United States has revealed that such a rule alone, without the random and other tests required by part 219, is not effective in detecting and deterring drug and alcohol abuse among safety-sensitive railroad employees. Second, Canadian Rule G does not directly prohibit the off-duty use of drugs and abuse of alcohol by train crews, in contrast to FRA's regulations, which prohibit any off-duty use of drugs, and which prohibit use of alcohol within four hours of reporting for covered service or after receiving notice to report for covered service since such usage may ultimately affect an individual's performance on the job. See §§ 219.101(a)(3) and 219.102.

Prior to the adoption of part 219 in 1985, railroads in the United States had attempted to deter alcohol and drug use by their employees by their Rule G, which prohibited operating employees from possessing and using alcohol and drugs while on duty, and from consuming alcoholic beverages while subject to being called for duty. The customary sanction for violation of Rule G was dismissal. Unfortunately, accident reports revealed that the United States railroads' Rule G efforts were not effective in curbing alcohol and drug abuse by railroad employees. 48 FR 30726 (1983). Railroads were able to detect only a relatively small number of Rule G violations owing, primarily, to their practice of relying on observations by supervisors and co-workers to enforce the rule. FRA found that there was a "conspiracy of silence" among railroad employees concerning alcohol and drug use. 49 FR 24281 (1984). Despite Rule G, industry participants confirmed that alcohol and drug use occurred on the United States railroads with unacceptable frequency. Available information from all sources "suggest[ed] that the problem includ[ed] 'pockets' of drinking and drug use involving multiple crew members (before and during work), sporadic cases of individuals reporting to work impaired, and repeated drinking and drug use by individual employees who were chemically or psychologically dependent on those substances." Id. at 24253–24254. FRA identified multiple accidents, fatalities, injuries and property damage that resulted from the errors of alcohol- and drug-impaired railroad employees. Id. at 24254. Some of these accidents involved the release of hazardous material and, in one case, the release required the evacuation of an entire Louisiana community. Id. at 24254, 24259. These findings led FRA to promulgate the initial version of part 219 in 1985. The regulations do not restrict a railroad's authority to impose more stringent requirements. 50 FR 31538 (1985).

A review of the Canadian Rule G violations reported by CP indicates that the Canadian Rule G has resulted in the identification of an extremely low number of operating crew violators. CP reported that in the period 1995–2001, when there were between 3,900 to 4,700 operating crew employees per year, there was a total of only 26 Canadian Rule G operating crew violators for the period. It is likely that the true level of drug and alcohol abuse among Canadian operating crew employees was much higher. For example, a 1987 survey commissioned by a Canadian Task Force on the Control of Drug and Alcohol Abuse in the Railway Industry revealed that 20 percent of 1,000 randomly-selected Canadian railway workers admitted that they had come to work feeling the effects of alcohol, and 2.5 percent admitted that they had used illegal drugs during their shift. In addition, CN's drug screening of its employees has shown a significant level of drug abuse among its employees.[7] Furthermore, alcohol and drug testing of safety-sensitive railroad employees in the United States found a significantly higher level of substance abuse prior to the introduction of random testing.

FRA's own data, compiled from domestic railroad reports, show a significantly higher level of substance abuse among safety-sensitive railroad employees in the United States prior to the introduction of random testing. For example, in 1988, the industry positive rates for reasonable cause testing were 4.7 percent for drugs and 4.5 percent for alcohol. After the introduction of random testing in 1989, these rates declined respectively to 2.02 percent and 1.32 percent. While the positive rates for reasonable suspicion testing have continued to fall, a comparison of the data for post-accident testing reveals an even stronger impact on positive testing rates. In 1988 the positive rate for drugs after qualifying accident events was 5.6 percent. After the commencement of random testing in 1990, this rate fell to 1.1 percent positive. There was a corresponding reduction in post-accident positives from 41 in 1988 to 17 in 1990. In 2002, two employees (1.06 per cent) testing for drugs other than alcohol in post-accident testing events.

The Canadian Government and CN and CP also rely heavily on the medical assessment that is required for dispatchers under the new Medical Rules for Safety Critical Employees as providing a functional equivalent to random testing. Under these rules, an assessment must be performed every three to five years, depending on the age of the employee, and include a medical examination. CP notes that the required intervals between assessments result in approximately 25 percent of Canadian employees being examined annually, and it argues that this is approximately the same number of United States rail employees that receive random drug testing per year under part 219.

Throughout the preamble to the NPRM, FRA emphasized the importance of random drug and alcohol testing in detecting and deterring substance abuse by railroad employees. The deterrent effect of random testing, which was implemented by FRA in 1988–1989, most certainly influenced the dramatic reduction in post-accident positives between the 41 that were recorded in 1988 to the 17 that were recorded in 1990. FRA does not believe that the

(b) The use of mood altering agents by employees subject to duty, or their possession or use while on duty, is prohibited except as prescribed by a doctor.

(c) The use of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely, by employees subject to duty, or on duty is prohibited.

(d) Employees must know and understand the possible effects of drugs, medication or mood altering agents, including those prescribed by a doctor, which, in any way, will adversely affect their ability to work safely.

[7] CN's submission to a Canadian Standing Committee on Transportation noted that CN had utilized pre-employment drug screening of job applicants since 1986, and these tests yielded a positive rate of 12 percent; similar testing of CN employees transferring to safety-sensitive positions ("pre-placement testing"), such as dispatcher positions, also yielded a positive rate of 12 percent. In the Matter of an Arbitration Between Canadian National Railway Company and National Automobile, Aerospace, Transportation and General Workers Union of Canada (Union) and Canadian Council of Railway Operating Unions (Intervener), Re: The Company's Drug and Alcohol Policy, decision of Arbitrator Michel G. Picher at 56 (July 18, 2000). CN drug screening results from of all sources (pre-placement, reasonable cause, medical examinations, promotions and transfer, reinstatement, and EAP follow-ups) in 1995, showed a 6.4 percent positive test rate in the Eastern Canada, and a 10 percent positive rate in Western Canada. Id. At 59–60.

periodic medical assessments Canadian railroad employees must undergo are the functional equivalent of random testing. The medical model relies primarily on medical examinations that are scheduled in advance. The employees know well beforehand that they will be undergoing an exam, giving them the opportunity to refrain from any activity that may reveal a substance abuse problem. Experience in similar programs in the United States (*e.g.*, in the aviation and motor carrier industries) indicates that routine medical examinations will seldom be successful in identifying alcohol or drug use problems except perhaps in the most advanced stages of chemical dependency when an employee's remaining work life is often limited and major damage has been done to vital organs. Even if an employee is forthcoming in offering that he or she is misusing drugs in his or her personal life, this would apparently not be a disqualifying condition absent medical diagnosis of a specific substance abuse disorder; however, one does not have to be chemically dependent to constitute a threat to public safety. Much of the alcohol and drug use that threatens transportation safety has a voluntary component, and random testing is therefore an appropriate deterrent. Further, Transport Canada is in the early stages of implementing this program and has not yet had the opportunity to determine program outcomes. For these reasons, it would not be appropriate for FRA to rely upon this program as a full substitute for key DOT program elements, including a prohibition on non-medical use of controlled substances and random testing.

Aside from the fact that FRA believes that random testing is the most important aspect of any testing program and that pre-employment testing is important, FRA is also concerned about two other significant differences between part 219 and the Canadian railroads' testing programs.

First, the criteria for post-accident testing are much more subjective under the Canadian programs than under part 219. In the United States, post-accident testing is required for a train crew employee who is directly and contemporaneously involved in the circumstances of any qualifying train accident. See section 219.203. Under the Canadian programs, however, a train crew employee is not automatically tested when he or she is involved in an accident. Instead, the railroad must have independent evidence of impairment before a train crew employee involved in a Canadian accident may be tested. Thus, a train crew employee under the influence of drugs or alcohol may contribute to an accident and yet must not be tested if he or she does not exhibit some physical manifestation of impairment. That train crew employee may continue to work without undergoing additional scrutiny that may reveal a dependency problem that could continue to negatively impact his or her job performance. CN did indicate in its written comments that it plans to revise its policy this year to add mandatory post-accident testing using criteria identical to that in part 219. The CHRC Commission Policy Statement endorses the right of Canadian companies to impose such testing for safety-sensitive employees.

Second, a Canadian rail employee may currently decline to be tested and not suffer adverse consequences unless the employer has an independent basis for concluding that the employee is impaired by drugs or alcohol. Under part 219, however, a train crew employee in the United States who refuses a test is immediately suspended for a period of nine months and must follow specified procedures, including return-to-duty and follow-up testing, before being allowed to return to safety-sensitive service. Obviously, the effectiveness of a testing program is severely compromised if an employee is permitted to simply decline to be tested.

In FRA's judgment, commenters who assert that Canada's stress on protection of individual rights is incompatible with random testing must consider public safety in any balancing test. Random testing, as implemented in part 219, effectively balances the rights of the individual against those of the public.

g. *FRFB employees may challenge the legality of a random drug testing program and may refuse to cooperate with the testing, including refusing to cross the border.* Litigation is costly and time consuming, and refusals by employees to submit to testing would result in them having to be taken out of United States service for a nine-month period and could lead to serious disruptions in train traffic across the border. In addition to the concerns listed above, commenters cited to four locations where interchange of railroad border traffic takes place in the United States, and asserted that comparable interchange facilities do not exist in Canada to permit the alternative of using United States-based crews to perform these operations. The AAR also pointed out that moving the interchange of traffic to Canada could have the counterproductive effect of undermining the deterrence effect of random drug testing on United States-based employees since, to accommodate Canadian law, railroads would be limited to conducting random testing only at the beginning of an employee's shift in the United States. Random testing achieves the most deterrence when the possibility of testing exists throughout an employee's shift, *i.e.*, before, during, or after a tour of duty.

FRA does not have sufficient information to make an informed judgment as to whether current facilities exist in Canada to permit the interchange of railroad traffic on the Canadian side of the border, or what the costs of constructing such facilities would be. While FRA cannot predict whether implementation of a random drug testing program would result in extensive Canadian railroad employee refusals to submit to such testing, litigation, or extensive disruptions to cross-border train service, FRA notes that employees of Canadian trucking companies who are subject to FMCSA's alcohol and drug testing regulations have not aggressively litigated the legitimacy of these regulations, and that the Canadian Human Rights Commission found cross-border trucking and bus operations to be "a special case" in that employees of Canadian cross-border trucking and bus companies may have a bona fide occupational requirement in not being banned from driving in the United States. As discussed above, FRA has modified its proposal as much as practicable to reconcile FRA's program requirements with Canadian public policy. Finally, random drug testing will detect and deter use whether the testing is conducted before, during, or after a tour of duty involving cross-border operations

h. *The proposed rule is not cost beneficial.* Commenters asserted that the NPRM's regulatory evaluation underestimated some of the costs associated with the proposal, including: (1) The likelihood of an increase in the pool of employees who would be subject to the proposed requirements; (2) the train delays associated with crews' refusals to submit to random drug testing; (3) the litigation expenses of defending challenges to random drug testing; (4) the need to make reasonable accommodations for persons with substance abuse problems, who are considered to be disabled under Canadian law; and (5) the back pay and other compensation paid to employees out of work due to positive drug test results or treatment for substance abuse. CP estimates that costs of the regulation, not including the significant costs associated with litigation or construction of track that would be

required to interchange all railroad traffic north of the Canada-United States border, are 37 times the benefits.

FRA believes that the costs may have been understated in the initial regulatory evaluation, but has not established the extent to which the additional factors cited by the commenters would raise the overall costs of the NPRM since FRA is proposing to except most existing cross-border operations from the application of subparts E, F, and G of part 219. FRA cannot verify or dispute CP's estimate, since CP failed to provide a complete justification of the costs and benefits used to develop it. The regulatory evaluation accompanying the NPRM estimated that its requirements would cost the rail industry approximately $366,244 Net Present Value (NPV) over the next 20 years. For a discussion of the costs and benefits associated with this final rule, see the analysis in the Regulatory Impact section below.

i. *Under NAFTA, trading partners are required to seek the least-trade-impact solution in furtherance of their national safety goals, and the NPRM does not meet this requirement.* Commenters indicated that FRA had not conducted a risk assessment to establish the need for the proposed rule, and that even if such an assessment existed, the proposed expansion of part 219 requirements for FRFB employees would be better handled through bilateral government negotiations than an FRA rulemaking.

FRA believes that the NPRM was consistent with NAFTA; nevertheless, as explained above, FRA has, after consultations with Canada and Mexico, and consideration of the public comments, modified the final rule to lessen its trade impact while continuing to further the safety of railroad operations in the United States. Under NAFTA, each Party retains the right to adopt and enforce any nondiscriminatory standards-related safety measure it considers appropriate to address legitimate safety objectives, including prohibiting the provision of service by a service provider of another Party that fails to comply with the safety measure. FRA has a legitimate interest in assuring the safety of rail transportation within the borders of the United States. A Canadian or Mexican dispatcher or train or engine crew employee operating in the United States who is impaired by alcohol or by use of a controlled substance has a substantial, direct, and foreseeable adverse effect on the safety of United States railroad operations, especially if he or she is involved in the movement of passengers or hazardous materials. Congress has determined, and FRA's experience has shown, that pre-employment drug testing and random drug and alcohol testing are critical parts of an effective drug and alcohol screening and deterrent program.

2. Other Issues Raised by Extraterritorial Application of Part 219

Because of the *de minimis* nature of the exceptions to the prohibition against extraterritorial dispatching, FRA proposed not to apply part 219 to the few railroad employees permitted to conduct extraterritorial dispatching under the interim final rule (49 CFR part 241) based on that service. Commenters agreed with this proposal, which is adopted in this final rule. FRA had also considered proposing an expanded application of part 219 to cover extraterritorial or FRFB signal maintainers, but decided not to do so after determining that this activity is also *de minimis*.[8]

FRA also solicited comment on whether it should expand post-accident testing to include FRFB train employees who are involved in an otherwise qualifying event while in transit to or from the United States, and whether to expand the basis for requiring reasonable suspicion testing to events that occur outside the United States.

CN supported post-accident testing in general, but commented that any expansion of FRA post-accident criteria would be subject to serious legal challenge and would also be rendered unnecessary by CN's plan to implement a company post-accident testing program. CP noted that in Canada each province has its own exclusive legal jurisdiction over post-mortem examinations, and that these differing requirements could interfere with administration of any expanded FRA post-accident testing requirements. CP also stated that it too is currently considering adoption of a post-accident testing program (unlike FRA's program, however, CN's post-accident testing program would likely test urine and breath specimens, but not blood). In light of the possibility of the two largest Canadian freight carriers implementing equivalent post-accident testing programs on their own, and out of respect for the prerogative of the Canadian Government to regulate events occurring within its territory, FRA has decided not to broaden the application of its post-accident testing program for now.

Finally, FRA also asked for comment on several implementation issues. Would clearance through customs and international mail significantly delay the shipment of testing specimens and their accompanying paperwork? Would employing railroads in foreign countries have difficulty obtaining and using evidential breath testing devices (EBTs) certified by the National Highway Traffic Safety Administration (NHTSA), as required in DOT's procedures for alcohol testing? In response to both questions, commenters indicated that while international customs and mail could occasionally cause delays, they did not anticipate a major problem with cross-border shipping and handling, or with obtaining and using NHTSA-certified EBTs.

FRA also asked whether, if it decided to apply post-accident testing to extraterritorial signal maintainers, foreign railroads would have difficulty shipping testing specimens to FRA's designated post-accident laboratory. This question is rendered moot by FRA's decision not to expand its post-accident testing program at this time.

B. Comments Filed in Response to the July 28, 2003 Notice

As mentioned above, after consulting with the Canadian and Mexican Governments, FRA published a notice outlining the likely revisions to the NPRM based on those consultations and FRA's consideration of the public comments to date. In response to this consultations notice, DATIA, CN, CP, and the UTU–Can. filed supplemental comments which, in addition to restating concerns expressed earlier in their comments in response to the NPRM, raised new issues or requested more information concerning the likely revisions outlined in the notice. Those comments that raised issues not discussed elsewhere in this rule (*e.g.*, under what circumstances an FRFB employee is required to undergo a pre-employment drug test), or not addressed in the above discussion of the comments to the NPRM, are discussed below.

CN noted that only half of its current cross-border operations would be excepted from subparts E, F, and G of this part, since each of its five remaining cross-border operations proceeds more than 10 route miles into United States territory. By definition, a limited haul is one that proceeds only a short distance into the United States; FRA excepts such short segment operations because it believes they present less of a safety

[8] As noted above, signal maintainers based in the United States, whether employed by United States or foreign railroads, remain fully subject to part 219 with respect to their covered service unless excepted under a provision of existing § 219.3(b). Likewise, signal maintainers employed by United States railroads but based outside the United States remain subject to part 219 in its entirety with respect to their covered service in the United States unless otherwise excepted.

risk and are necessary to facilitate interchange. The five CN cross-border operations that do not fall under this exception can in no way be considered limited hauls, since they respectively proceed 23, 25, 44, 54, and 74 route miles into the United States.

CN and the UTU–Can. stated that Canadian railroad employees who were subject to, but never actually called for cross-border operations, should not be subject to FRA's random testing requirements. A random testing pool can be designed to limit selections only to those employees who actually operate into the United States (*e.g.*, by selecting through job numbers or trains that operate in the United States beyond 10 route miles instead of through employee names).

Finally, CN asked whether, in order to aid compliance with the rule's requirements, FRA would consider certifying Canadian testing laboratories for DOT workplace testing and recognizing Canadian railroad Chief Medical Officers (CMOs) as Substance Abuse Professionals (SAPs) for return-to-service and follow-up testing evaluations. As stated above, FRA has no authority to certify laboratories for forensic urine testing; Canadian and foreign laboratories wishing to be considered for certification must apply to the HHS National Laboratory Certification Program (NLCP) just as United States laboratories do. (As noted earlier, several accredited Canadian laboratories are currently certified to conduct DOT workplace testing.) FRA also has no authority to recognize CMOs as a body as Substance Abuse Professionals; under § 40.283, an organization that seeks recognition for its members as SAPs must petition DOT for such recognition.

VI. Alternative Options that FRA Considered But Did Not Adopt

After reviewing the comments on the NPRM, FRA considered several alternatives to the one adopted today. FRA's reasons for excepting cross-border operations of 10 route miles or less from full application of part 219 are fully discussed throughout this preamble. The pluses and minus of the alternatives that were considered but not adopted are discussed below.

A. Adopt the NPRM as Proposed

First, FRA considered adopting the NPRM's proposal to apply part 219 in its entirety to FRFB train and dispatching service employees. FRA continues to believe that random testing is an essential component of effective programs to deter alcohol and drug abuse since, as stated above, industry positive rates have decreased significantly since domestic railroad employees became subject to FRA's random drug testing requirements. Moreover, a substantial number of the existing Canadian cross-border operations involve the movement of significant quantities of hazardous materials. Failure to subject the employees conducting these operations to random drug and alcohol testing increases the possibility that these operations will be conducted with drug or alcohol-impaired train crews. Conversely, barring FRFB employees who test positive or who refuse to submit to drug and alcohol testing from working in the United States would likely improve the safety of United States rail operations. Finally, as stated earlier, FMCSA has regulated and audited foreign-based Commercial Drivers License holders who operate in the United States with few problems since 1995.

Nevertheless, FRA decided not to adopt the NPRM entirely as proposed. Canadian commenters objected strongly to the NPRM's proposal to require FRFB employees to submit to random testing, with only CN favoring implementation of a random testing requirement, and then only if random testing were also required by Transport Canada. Furthermore, random testing would be of lesser deterrent value to a Canadian employee than to a United States counterpart, since a Canadian FRFB employee with a positive result or a refusal could continue to perform train or dispatching service in Canada so long as he or she is removed from United States service. Also, as commenters pointed out, an individual FRFB employee's refusal to be tested could disrupt the flow of United States-bound freight over the Canadian border since a train delay due to a train crew member's refusal to take a random drug test is potentially more disruptive than the refusal of a single trucker to comply with the FMCSA testing program. Finally, as commenters noted, to date FRA has no specific accident data to show that cross-border railroad operations, which are only partially subject to part 219, are less safe than domestic operations, which are fully subject to part 219. Given all these factors, FRA opted instead to adopt a limited haul exception.

B. Grandfather Canadian and Mexican Cross-Border Train and Dispatching Service Operations in Existence as of the Date of Publication of the Final Rule

FRA also considered modifying its original proposal by grandfathering existing Canadian and Mexican cross-border train operations and dispatching service in the United States performed by FRFB employees. (FRA has not identified any FRFB employees who enter the United States to dispatch a United States rail operation.) Because FRA does not segregate cross-border operations from overall accident reporting data, the prevalence of drug and alcohol abuse on existing cross-border operations is unknown, as is the extent to which substance abuse has contributed to cross-border accidents. The extent and volume of existing Canadian and Mexican cross-border railroad operations are limited, however, since, half of the current Canadian cross-border railroad operations travel one mile or less into the United States, and all of the current Mexican cross-border railroad operations travel one mile or less within the United States.

For the reasons stated above, however, FRA has decided to adopt a 10-mile limited haul exception instead of grandfathering all existing cross-border railroad operations from full application of part 219. Setting the fringe border's limits at 10 route miles or less allows FRA to except most of the current Canadian cross-border railroad operations and all of the current Mexican ones, while still capturing the six longest cross-border operations, all of which operate a significant distance into the United States from Canada (the two cross-border segments that end in Detroit operate respectively 54 and 74 miles into United States territory). Other than new cross-border railroad operations within the 10-mile limited haul exception, any expansion of current cross-border train or dispatching service operations will be required to comply with all part 219 requirements (absent the grant of waivers or future rule changes by FRA), including random alcohol and drug testing, which may, at the option of the foreign railroad, be conducted in the United States or in the railroad's home country. The limited haul approach is also consistent with NAFTA, since this option has the least trade impact consistent with achieving safe railroad operations in the United States, and is less costly than adopting the full application approach of the NPRM.

VI. Section-by-Section Analysis

Introduction

This section-by-section analysis explains the provisions of the final rule and any changes made from the NPRM. This analysis should be considered as a whole with the discussion in the previous sections of this preamble. For

completeness, this analysis reprints portions of the section-by-section analysis from the proposed rule where sections have been adopted without change from the NPRM.

General Provisions (Subpart A)

Section 219.3 Application

Paragraph (a) contains a general statement of the scope of applicability of part 219, and paragraphs (b) and (c) contain exceptions to that general statement of applicability. The exceptions in paragraph (b) are available to both domestic and foreign railroads, while the exceptions in paragraph (c) are available only to foreign railroads. These changes are noted in the new paragraph headings.

Paragraph (a) is unchanged except to add the heading "General" and to make explicit in paragraph (a)(2) that part 219 applies to commuter and short-haul railroad operations in the United States, but not to such operations outside the United States. Paragraph (a) means that part 219 applies to each railroad that operates on the general railroad system of transportation and each railroad providing commuter or other short-haul service in the United States as described in the statutory definition of "railroad," unless the railroad falls into one of the exceptions contained in paragraphs (b) or (c). Intercity passenger operations and commuter operations in the United States are covered even if not physically connected to other portions of the general railroad system. See discussion below.

Paragraph (b)(1) is amended to state that this part does not cover a railroad whose entire operation is conducted on track within an installation that is outside of the general railroad system of transportation in the United States (in this paragraph, "general system" or "general railroad system"). Tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system are, therefore, not subject to this part. FRA uses the term "installation" to convey the meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system solely to receive or offer its own shipments is within an installation. Examples of such installations are chemical and manufacturing plants, most tourist railroads, mining railroads, and military bases. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation and, accordingly, not outside of the general system merely because of the operational separation.

Read together, *paragraphs (a) and (b)(1)* mean that part 219 applies in its entirety to all railroads that operate on the general railroad system of transportation or are commuter or intercity passenger railroads, except those excepted from certain subparts of part 219 by paragraphs (b)(2) or (b)(3), or any provision of paragraph (c).

Paragraph (b)(2). Existing paragraph (b)(2) excepts from subparts D (mandatory reasonable suspicion testing; the other types of for cause testing, namely accident/incident and rule violation testing, are authorized but not required), E (self-referral and co-worker report programs), F (pre-employment testing), and G (random testing) a railroad that meets the following two criteria for the small railroad exception: the railroad must (1) utilize 15 or fewer employees who are subject to the hours of service laws, and (2) not operate on the tracks of another railroad or engage in other joint operations with another railroad except for purposes of interchange.

As proposed, a railroad (including a foreign railroad that utilizes FRFB employees to perform train operations in the United States) qualifies as a small entity excepted from the reasonable suspicion testing requirement in subpart D, and from subparts E, F, and G of part 219 upon satisfaction of the following two conditions. First, the *total* number of its employees covered by the hours of service laws (as train employees, dispatching service employees, or signal employees), and employees who would be covered by the hours of service laws if their services were performed in the United States, must be 15 or fewer. (In calculating the total number of its employees covered by the hours of service laws, a railroad must include *all* employees covered by virtue of operating on United States soil, including those employees who operate on cross-border operations that are excepted under the 10-mile limited haul exception. The latter, will, however, continue to be excepted from subparts E, F, and G.) Second, as is the case currently, the railroad may not operate on the tracks of another railroad or otherwise engage in joint operations in the United States except in order to perform interchange. By excepting only railroads which in their entirety, comprise 15 or fewer employees who are or would be subject to the hours of service laws, FRA is effectuating the original intent of this subsection, which was to lessen the economic impact of part 219 on those small entities that have both limited resources and a minimal impact on safety.

Also as proposed, FRA in part determines the applicability of subparts E, F, and G to a railroad based on the total number of its employees who are, or would be, covered by the hours of service laws. A railroad that is excepted under paragraph (b)(2) only from subparts E, F, and G must comply with all other requirements of part 219 (subparts A, B, C, reasonable suspicion testing in subpart D, and subparts H, I, and J) only with respect to those of its employees who are "covered employees" within the meaning of the substantive provisions of part 219.

Paragraph (b)(3). The exception from reporting requirements for subpart I is revised in three ways. First, the term "employee hours" replaces the term "manhours" to make the provision gender-neutral. Second, the way in which employee hours are to be calculated is clarified. Third, the term ("primary place of service ("home terminal") for rail transportation services") is replaced with the more generic term ("primary place of reporting") to convey more clearly that this exception applies to signal employees, whose principal reporting point is not typically called a "home terminal."

Paragraph (c). As proposed, to be considered an "FRFB train employee" or "FRFB dispatching service employee," an individual must meet all three of the following criteria. First, the individual must be employed by a foreign railroad or by a contractor to a foreign railroad. Second, the individual's primary place of service for rail transportation services ("home terminal") must be located outside the United States. If the individual's home terminal is inside the United States, § 219.3(c)(2) does not apply. Third, the individual must either—

(a) in the case of a train service employee, be engaged in or connected with the movement of a train, including a hostler (49 U.S.C. 21101(5)), or

(b) in the case of a dispatching service employee, report, transmit, receive, or deliver orders related to or affecting train movements (49 U.S.C. 21101(2))—

in the United States during a duty tour or be assigned to perform such train service or dispatching service in the United States during a duty tour. A foreign railroad must remove any employee who refuses to submit to FRA-required testing from performing rail operations in the United States for a nine-month period (the employee must also comply with the return-to-service requirements in § 219.104 before returning to safety-sensitive service in

the United States), although this regulation does not preclude such an employee from continuing to perform rail service outside the United States.

Paragraph (c)(1). As stated above, FRFB train or dispatching service employees who operate on cross-border segments of 10 route miles or less will continue to be excepted from subparts E (self-referral and co-worker report programs), F (pre-employment drug tests), and G (random testing); those who perform train operations or dispatching service in the United States on cross-border segments that extend more than 10 route miles into the United States are no longer excepted from full application of part 219 (unless they work for railroads that qualify for the small railroad exception in § 219.3(b)).

While FRA has chosen not to address the relatively low safety risk of smaller cross-border segments, FRA continues to have safety concerns about the potential for future expansion of foreign railroad operations into United States territory. In new or expanded cross-border operations, FRFB employees may operate a significant distance inside the United States. There is no reason to treat these FRFB employees differently from domestic employees. Adopting a 10-mile limited haul exception ensures that only FRFB train or dispatching service employees who perform extended cross-border operations in the United States will be subject to random testing.

Paragraph (c)(2). This paragraph excepts an FRFB signal maintainer, defined as an individual (1) whose principal reporting point is outside the United States, (2) who is employed by a foreign railroad, and (3) who is a covered signal employee (unless the railroad for whom the individual works falls under the small railroad exception in § 219.3(b)) from subparts E, F, and G of this part. As before, subparts A, B, C, reasonable suspicion in subpart D, and subparts H, I, and J of this part continue to apply to an FRFB signal maintainer when he or she is performing signal maintenance in the United States.

Paragraph (c)(3). As stated earlier, current FRFB employees are not subject to pre-employment drug testing. Only employees not covered by the 10-mile limited haul exception who perform train or dispatching service for the first time in the United States after June 11, 2004 will be subject to pre-employment testing under this part.

Section 219.4 Recognition of Foreign Railroad Workplace Testing Programs

This new section specifies the procedures and requirements for a foreign railroad to obtain FRA recognition of a program promulgated under its home country government's workplace testing standards as compatible with the return-to-service requirements in subpart B, and subparts E, F, and G of this part. To be so recognized, the foreign railroad's program must include equivalents to the specified portions of part 219, and, in these equivalent provisions, use testing procedures, criteria and assays reasonably comparable in effectiveness to those in DOT procedures for workplace drug and alcohol testing programs (49 CFR part 40, incorporated by reference in subpart H of this part). In approving a program under this section, the FRA Associate Administrator for Safety may impose conditions deemed necessary. Upon FRA's recognition of a foreign workplace testing program as compatible with these subparts, train and dispatching employees whose primary reporting point is in the foreign country may comply with the standards of the recognized program while operating in the United States as an alternative of the requirements of these subparts; FRFB employees, would, however, continue to be subject to certain part 219 requirements: subpart A, subpart B other than the return-to-service requirements in section 219.104(d), subpart C, reasonable suspicion in subpart D, and subparts I and J of this part; all of these requirements remain subject to part 40 procedures.

Once granted, program recognition allows a foreign railroad to comply with the standards of its home country with regard to the FRA tests and criteria that are a condition precedent to entry into the United States (*i.e.*, return-to-service criteria, employee assistance, and pre-employment and random testing procedures). For program recognition, these standards need be compatible, but not necessarily identical, to their corresponding sections in this part. In contrast, part 219 elements that address transactions occurring on United States soil (Rule G violations, post-accident testing events, and reasonable suspicion) will remain under United States law for all purposes, and all protections of this part, including the DOT workplace testing procedures incorporated by subpart H of this part, will continue to apply.

Once granted, program recognition would remain valid so long as the program retained these elements and foreign-based railroads continued to comply with program requirements. For FRA's auditing purposes, the foreign railroad should maintain a letter on file indicating that it has elected to extend specified elements of the recognized program to its operations in the United States. FRA will work with the Canadian and Mexican Governments to arrange cooperative audits that build confidence in the effectiveness of each government's program.

Section 219.5 Definitions

The terms "covered service" and "covered employee" are closely interrelated and, therefore, their definitions are discussed together.

Covered service. As proposed, the definition is added to make clear that "covered service" is service subject to the hours of service laws (49 U.S.C. ch. 211) that occurs in the United States. This is a practical, rather than a craft-based, definition of the persons and functions subject to the regulations. The employees that will most often fall within the definition of covered employee are train and engine crews, yard crews (including switchmen), hostlers, train order and block operators, dispatchers, and signalmen. These functions have been identified by the Congress as being connected with the movement of trains and requiring maximum limits on duty periods and required off-duty periods in order to ensure their fitness.

Covered employee. As proposed, the definition of this term is revised to make clear that FRA interprets covered service as service performed in the United States.

Cross-border operation. This definition was not proposed in the NPRM, but is consistent with the NPRM's usage of this term, and is added for clarity.

Domestic railroad. As proposed, FRA adds this definition for clarity to distinguish a railroad that is incorporated in the United States from a foreign railroad.

Foreign railroad. As proposed, FRA this new term refers to a railroad that is incorporated outside the United States.

General railroad system of transportation. As proposed, this new definition clarifies that the term applies only to that part of the general railroad system of transportation that is located within the borders of the United States.

State. As proposed, FRA this new term refers to a State of the United States of America or the District of Columbia.

Section 219.7 Waivers

Paragraph (d). Special dispensation for employees performing train or dispatching service on existing cross-border operations. This section allows a foreign railroad to petition FRA, within 120 days of the publication of this rule,

for a waiver of subparts E, F, and G of this part for any existing cross-border operation that becomes fully subject to these subparts by virtue of this rule. As with other requests for waivers of safety rules, FRA's Railroad Safety Board will consider each such petition to determine if waiving full application of these subparts on the subject operation is consistent with railroad safety and in the public interest. Existing cross-border crew assignments on the operation subject to a petition filed within the 120–day period will continue to be excepted from subparts E, F, and G until the waiver request is acted upon by FRA.

Paragraph (e). Waiver requests for employees performing train or dispatching service on new or expanded cross-border operations. As stated above, a new cross-border railroad operation that proceeds more than 10 route miles into the United States, or a formerly excepted cross-border operation that expands beyond the10 mile limited haul exception, is subject to these rules unless the foreign railroad involved petitions FRA for a waiver of subparts E, F, and G not later than 90 days before commencing the cross-border operation, and FRA determines that granting the required relief is consistent with rail safety and in the public interest. See 49 CFR part 211. FRA will attempt to decide such petitions within 90 days. However, if no action is taken on the petition within 90 days, the petition remains pending for decision and the petitioner must comply with subparts E, F, and G should it commence the subject operations.

Section 219.11 General Conditions for Chemical Tests

As stated above, a foreign railroad now has the option of complying with the requirements of this part by conducting required collecting and testing entirely on United States soil. The railroad may collect FRA-required specimens in its home country or in the United States, so long as the DOT's workplace testing procedures (49 CFR part 40) are observed and records are maintained as required.

Annual Report (Subpart I)

Section 219.800 Annual Report

Paragraph (a)

As proposed, § 219.800 is amended to reflect the replacement of the term "manhours" in § 219.3(b)(3) with the gender-neutral term "employee hours."

VIII. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The provision to except FRFB employees who enter the U.S. for 10 route miles or less from subparts E, F, and G of part 219 narrows the number of FRFB employees who will be affected by this rule. All current Mexican FRFB employees fall under the exception, because all current Mexican-based train operations into the U.S. are less than 1 mile. Almost all Canadian railroad operations into the U.S. are also excepted, however, a small number of Canadian railroad operations extend into the U.S. for more than 10 miles. From information submitted to FRA, FRA estimates that 100 Canadian-based employees serving on these operations will be affected. The affected FRFB employees are employed by two railroads, the Canadian National Railway Company (CN) and the St. Lawrence & Atlantic Railroad Inc. (SLR).

The regulatory evaluation estimates the costs and benefits from extending subparts E, F, and G of part 219 to these 100 FRFB employees and two railroads. The costs resulting from applying subpart E are the costs of developing a referral and co-worker reporting policy, and evaluating employees who are experiencing substance abuse problems. The costs of subpart F are for costs associated with testing employee specimens for pre-employment drug testing. The main contributors to costs of extending subpart G are for developing the program and random selection procedures, and for costs associated with performing the subsequent alcohol and drug tests. A new provision in the Final Rule provides an option for foreign railroads to file a letter of intent to follow their home country's testing program for U.S. and foreign railroad operations, following approval of the alternate, compatible program by the FRA's Associate Administrator for Safety. It is anticipated this option will be used by Mexican railroads, who will be required to file compliance programs with their government (Mexico has indicated its intent to establish a regulatory program similar to part 219). This option will reduce the burden for Mexican railroads to comply with two sets of programs. The costs for FRA's review is estimated. To better account for all costs, a miscellaneous cost category is assigned to represent reporting, testing, administrative, logistical, other burdens that may not have been specifically estimated. The table below presents the costs of this rule calculated as Net Present Value (NPV) over a twenty-year period using a 7 percent discount rate.

TOTAL COSTS

Description	Estimated 20 year NPV costs @7%
Subpart E (Voluntary referral and co-worker identification, employee assistance programs)	$2,726
Subpart F (Pre-employment testing)	$10,646
Subpart G (Random alcohol and drug testing)	$69,741
Filing intent to follow alternative, compatible program and review	$359
Miscellaneous	$3,000
Total	$86,472

Total twenty-year NPV costs associated with the Final Rule are estimated to be about $90,000.

The benefits of this rule will result from improved safety of railroad operations in the U.S. FRA believes that eased trade restrictions between the U.S. and its foreign neighbors as a result of the North American Free Trade Agreement NAFTA, and consolidations in North American railroad operations, have led to more cross-border railroad operations. This trend will likely continue. Extending application of subparts E, F, and G of part 219 will help protect against accidents that may be caused by impaired employees. With the 10-mile limited haul exception, the Final Rule targets the longer-distance railroad operations that pose a greater safety risk, yet reduces regulatory burden on most foreign railroads that have cross-border operations. Although the deterrent effect of random alcohol and drug testing will likely reduce

accidents, the direct benefits from avoiding fatalities and injuries in the future are not monetized because FRA's database has not historically separately identified cross-border accidents. FRA also notes that extending subparts E, F, and G to some FRFB employees will improve fairness in the applicability of part 219, by placing the same mandates on those FRFB employees as are already placed on U.S. railroad employees.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment, which assesses the small entity impact. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., 7th Floor, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published a final policy that formally establishes "small entities" as being railroads that meet the line-haulage revenue requirements of a Class III railroad. For other entities, the same dollar limit in revenue governs whether a railroad, contractor, or other respondent is a small entity (68 FR 24891, May 9, 2003).

In the Regulatory Flexibility Assessment, FRA certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities. Current cross-border railroad operations (listed at the end of this rule) are conducted only by large Canadian and Mexican railroad companies.

C. Paperwork Reduction Act

Paperwork Statement—Alcohol and Drug Regulations: FRFB Train Crews and Dispatchers

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section–49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
219.4–Recognition of a Foreign Railroad's Workplace Testing Program.	2 railroads	1 petition	10 hours	10 hours	$370.
–Comment	2 railroads/public	2 comments + 2 comment copies.	2 hours	4 hours	$148.
219.401/403/405–Voluntary Referral & Co-worker Report Policies.	2 railroads	2 policies	30 hours	60 hours	$2,364.
219.03/405–Evaluation by Substance Abuse Professional.	2 railroads	3 reports/referrals	2 hours	6 hours	$900.
219.405(c)(1)–Report by a Co-worker.	2 railroads	1 report	5 minutes	.08 hour	$3.
219.601(a)–Railroad Random Drug Testing Programs.	2 railroads	2 programs	16 hours	32 hours	$1,184.
–Amendments to Programs	2 railroads	1 amendment	1 hour	1 hour	$37.
219.601(b)(1)–Random Selection Proc.–Drug.	2 railroads	24 documents	4 hours	96 hours	$1,440.
219.601(b)(4); 219.601(d)–Notice to Employees.	2 railroads	2 notices	10 hours	20 hours	$740.
–Notice to Employees–Selection for Testing.	2 railroads	20 notices	1 minute	.333 hour	$12.
219.602; 219.608–Administrator's Determination of Random/Drug/Alcohol Testing Rate.	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.
219.603(a)–Notice by Employee Asking to be Excused From Urine Testing.	200 employees	2 documented excuses.	15 minutes	.50 hour	$22.
219.607(a)–Railroad Random Alcohol Testing Progs.	2 railroads	1 amendment	1 hour	1 hour	$37.
–Amendments					
219.609–Notice by Employee Asking to be Excused from Random Alcohol Testing.	200 employees	2 documented excuses.	15 minutes	.50 hour	$22.
219.800—Annual Reports	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.	Covered under OMB No. 2105–0529.
219.901/903–Retention of Breath Alcohol/Urine Drug Testing Records.	2 railroads	80 records	5 minutes	7 hours	$105.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicited comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. FRA received no replies in response to this request for comments. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan, FRA Information Clearance Officer, at 202–493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, entitled "Federalism," requires that each agency in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *

See section 6(b)(2)(B).

In most circumstances FRA performs these required Federalism consultations in the early stages of a rulemaking at meetings of the full Railroad Safety Advisory Committee ("RSAC"), which includes representatives of groups representing State and local officials. However, upon RSAC's inception FRA committed not to task the RSAC with rulemakings concerning alcohol and drug testing issues since these issues require extensive coordination and consultation with both DOT and HHS.

FRA instead solicited comment on the Federalism implications of the proposed rule from nine groups designated as representatives for various State and local officials. In March 2000, FRA sent a letter seeking comment on the Federalism implications of the NPRM to the following organizations: the American Association of State Highway and Transportation Officials, the Association of State Rail Safety Managers, the Council of State Governments, The National Association of Counties, the National Association of Towns and Townships, the National Conference of State Legislatures, the National Governors' Association, the National League of Cities, and the United States Conference of Mayors. FRA received no indication of concerns about the Federalism implications of this rulemaking from these representatives. FRA has adhered to Executive Order 13132 in issuing this final rule.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that

before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *

detailing the effect on State, local, and tribal governments and the private sector. This final rule does not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28355; May 22, 2001. Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has

evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of the Executive Order.

H. Privacy Act

Anyone is able to search the electronic form of all public submissions to any of our dockets by the name of the individual making the submission (or signing the submission, if made 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) or by visiting *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Final Rule

In consideration of the foregoing, the FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 219—[AMENDED]

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. Section 219.3 is revised to read as follows:

§ 219.3 Application.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102) in the United States.

(b) *Exceptions available to both domestic and foreign railroads.* (1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G of this part do not apply to a railroad that—

(i) Has a total of 15 or fewer employees who are covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, or who would be subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105 if their services were performed in the United States; and

(ii) Does not operate on the tracks in the United States of another railroad (or otherwise engage in joint operations in the United States with another railroad) except as necessary for purposes of interchange.

(3) Subpart I of this part does not apply to a railroad that has fewer than 400,000 total employee hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States. For purposes of this paragraph, the term "employees of the railroad" includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

(c) *Exceptions available to foreign railroads only.* (1) Subparts E, F and G of this part do not apply to train or dispatching service in the United States performed by an employee of a foreign railroad whose primary reporting point is outside the United States, on that portion of a rail line in the United States extending up to10 route miles from the point that the line crosses into the United States from Canada or Mexico.

(2) Unless otherwise provided by paragraph (b) of this section, subparts A, B, C, D, H, I, and J of this part apply to signal service in the United States of a foreign railroad performed by an employee of the foreign railroad if the employee's primary place of reporting is located outside the United States. Subparts E, F, and G of this part do not apply to signal service in the United States of a foreign railroad performed by an employee of the foreign railroad if the employee's primary place of reporting is located outside the United States.

(3) Unless otherwise excepted under paragraph (c)(1) of this section, on and after June 11, 2004, a foreign railroad shall conduct a pre-employment drug test on each of its final applicants for, and each of its employees seeking to transfer for the first time to, duties involving train or dispatching service in the United States while having his or her primary reporting point outside of the United States. The test shall be conducted in accordance with this part prior to the applicant or employee's performance of train or dispatching service in the United States.

■ 3. Section 219.4 is added to read as follows:

§ 219.4 Recognition of a foreign railroad's workplace testing program.

(a) *General.* A foreign railroad may petition the FRA Associate Administrator for Safety for recognition of a workplace testing program promulgated under the laws of its home country as a compatible alternative to the return-to-service requirements in subpart B of this part and the requirements of subparts E, F, and G of this part with respect to its employees whose primary reporting point is outside the United States but who enter the United States to perform train or dispatching service and with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such service.

(1) To be so considered, the petition must document that the foreign railroad's workplace testing program contains equivalents to subparts B, E, F, and G of this part:

(i) Pre-employment drug testing;

(ii) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems;

(iii) Random drug and alcohol testing;

(iv) Return-to-duty testing; and

(v) Testing procedures and safeguards reasonably comparable in effectiveness to all applicable provisions of the United States Department of Transportation Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(2) In approving a program under this section, the FRA Associate Administrator for Safety may impose conditions deemed necessary.

(b) *Alternative programs.* (1) Upon FRA's recognition of a foreign railroad's workplace testing program as compatible with the return-to-service requirements in subpart B and the requirements of subparts E, F, and G of this part, the foreign railroad must comply with either the enumerated provisions of part 219 or with the standards of the recognized program, and any imposed conditions, with respect to its employees whose primary reporting point is outside the United States and who perform train or dispatching service in the United States. The foreign railroad must also, with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such train or dispatching service in the United States, comply with either subpart E of

this part or the standards of the recognized program.

(2) The foreign railroad must comply with subparts A, B (other than the return-to-service provisions in § 219.104(d)), C, reasonable suspicion testing in subpart D, and subparts I and J. Drug or alcohol testing required by these subparts must be conducted in compliance with all applicable provisions of the United States Department of Transportation Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(c) *Petitions for recognition of a foreign railroad's workplace testing programs.* Each petition for recognition of a foreign workplace testing program shall contain:

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition;

(2) The requirements of the foreign railroad workplace testing program to be considered for recognition;

(3) Appropriate data or records, or both, for FRA to consider in determining whether the foreign railroad workplace testing program is equivalent to the minimum standards contained in this part and provides at least an equivalent level of safety.

(d) ***Federal Register*** *notice.* FRA will publish a notice in the **Federal Register** concerning each petition under paragraph (c) of this section that it receives.

(e) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraph (c) of this section, any person may comment on the petition.

(1) A comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Any comment on a petition should reference the FRA docket and notice numbers. A commenter may submit a comment and related material by only one of the following methods:

(i) *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

(ii) *Fax:* 1–202–493–2251.

(iii) *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

(iv) *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.

(v) *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

(3) The commenter shall certify that a copy of the comment was served on the petitioner. Note that all petitions received will be posted without change to *http://dms.dot.gov* including any personal information provided.

(f) *Disposition of petitions.* (1) If FRA finds that the petition complies with the requirements of this section and that the foreign railroad's workplace testing program is compatible with the minimum standards of this part, the petition will be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of any petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause.

(2) If FRA finds that the petition does not comply with the requirements of this section or that the foreign railroad's workplace testing program is not compatible with the minimum standards of this part, the petition will be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

(g) *Program recognition.* If its program has been recognized, the foreign railroad shall maintain a letter on file indicating that it has elected to extend specified elements of the recognized program to its operations in the United States. Once granted, program recognition remains valid so long as the program retains these elements and the foreign railroad complies with the program requirements.

■ 4. Section 219.5 is amended by revising the definition of *Covered employee* and by adding new definitions in alphabetical order to read as follows:

§ 219.5 Definitions.

* * * * *

Covered employee means a person who has been assigned to perform service in the United States subject to the hours of service laws (49 U.S.C. ch. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term "covered employee" includes a person applying to perform covered service in the United States.

Covered service means service in the United States that is subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

Cross-border operation means a rail operation that crosses into the United States from Canada or Mexico.

Domestic railroad means a railroad that is incorporated in the United States.

* * * * *

Foreign railroad means a railroad that is incorporated outside the United States.

* * * * *

General railroad system of transportation means the general railroad system of transportation in the United States.

* * * * *

State means a State of the United States of America or the District of Columbia.

* * * * *

United States means all of the States.

* * * * *

■ 5. Section 219.7 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 219.7 Waivers.

* * * * *

(d) *Special dispensation for employees performing train or dispatching service on existing cross-border operations.* If a foreign railroad requests a waiver not later than August 10, 2004, for an existing cross-border operation, subparts E, F, and G of this part shall not apply to train or dispatching service on that operation in the United States performed by an employee of a foreign railroad whose primary reporting point is outside the United States, until the railroad's waiver request is acted upon by FRA.

(e) *Waiver requests for employees performing train or dispatching service on new or expanded cross-border operations.* A foreign railroad seeking a waiver from subparts E, F, and G of this part for its employees performing train or dispatching service on a new cross-border operation that proceeds more than 10 route miles into the United States, or a formerly excepted cross-border operation that expands beyond the 10 mile limited haul exception in paragraph (d) of this section, must file

a petition not later than 90 days before commencing the subject operation. FRA will attempt to decide on such petitions within 90 days. If no action is taken on the petition within 90 days, the petition remains pending for decision and the cross-border crew assignments on the operation covered by the petition will be subject to subparts E, F, and G until FRA grants the petition should the petitioner commence the proposed operation.

■ 6. Section 219.11 is amended by adding a new paragraph (i) to read as follows:

§ 219.11 General conditions for chemical tests.

* * * * *

(i) A railroad required or authorized to conduct testing under this part may conduct all such testing in the United States. A foreign railroad required to conduct testing under this part may conduct such tests in its home country, provided that it otherwise complies with the requirements of this part.

■ 7. Section 219.800(a) is revised to read as follows:

§ 219.800 Annual reports.

(a) Each railroad that has a total of 400,000 or more employee hours (including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States) must submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol misuse prevention program. As used in this paragraph, the term "employees of the railroad" includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

* * * * *

Issued in Washington, DC, on March 26, 2004.

Allan Rutter,

Federal Railroad Administrator.

[**Note:** The following two tables will not appear in the Code of Federal Regulations.]

TRAIN OPERATIONS IN THE UNITED STATES BY CANADIAN-BASED EMPLOYEES OF FOREIGN RAILROADS

Destination in U.S.	Distance traveled in the U.S. per train	Operating railroad
	10 miles or less	
Eastport, ID	1.7 miles	Canadian Pacific Railway Company (CP).
Detroit, MI	1 mile to CSX Transportation, Inc. (CSX) Expressway Yard	CP.
Detroit, MI	9 miles to the tunnel to CSX Rougemere Yard	CP.
Detroit, MI	9 miles to the tunnel to CSX Rougemere Yard	Canadian National Railway Company (CN).
Detroit, MI	6 miles to the Norfolk Southern Railway Company (NS) Oakwood Yard.	CP.
Sault Ste. Marie, MI	2 miles	CN.
Noyes, MN	1 mile	CN.
Noyes, MN	3.2 miles	CP.
Ranier, MN	Less than 1 mile	CP.
Coutts, MT	unknown	CP.
Sweet Grass, MT	2 miles	CN.
Sweet Grass, MT	2 miles	CP.
Buffalo, NY	5 miles	CN.
Buffalo, NY	7 miles	CN.
Buffalo, NY	9 miles	CN.
Buffalo, NY	7.5 miles	CP.
East Alburg, NY	2 miles	CN.
Niagara Falls, NY	1 mile	CN.
Rouses Point, NY	1 mile	CN.
Rouses Point, NY	1.2 mile	CP.
Portal, ND	2.8 miles	CP.
Sumas, WA	¼ mile	CP.
	More than 10 miles	
Island Pond, VT	15 miles	St. Lawrence & Atlantic Railroad (Quebec), Inc.
Massena, NY	23 miles	CN.
St. Albans, VT	25 miles	CN.
Baudette, MN	44 miles	CN
Detroit, MI	54 miles to the GTW tunnel and East Yard in Detroit	CN.
Trenton, MI	74 miles via Detroit to tunnel and GTW Edison Yard (Trenton, MI)	CN.

TRAIN OPERATIONS IN THE UNITED STATES BY MEXICAN-BASED EMPLOYEES OF FOREIGN RAILROADS

Point of entry into U.S. and destination in U.S.	Distance traveled in the U.S. per train	Operating railroad
Nogales, AZ	Less than ¼ mile	Ferrocaril Mexicano (FXE).
Brownsville, TX	Less than 1 mile	Transportacion Ferroviaria Mexicana (TFM).
Eagle Pass, TX	Less than 1 mile	FXE.
El Paso, TX	Less than ¼ mile	FXE.

TRAIN OPERATIONS IN THE UNITED STATES BY MEXICAN-BASED EMPLOYEES OF FOREIGN RAILROADS—Continued

Point of entry into U.S. and destination in U.S.	Distance traveled in the U.S. per train	Operating railroad
Laredo, TX	Less than 1 mile	TFM.
Presidio, TX	Less than 1 mile	FXE.

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7 CFR Part 1033

Milk in the Mideast Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–361–A35; DA–01–04]

Milk in the Mideast Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on July 26, 2002, concerning pooling provisions of the Mideast Federal milk order. This document also sets forth the final decision of the Department and is subject to approval by producers. Specifically, this final decision would adopt amendments that would continue to amend the *Pool plant* provisions which: eliminate automatic pool plant status for the 6-month period of March through August, eliminate milk shipments to a distributing plant regulated by another Federal milk order as pool-qualifying shipments under the Mideast order, eliminate the "split plant" feature, eliminate including diversions made by a pool supply plant located outside the marketing area to a second pool plant, and establish a "net shipments" provision. For the *Producer milk* provisions, this final decision would continue to adopt amendments which: seasonally adjust and increase the number of days that the milk of a producer needs to be delivered to a pool plant and establishes year-round diversion limits, adjusted seasonally, for producer milk for handlers pooled under the Mideast order.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, 1400 Independence Avenue, SW., STOP 0231, Washington, DC 20090–6456, (202) 690–1366, e-mail address *gino.tosi@usda.gov*.

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.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the 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.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered 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.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

10,756 of the 11,133 dairy farmers, or 97 percent, whose milk was pooled under the Mideast order at the time of the hearing (October 2001) would meet the definition of small businesses. On the processing side, approximately 27 of the 58 milk plants associated with the Mideast order during October 2001 would qualify as small businesses, constituting 47 percent of the total.

Based on these criteria, the vast majority of the producers and handlers would be considered small businesses. The adoption of the amended pooling standards serve to revise and establish criteria that ensure the pooling of producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid milk needs of the Mideast milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market, and determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses. Therefore, the Department has determined that proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information, which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued September 21, 2001; published September 28, 2001 (66 FR 49571).

Tentative Final Decision: Issued June 4, 2002; published June 11, 2002 (67 FR 39871).

Interim Final Rule: Issued July 22, 2002; published July 26, 2002 (67 FR 48743).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Mideast marketing area. The hearing was held, 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), at Wadsworth, Ohio, on October 23–24, 2001, pursuant to a notice of hearing issued September 21, 2001, and published September 28, 2001 (66 FR 49571).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on June 4, 2002, issued a Tentative Final Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, conclusions, and rulings of the tentative final decision are hereby approved and adopted and are set forth herein. The material issues on the record of the hearing relate to:

1. Pooling standards of the marketing order.

a. Standards for pool plants.

b. Standards applicable for producer milk.

2. Rate of partial payments to producers by handlers.

3. Conforming changes to the order.

4. Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards of the Order.

a. Standards for Pool Plants

Distributing Plants. A proposal seeking to increase one of the distributing plant pooling standards and providing for the seasonal adjustment of the standard was not adopted in the tentative final decision and is not adopted in this final decision. Published in the hearing notice as Proposal 1, this proposal specifically sought to raise the minimum amount of the total quantity of fluid milk products physically received by a distributing plant and disposed of as route disposition, or transferred in the form of packaged fluid milk products, by 5 percentage points (from 30 to 35 percent) for the months of May through July, and by 10 percentage points (from 30 to 40 percent) for the months of August through April.

Supply Plants. Several amendments to the supply plant pooling provisions of the Mideast order are adopted on a permanent basis by this final decision. According to the tentative decision, certain inadequacies of the supply plant pooling provisions, together with unneeded features contained in the current provision, are resulting in disorderly marketing conditions and unwarranted erosion of the blend price received by those producers who are providing milk to satisfy the fluid milk demands of the Mideast marketing area. Specifically, the following amendments to the supply plant pooling standards, previously adopted on an interim basis, are adopted on a permanent basis by this final decision: (1) Eliminate automatic pool plant status during the 6-month period of March through August for certain supply plants; (2) eliminate the volume of milk shipments made by supply plants to distributing plants regulated by another Federal milk marketing order as a qualifying shipment for the purpose of meeting the Mideast supply plant shipping standard; (3) eliminate the feature of providing for a "split plant"; (4) exclude from receipts diversions made by a pool plant to a second pool plant from the calculation of the diversion limitation established for pool plants; and (5) provide a "net shipment" standard for supply plant deliveries to the order's distributing plants for the purpose of meeting the Mideast supply plant shipping standard. These amendments to the pool plant pooling standards were largely represented by, and in testimony related to, Proposal 2 and Proposal 5.

A proposal, Proposal 8, that would, in part, establish a 6-month re-pooling delay whenever a pool supply plant elects not to meet the supply plant pooling standards for the month, was not adopted in the interim rule and is not adopted in this final decision. However, this final decision adopts on a permanent basis that portion of the proposal that would have August as the beginning month for meeting the pool supply plant shipping standard. The adoption of this feature of Proposal 8 makes it identical to the adoption of the same feature in Proposal 2.

Four proposals seeking to modify the pooling standards for pool plants of the Mideast order were considered in this proceeding. The record evidence makes clear that the proponents of these four proposals, described and discussed further below, are of the opinion that the current pooling provisions of the order are not accurately identifying those producers and the milk of those producers consistently serving the fluid needs of the marketing area. Part of the pooling standards of the Mideast order are contained in the *Pool plant* provision of the order. Published in the hearing notice as Proposals 1, 2, 5, and 8, these proposals offered various changes to specific components of the current pooling standards for supply plants and distributing plants.

Proposals 1, 2, and 5 were proposed by Dairy Farmers of America (DFA), Continental Farms Cooperative, Inc., Michigan Milk Producers, Inc., and Prairie Farms Cooperative, Inc. Hereinafter, this decision will refer collectively to these proponents as the "Cooperatives." These organizations are cooperatives owned by dairy-farmer members that supply a significant portion of the milk needs of the Mideast marketing area and whose milk is pooled on the Mideast order.

Proposal 8 was proposed by Dean Dairy Products Company, Schneider's Dairy Inc., Turner Dairy Farms, Inc., Marburger Farm Dairy, Inc., Fike's Dairy, Inc., United Dairy, Inc., Carl Colteryahn Dairy, Inc., Smith Dairy Products Company, Superior Dairy, Goshen Dairy, and Reiter Dairy. Hereinafter, this decision will refer collectively to these organizations as the "Handlers." These organizations receive milk from dairy farmers and cooperatives and distribute fluid milk and other dairy products within the marketing area. They are regulated under the terms of the order.

Proposal 1, offered by the Cooperatives, seeks to amend the pool plant definition by increasing the minimum amount of milk that would, in part, cause a distributing plant to become pooled on the Mideast order. Proposal 1 would provide that 35 percent or more of the total quantity of fluid milk products physically received at a distributing plant be disposed of as route disposition or transferred in the form of packaged fluid milk products to other distributing plants for the months of May through July. Proposal 1 would also increase this same minimum standard to 40 percent for the months of August through April. The order currently provides a minimum standard of 30 percent and, unlike the proposal, makes no seasonal adjustments. Proposal 1 does not seek to change this provision's current exclusion of

concentrated milk received from another plant for other than Class I use.

Proposal 2, offered by the Cooperatives, seeks to amend three features of the supply plant provision of the order as follows: Change certain details that currently provide for the automatic pooling of supply plants; not consider milk shipments from a Mideast supply plant to a distributing plant regulated by another Federal milk order as a qualifying shipment in meeting the performance standards for becoming a pool plant on the Mideast order; and count on a "net receipts" basis all supply plant shipments, including milk that is transferred or diverted and physically received by distributing plants regulated by the order. The "net receipts" criteria would exclude from a supply plant's qualifying shipment any transfers or diversions of bulk fluid milk products made by a distributing plant receiving a qualifying shipment. In this regard, the concept of a "net receipt" is similar to what is also commonly referred to as a "net shipment." The difference between the two terms is that a "net receipt," as presented in this proceeding, applies to distributing plants receiving milk. The term "net shipment," as referred to in the record of this proceeding, applies to supply plants shipping milk to distributing plants. The intended use of these terms is clear, and herein after, this tentative final decision will refer to this feature of Proposal 2 as "net shipments" because the proposed change would amend how the order applies pooling performance standards to supply plants shipping milk to distributing plants. The Mideast order currently has no "net shipment" provision.

The order currently provides automatic pool plant status during the months of March through August, provided the supply plant met the applicable performance standards for pool supply plants during each of the immediately preceding months of September through February. Additionally, the order currently considers shipments of milk to a distributing plant regulated by another Federal order as qualifying shipments in meeting the performance standards of the Mideast order.

Proposal 8, offered by the Handlers, seeks to change the months in which the pool plant standard is applicable for supply plant shipments to distributing plants from September through February to August through February. In this regard, Proposal 8 is similar to Proposal 2. However, Proposal 8 also seeks to provide that in the event a supply plant opts not to be a pool plant during the month, the plant will not be eligible to regain pool plant status for a period of six months.

Proposal 5, offered by the Cooperatives, seeks to eliminate what is often referred to as the "split plant" provision. This provision provides for designating a portion of a pool plant as a nonpool plant, provided that the nonpool portion of the plant is physically separate and operated separately from the regulated or pool side of the plant.

A DFA witness, representing the Cooperatives, testified that two primary benefits of the Federal order program are allowing producers to benefit from the orderly marketing of milk and the marketwide distribution of revenue that results mostly from Class I milk sales. Orderly marketing influences milk to move to the highest value use when needed, and for milk to clear the market when not used in Class I, said the Cooperatives. The witness noted that marketwide pooling allows qualified producers to equitably share in the returns from the market and in a manner that provides incentives for supplying the market in the most efficient manner. The witness insisted that the pooling of milk which does not service the Class I market is inconsistent with Federal order policy.

The Cooperatives' witness was of the opinion that the new Class I pricing structure, implemented under Federal order reform, together with the pooling provisions found in each order, resulted in changes in the marketplace for milk pooled on Federal milk orders, including the Mideast order. The link between performance and pooling, said the witness, was altered by these reforms and needs review. The Cooperatives noted that many entities, including DFA, moved quickly to take advantage of these changes in order rules. The witness indicated that as a participant in a competitive dairy economy, one must make pooling decisions that aim to increase returns or risk their competitive position.

The Cooperatives' witness was of the opinion that the principles underlying the economic models that formulated the Class I price surface established during Federal order reform assumed that supplies of milk associated with a demand point were aggregated into a single market and were actually shipped from the counties that were located in the population centers where demand points were fixed. There were no provisions in the mathematical equations for those models allowing for milk to be associated with a market if it did not actually ship to or supply the market, said the witness. The current pooling practices, say the Cooperatives, clearly exploit the price surface, and if we are to retain it, pooling standards need to be restructured to parallel the model.

Pooling standards are universal in their intention, stressed the Cooperatives, requiring a measure of commitment to a market marked by the ability and willingness to supply the Class I fluid needs of that market. The witness noted that pooling standards are individualized in their application and each market requires standards that work for the conditions that apply in that individual market. The witness quoted the Final Decision of milk order reform: "The pooling provisions for the consolidated orders provide a reasonable balance between encouraging handlers to supply milk for fluid use and ensuring orderly marketing by providing a reasonable means for producers with a common marketing area to establish an association within the fluid market."

The Cooperatives' witness also relied on, and drew heavily from, the order reform Final Decision detailing the primary criteria used to form the boundaries of the consolidated orders, including the consolidated Mideast order. The Cooperatives' witness emphasized the first and most important criteria of Federal order consolidation as the area of overlapping route distribution of Class I milk. Also taken from the Final Decision, the Cooperatives' witness noted that, "The pooling of milk produced within the same procurement area under the same order facilitates the uniform pricing of producer milk," concluding that milk procurement areas were also considered as a criteria in establishing the consolidated marketing area boundaries. The witness also noted other criteria used, including the number of handlers within a market, naturally occurring boundaries, cooperative association service areas, features or regulatory provisions common to existing orders, and milk utilization in common dairy products.

The Cooperatives' witness continued to rely on, and drew heavily from, the Final Decision of milk order reform by relating the decision's geographical description of the Mideast order and how the aforementioned criteria were applied to form the boundaries of the Mideast marketing area. In this regard, the witness indicated that the consolidated Mideast marketing area was the result of combining the pre-reform orders of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan, and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk

order, and most of the then unregulated counties in Michigan, Indiana, and Ohio. The witness stressed that the order reform Final Decision concluded that nearly all milk produced within the area would be pooled on the consolidated Mideast order.

The Cooperatives' witness was of the opinion that "open pooling" is not appropriate for the Mideast order. When milk shares in a pool's proceeds but does not service the Class I needs of the market or help to balance the market, the witness indicated, there is cause for concern. The witness emphasized that the cost of providing service to the Class I market always falls back on the local milk supply. To allow the pooling of milk which does not provide such services to the Class I needs of the market only lowers returns of those dairy farmers whose milk is actually supplying the local Class I market, concluded the witness.

The Cooperatives' witness presented evidence which reviewed the various Federal order performance standards, concluding that while all the standards differ, they nevertheless address the importance of performance to the market by serving the Class I needs of the market as a condition for milk to be pooled and receive the order's blend price.

According to the Cooperatives' witness, a new phenomenon is occurring in the area of performance standards. Several entities have solicited milk located in the marketing area in order to pool milk located outside of the marketing area, said the witness. Their deliveries of this local supply to distributing plants, said the Cooperatives' witness, provide the opportunity to pool much more milk located outside the marketing area. This practice, the Cooperatives' witness said, does not bring any new milk to be actually received at pool plants, and the milk located outside of the marketing area is not available and does not demonstrate any consistent or actual service to meeting the fluid milk needs of the market.

This practice of pooling milk located far outside the Mideast marketing area, said the Cooperatives' witness, is accomplished through a feature of current pool plant performance standards which allows a supply plant to use direct deliveries from farms to satisfy up to 90 percent of its performance standard by diversions. This standard, said the witness, is a good standard for milk located inside the marketing area, but is not an appropriate standard for milk supplies located outside of the area.

The use of direct deliveries from inside the marketing area to qualify supply plants and milk supplies located far outside the marketing area should be greatly limited if allowed at all, said the Cooperatives' witness. The witness stated that allowing direct shipped milk from the farm to qualify a supply plant was intended to provide economic efficiency in moving milk, for example, thereby saving the reload in and pump-over costs for the sole purpose of meeting a pooling standard. However, this feature is now being used to qualify milk supplies physically located far outside of the Mideast. This, emphasized the witness, runs counter to the initial intent of the provision and has resulted in disorderly marketing conditions.

The Cooperatives' witness provided evidence indicating that the Mideast order has the second largest volume of Class I use in the Federal Order system. According to the witness, the performance standards for the Mideast order should assure meeting this demand by specifying a performance standard that results in actual serving of the market's Class I needs as a condition to receive the order's blend price.

Along this theme, the Cooperatives' witness relied on data showing that the volume of Class I and II milk used in the Mideast changed little in the (then) 21 months since implementation of Federal order reform. However, noted the witness, the amount of reserve milk, represented by Class III and IV use, had grown dramatically. The witness concluded from the data that it is difficult to justify the need to have pooling standards which have allowed pooling some 250 percent of additional milk on the Mideast order when that milk does not service the Class I needs of the market. The witness indicated that additional milk pooled on the order was produced in states far from the marketing area, including the States of Illinois, Iowa, Kansas, Minnesota, New York, North Dakota, South Dakota, and Wisconsin.

The witness also faulted the Mideast order's lack of having a performance standard for pool supply plants during the months of March through August as another way to pool milk on the Mideast order from other marketing areas that have lower blend prices. The evidence for this observation, said the Cooperatives' witness, is exhibited by data indicating that producers located in Wisconsin and South Dakota began pooling large volumes of their milk beginning in March 2000. The Cooperatives' witness, relying on the same statistics, observed that the volume of milk pooled on the order during this 21-month time period, but produced on farms located far outside the marketing area, increased by 395.66 percent, or by 430,222,762 pounds.

The tentative final decision inadvertently listed comments filed in brief by Land O' Lakes (LOL) as testimony given at the hearing in, regards to Proposal 1. This final decision clarifies that LOL was in strong support of "performance oriented" pooling standards, along with the adoption of Proposal 1. This support was articulated *in their post-hearing brief,* and not in testimony given at the hearing.

Additional support for Proposals 1 and 2 was offered by Prairie Farms Dairy, Inc. (Prairie Farms). Prairie Farms operates three pool distributing plants regulated by the Mideast order. Their milk is supplied by their 176 producer members located in Indiana, Michigan, and Ohio.

The Prairie Farms witness stated that certain provisions of the Mideast order have made it too easy to pool milk without the milk actually servicing the Class I needs of the market. Federal orders should not be written so restrictively that pooling any milk supplies beyond normal basic Class I needs is impossible, said the Prairie Farms witness. However, continued the witness, orders should not be written so liberally that pooling milk becomes an end unto itself rather than a standard that assures milk is actually serving the fluid needs of the market. As the Mideast milk order regulations are currently written, added the witness, the pooling of milk far beyond the day-to-day needs of the market can and does occur.

According to the Prairie Farms witness, Class I use by Mideast order distributing plants has been relatively stable since implementation of order reform, but the amount of Class III and Class IV milk pooled on the order has increased markedly. The witness indicated the additional quantities of milk pooled on the order only lower the returns to its members and others who actually do serve the Class I needs of the market every day.

A witness from Foremost Farms who appeared on behalf of the Mideast Milk Marketing Agency (MEMA), testified in support of Proposals 1 and 2. The MEMA is a new organization resulting from the union of three previous milk marketing agencies that served milk processors by arranging for milk supplies in the pre-reform milk orders consolidated to form the current Mideast milk marketing area. The MEMA witness indicated that the needs of their customers and variations in

production cause them to have an occasional need to secure additional volumes of milk, citing the opening of schools as an example of when additional milk supplies are needed. The witness also indicated that the supply and demand situation in spring months shows increased production and decreased Class I demands that generally begin in late April and continue through mid-July. During this time of the year, the MEMA witness indicated, they assume responsibility to sell milk not required by their customers. Most often these sales are to manufacturing plants located in the marketing area and to plants located as far away as Wisconsin and Minnesota, the witness said. Often, noted the witness, such sales are below the minimum class prices of the order and the costs of disposing of surplus milk are borne by MEMA members.

The MEMA witness noted that sufficient raw milk is secured through its member cooperatives and other suppliers within the marketing area to service its customers on a year-round basis, with the fall months being the only exception. In light of this supply and demand situation, the witness could find no reason why the Mideast marketing order should provide for the pooling of two to three times the milk supply actually needed to serve the Class I needs of the market.

A witness appearing on behalf of the Michigan Milk Producers Association (MMPA) also testified in support of Proposals 1 and 2. MMPA is a dairy farmer owned-and-operated cooperative engaged exclusively in the marketing of milk and dairy products on behalf of 2,600 of their member dairy farmers in Michigan, Ohio, northern Indiana, and northeast Wisconsin.

The MMPA witness testified that each of the five predecessor orders merged into the consolidated Mideast order had more demanding pool plant qualification standards. The witness stressed that pooling provisions are not intended to create barriers to pooling. However, the witness indicated, it is reasonable to expect that a market with a fluid demand as large as the Mideast warrants a higher level of performance than in markets with lower Class I use.

The MMPA witness stated that adequate supplies of milk exist within the order to satisfy the requirements of at least the Michigan portion of the marketing area. The witness noted that during the past 24 months, Class I sales in Michigan had declined 7 percent. Also, the witness noted that milk production in Michigan has been increasing and indicated that local supplies have increased 7 percent since 1998. The MMPA witness was of the opinion that with declining fluid sales and increasing milk production, pooling standards that result in pooling additional quantities of milk supplies cannot be justified.

The MMPA witness noted that nearly all of the increased volume of milk pooled on the Mideast order since order reform was used at Class III or IV manufacturing plants, which the witness concluded has only served to lower producer pay prices. In their opinion, this occurred because the current performance standards required for pool qualification are too lenient. These performance standards have resulted in an inequitable distribution of proceeds from this market's pool, stressed MMPA, while the proceeds from the fluid market were improperly shared with producers who did not service the Class I needs of the market. The MMPA witness was of the strong opinion that this situation should be treated as an emergency by the Department and a Recommended Decision should therefore be omitted.

In addition to supporting the testimony given by the DFA witness on behalf of the Cooperatives regarding Proposal 2, the MMPA witness offered a modification to Proposal 2. The MMPA modification would specifically limit the practice of using pooled milk located inside of the marketing area to qualify milk of a plant located outside of the marketing area for pooling its milk receipts on the order. According to the witness, a one-time delivery of the milk of a producer located outside the marketing area qualifies a "distant" producer as a producer under the Mideast order and, in turn, qualifies the milk of a "distant" producer to thereafter be diverted to nonpool plants. Most often, stressed the witness, these plants are also located at a great distance from the marketing area and this milk need never meet the order's performance standards. The MMPA witness concluded that the pooling standards should not allow such milk to be part of the Mideast pool. The witness stressed that eliminating the ability to pool milk in this manner would not affect the efficiencies afforded by direct-shipped milk from farms located within the marketing area. The MMPA witness added it would also prohibit an abuse of pooling principles that never intended to qualify milk for pooling under the order without an actual relationship to the order's supply plants in supplying the Class I needs of the market.

A witness from Dean Foods (Dean) testified in support of a portion of Proposal 2. They supported eliminating the feature of the current pool supply provision which does not establish a performance standard during the months of March through August. They were also in agreement with other witnesses that the Department should treat this proceeding on an emergency basis. The Dean witness reasoned that the economic damage to the producers whose milk actually serves the Class I needs of the market should be resolved as soon as possible.

A witness appeared on behalf of Suiza Foods (Suiza) in general support of Proposals 1 and 2. The witness reasoned that once performance becomes a monthly requirement to pool milk, both processors and producers will be better able to plan deliveries based upon the need for milk during the fall months when milk supplies are generally less plentiful. The witness also stated that August should be the initial month when higher performance standards should apply because of increased demand caused by the opening of schools occurring at the same time as generally declining overall milk supplies.

The Suiza witness also was of the opinion that the adoption of a net shipment provision for supply plants should also be applicable for plants operated by a cooperative association—another type of pool plant provided for in the Mideast order. In their post-hearing brief, Suiza emphasized that in the interest of fairness and equitable regulatory treatment, providing a net shipment provision applicable to this type of pool plant would be appropriate. According to Suiza, not providing for a net shipment feature for supply plants operated by a cooperative association would merely change the incentives for cooperatives that operate supply plants to become a pool plant under this provision applicable for cooperative associations. Although not a part of the direct testimony by the proponents of Proposal 2, or its supporters, all parties agreed that a net shipment provision should also be provided for plants operated by cooperative associations.

A witness representing Scioto County Cooperative Milk Producers Association (Scioto) testified in support of Proposals 1 and 2. Scioto has dairy farmer members in southern Ohio and northern Kentucky whose milk is pooled on the Mideast order.

The Scioto witness noted that during the period of 2000–2001, the amount of producer milk pooled on the Mideast market increased by nearly 42 percent. Virtually all of this increase can be attributed to producers in States not included as part of the Mideast marketing area, while the amount of the

Class I use in the Mideast order remained relatively constant, maintained the witness. In light of the increased amount of milk pooled on the Mideast order, Scioto indicated their support for proposals which would establish higher pooling standards. Scioto indicated this would also ensure that the revenue generated by Class I sales are properly shared with those producers and pool plants which actually perform service to the Class I market.

The Scioto witness also indicated support for the addition of August as a month when additional shipments should be made to distributing plants. However, Scioto opposed establishing performance standards for the remaining months which currently have none. The witness concurred that the hot days of August have a significant impact on milk production and noted more schools are starting as early as middle August. Scioto said that this combined effect makes it more difficult to meet the fluid needs of the market and concluded that supply plant standards should be established to assure those needs.

Opposition to a part of Proposal 2 was offered by the Scioto witness. The witness stated that a provision for specifying "net shipments" for supply plant deliveries to pool distributing plants should not be adopted. The witness was of the opinion that performance standards should only require supply plants to ship milk when needed by the market and that performance standards should provide the flexibility to retain milk at local supply plants during the flush season when milk supplies are more plentiful.

Opposition to a portion of Proposal 2 by LOL was provided in their post-hearing brief. LOL indicated they do not support establishing a "net shipments" provision because it would effectively raise the supply plant shipping standards above the indicated pool supply plant performance standard. The LOL brief indicated that virtually all distributing plants have some transfers or diversions resulting from decreased demand on weekends and holidays for Class I milk. According to LOL, this should be considered so that supply plants are not penalized by being viewed as not performing in supplying the fluid market during such situations.

Proposal 8, offered by the Handlers, seeks, in part, to change the months during which pool supply plant shipping standards would be applicable—to begin in August and continue through to February. Proposal 8 also seeks to establish a 6-month re-pooling delay whenever a pool supply plant elects to not meet the pool plant standards for the month. According to the Handlers, a 6-month delay in being able to return to the order as a pool plant would eliminate the ability of handlers to participate in the pool only when it was advantageous and to not participate in the pool when it was not.

A witness from Dean Foods, appearing on behalf of the Handlers, testified that the current pool supply plant provisions permitting handlers to pool and de-pool milk causes market instability. The witness noted the occurrence of a class-price inversion (when the blend price is lower than the Class III price) as an example of when supply plants have the economic incentive to opt out of pooling their milk supplies. Nevertheless, the Dean witness was of the opinion that a 6-month re-pooling delay would serve to assure consistent and reliable association of milk with the marketing area and in meeting the market's Class I demands.

Opposition to Proposal 8 was raised by DFA. DFA was of the opinion that class-price inversions are a function of the order providing advanced pricing to handlers for Class I and II milk. The witness indicated advanced pricing is a needed and good provision of Federal milk marketing orders. However, if the Class I sector of the market were not provided advanced pricing, reasoned the DFA witness, depooling might never occur. Nevertheless, noted the DFA witness, there should be no reason why Class III and IV handlers should ever have to equalize class-use values with the blend price by paying this difference into the pool for the benefit of Class I handlers simply because of price inversion. Imposing a 6-month re-pooling delay may cause Class III and IV handlers to pay into the pool only to retain pool status, but doing so can result in causing financial damage to the reserve and balancing sectors of the market, maintained the DFA witness.

Proposal 5, offered by the Cooperatives, seeks to eliminate what is commonly referred to as the "split plant" provision from the Mideast order. A split plant designates a portion of the plant as the "pool" side and another portion of the plant as the "nonpool" side.

According to the Cooperatives, this provision was initially used to accommodate a plant's use of both Grade A and Grade B milk while providing for diversion from the pool plant side of the plant to the nonpool side for use in manufactured products. This designation was provided, said the witness, for orders with lower Class I differentials and low Class I use. However, the witness noted that its purpose seems to have been broadened to also afford a supply plant to gain economic efficiencies by avoiding incurring costs for transporting milk solely to meet pool standards.

The Cooperatives' witness argued that the split plant provision continues to have validity in low Class I use and low Class I differential orders, but does not have a legitimate role to play in a higher differential, higher utilization order like the Mideast. This provision, said the witness, serves no purpose for the Mideast order, stressing that none of the Mideast's predecessor orders provided for it and that no plant located within the Mideast marketing area makes use of the provision. Rather, it has only become a tool to pool distant milk on the market which is not serving the Class I milk needs of the market, maintained the witness.

Citing data provided by the Mideast Market Administrator, the Cooperatives observed that increasing volumes of milk pooled from distant areas began in June 2000. The amount of distant milk pooled then was about 16 million pounds and grew dramatically to some 480.5 million pounds by June 2001. The total pounds of milk pooled through split plants ranged from 69 to 179 million pounds for the months of January through August 2001, noted the witness. The witness indicated that this statistic represents a significant percentage of the total milk pooled on the order. Diversions of distant milk by pool distributing plants, added the witness, were similarly significant. However, the witness stressed that actual physical deliveries used to qualify the additional volumes of milk pooled through split plants were as little as 50,000 pounds. These statistics, said the Cooperatives' witness, clearly prove that the current pooling standards are allowing milk to be pooled without demonstrating reasonable relationship, or providing actual service, to the market's fluid needs. According to the witness, using split plants to pool milk in this way can only be viewed as an abuse of an accommodation not intended when originally adopted for the Mideast order.

Scenarios were presented by the Cooperatives' witness as examples for illustrating the harm being caused by the split plant provision. One example depicted how milk currently being pooled on the order, but located far from the marketing area, would not likely seek to be on the Mideast order without a split plant provision. According to the Cooperatives' witness, this is because the cost of transportation would exceed the gain of receiving the Mideast's blend

price. Another example demonstrated the negative impacts of split plants to the Mideast market because of the lack of diversion limits.

According to the Cooperatives' witness, the pool side of the split plant is being used to establish an "outpost" that serves no other purpose than to qualify milk for pooling from other marketing areas where blend prices are lower. By meeting the minimal one-day delivery standard for becoming a producer on the order, the milk of producers located far from the marketing area, but whose milk is actually delivered to an "outpost" pool plant nearer their farms, may qualify milk for pooling on the Mideast order. Further, stressed the witness, the milk of these producers can thereafter be diverted to manufacturing plants nearer their farms without ever again being delivered to pool plants located in marketing area. This milk can hardly be viewed as servicing the market, the Cooperatives' witness asserted. Additionally, concluded the witness, the daily, weekly, and seasonal supplying of fluid milk, and meeting the balancing needs of the market are consistently being borne by the local producers who are only having their blend price diluted from the pooling of milk that does not consistently provide these services.

A witness representing Suiza testified in support of Proposal 5. This witness stressed that the split plant provision did not exist in all marketing orders prior to order reform and is not used today for the purpose for which it was originally intended. The Suiza witness concluded that the split plant provision is clearly not needed nor justifiable under the Mideast order.

MMPA also testified in support of Proposal 5. The witness similarly observed that pooling milk through the split plant provision only serves to depress prices for producers who actually supply the market. The witness maintained that a principle responsibility of the Federal milk order program is to preserve the proceeds from the fluid market for those producers who demonstrate an ability and willingness to serve that market. Since the split plant provision does not serve this end, concluded the witness, it should be eliminated from the order.

The witness representing Scioto expressed doubt that adopting Proposal 5 would solve the pooling problem presented by split plants. In this regard, the witness proposed a limit on the maximum amount of producer milk that could be associated with a pool supply plant during the months when no performance standard is applicable. The witness offered that 110 percent of the daily average producer receipts, pooled during the months specifying a performance standard, is a reasonable alternative performance standard for such months. According to the Scioto witness, amending the split plant feature in this way would recognize normally higher production levels during the spring and summer months as compared to generally lower production levels during the fall and winter months. It would still allow supply plants from outside the marketing area to participate in the Class I returns of the market for the entire year, noted the witness, but would prevent plants from abusing the market by only pooling milk during the spring and summer months with milk that does not service the market.

Post-hearing briefs submitted by LOL expressed opposition to the adoption of Proposal 5. The split plant provision, indicated LOL, has historically recognized commingled Grade A and Grade B milk in procurement areas and has provided a way for Grade A milk to be diverted to the non-pool plant for manufacturing uses. Removing this pooling feature, concluded LOL in their brief, would result in the need for full plant accountability, including determining milk shrinkage and overage, in the manufacturing (nonpool) portion of a plant. LOL is of the opinion that this would be very burdensome and would result in the need for costly record keeping by both handlers and the Market Administrator's office, while providing no benefit to producers or handlers.

As specified in the tentative final decision, the record contains testimony clearly indicating general support for increasing and seasonally adjusting the distributing plant pooling standard offered by Proposal 1. The proposal would increase minimum standards for triggering pool plant status for a distributing plant and therefore become regulated under the terms of the Mideast milk marketing order. Beyond statements indicating general support for the adoption of Proposal 1, the record contains little, if any, evidence that indicates why this pooling standard should be increased. To the extent that excess milk is being pooled on the order through distributing plants, this decision attributes the pooling of excess milk to inadequacies in other pooling standards of the order. Specifically, the record reveals that the lack of diversion limits during certain times of the year provides the ability for distributing plants to pool milk on the Mideast order (the issue of diversions and diversion limits are discussed later in this decision) far beyond the legitimate reserve supply of milk for the plant. Therefore, in the absence of other evidence, and as specified in the tentative final decision, the record does not support a finding that distributing plants should meet a higher standard by increasing the amount of milk receipts disposed of as route disposition, or transferred in the form of packaged fluid milk products, as a condition for designation as a pool plant.

The record of this proceeding strongly supports the conclusion of the tentative final decision that the various features of the Mideast order's supply plant pooling standards were either inadequate or unnecessary. Because the order currently contains inadequate pooling standards for supply plants, much more milk is able to be pooled on the order than can be considered properly associated with the Mideast market. This milk does not demonstrate a reasonable level of performance necessary to conclude that it provides a regular and reliable service in satisfying the Class I milk demands of the Mideast marketing area. Therefore such milk should not be pooled on the order.

The pooling standards of all milk marketing orders, including the Mideast order, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market for sharing in the Class I proceeds. Pooling standards of the Mideast order are represented in the *Pool Plant*, *Producer*, and the *Producer milk* definitions of the order. Taken as a whole, these definitions set forth the criteria for pooling. The pooling standards for the Mideast order are based on performance, specifying standards that, if met, qualify a producer, the milk of a producer, or a plant to enjoy the benefits arising from the classified pricing of milk.

Pooling standards that are performance based provide the only viable method for determining those eligible to share in the marketwide pool. It is primarily the Class I use of milk that adds additional revenue, and it is reasonable to expect that only those producers who consistently supply the market's fluid needs should be the ones to share in the distribution of pool proceeds. Pool plant standards, specifically standards that provide for the pooling of milk through supply plants, also need to be reflective of the supply and demand conditions of the marketing area. This is important because pooling this milk ensures the receipt of the market's blend price.

Similarly, supply plant pooling standards should provide for those features and accommodations that are reflective of the needs of proprietary handlers and cooperatives in providing the market with milk and dairy products. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that is not serving the fluid needs of the market, it is appropriate to re-examine the need for continuing to provide for that feature as a necessary component of the pooling standards of the order. One of the objectives of pooling standards is to ensure an adequate supply of fluid milk for the marketing area. A feature which results in pooling milk on the order that does not provide such service should be considered as unnecessary for that marketing area. Similarly, another objective of pooling standards is for the proper identification of the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the lowering of returns to those producers whose milk is serving the fluid market.

As noted in the tentative final decision, the record provides sufficient evidence to conclude that several features of the supply plant definition are not being used for the reasons they were originally intended. Other shortcomings of the Mideast order's pooling standards, specifically as they relate to producer milk, also contribute to inappropriately pooling the milk of producers who are not a legitimate part of the Mideast marketing area. Here too, the impact is an unwarranted association of milk on the order. Milk is classed at lower prices—a decrease in the relative Class I utilization of the market—which results in a lower blend price to those producers who do supply the Class I needs of the market.

The tentative final decision and this final decision find that the milk of some producers is benefitting from the blend price of the Mideast order while not reasonably demonstrating a service to the Class I needs of the Mideast marketing area. This finding is attributable to faulty pooling standards. The pooling provisions provided in the Final Decision of milk order reform, implemented on January 1, 2000, established pooling standards and pooling features that envisioned the needs of the market participants resulting from the consolidation of those pre-reform orders. The reform Final Decision, as it related to the Mideast marketing area, did not intend or envision that the pooling standards adopted would result in the sharing of Class I revenues with those persons, or the milk of those persons, who do not provide a reasonable measure of service in providing the Class I needs of the market. The reform Final Decision examined and discussed the various pooling standards and features of the pre-reform orders for their applicability in a new, larger, consolidated milk order. The pooling standards and features adopted for the Mideast order were designed to reflect and retain those standards and features of the pre-reform orders so as to not cause a significant change, and indeed to provide for, the continued pooling of milk that had been pooled by those market participants. As noted in the tentative final decision, the record of this proceeding reveals that the combination of the standards and features adopted for pool plants, especially those that apply to pool supply plants, are not the appropriate or reasonable standards for a much larger milk marketing area.

Accordingly, the tentative final decision and this final decision find basic agreement in the evidence presented by the proponents of Proposal 2 and Proposal 5, and those entities who expressed their support for adopting these proposals, that certain pool plant provisions should be eliminated from the Mideast order. These include: (1) The provision of the order that currently provides for automatic pool plant status during the 6-month period of March through August for certain pool supply plants; (2) the provision that currently counts supply plant shipments to distributing plants regulated by another Federal milk marketing order as a qualifying shipment for meeting supply plant performance standards of the Mideast order; and (3) the provision of the order that provides for "split plant" recognition.

Supply plant deliveries of milk to a distributing plant regulated by another Federal milk marketing order should no longer be considered as a qualifying shipment for meeting the supply plant performance standards of the Mideast order. While such milk is providing some servicing of the fluid needs of another marketing area, such milk provides no service to the Class I needs of the Mideast order. Pooling standards for the Mideast marketing area, in part, provide for determining those producers and the milk of those producers who are serving the Class I needs of the Mideast marketing area and thereby receive the blend price of the Mideast order. It is reasonable, in light of this objective, to conclude that serving the fluid needs of another market provides no service to the Mideast market. Accordingly, such milk should not be considered as a qualifying shipment for meeting the supply plant performance standard of the Mideast order.

In their exceptions to the tentative final decision, LOL reiterated their opposition to the elimination of milk shipments to a distributing plant regulated by another Federal milk order as pool-qualifying shipments under the Mideast order. They asserted that not allowing shipments to distributing plants located outside the Mideast marketing area to be considered as a qualifying shipment for pooling purposes is discriminatory to producers and restricts access to the proceeds of the Mideast marketwide pool.

The modification of Proposal 2, offered by MMPA, intended to provide a pooling standard that assists in the proper identification of the milk of those producers who actually provide a service to the order's Class I market, and previously adopted on an interim basis, is adopted by this final decision. The proposed amendatory language has been modified by the Department and is presented below. Safeguards are added to the supply plant provision allowing that up to 90 percent of a supply plant's qualifying shipments to distributing plants be directly from farms of producers by diversion. The intent of this pooling feature for supply plants was to provide flexibility and offer efficiency in transporting milk, and thereby be less burdensome, for those market participants of the pre-reform orders who would continue to be pooled on the larger consolidated Mideast order. This feature was not intended to be used as a mechanism to pool milk on the order that was not providing a reasonable measure of service in supplying the Class I needs of the Mideast marketing area.

As noted in the tentative final decision, the intent of the modification of Proposal 2 by MMPA sought reasonable safeguards so that milk pooled by handlers from sources distant from the marketing area, resulting from the pooling of milk from within the marketing area, would end. The reasons for modifying Proposal 2 are well supported by evidence contained in the record of this proceeding. Currently, plants located far from the marketing area can use diversion of near-in milk for up to 90 percent of the distant plant's qualifying deliveries. Supply plants qualified in this manner do not provide milk to the marketing area that can be shown to be a service in meeting the Class I needs of the Mideast marketing area. Therefore, both the

tentative final decision and this final decision find that there is no reasonable basis to conclude that such milk should be pooled on the order and thereby receive the order's blend price. This modification would establish that supplemental milk supplies actually perform a reasonable measure of service in supplying the fluid needs of the Mideast marketing area.

Finally, this decision adopts a "net shipment" provision, a feature of Proposal 2. As intended by the proponents, a net shipment feature would not include transfers or diversions of bulk fluid milk products of a supply plant's qualifying shipments to a distributing plant by any amount of bulk milk transfers or diversions made from the distributing plant. Providing such a feature for the pooling standards for the Mideast order supply plants is reasonable, notwithstanding the objections to its adoption by Scioto and LOL. It is true that distributing plants have some transfers and diversions resulting from variations in demand stemming from weekend days and holidays. However, the current supply plant performance standard is below the Mideast market's Class I use of milk, even with the pooling of milk inappropriately associated with the market due to faulty pooling standards. This decision finds it unlikely that transfers and diversions by distributing plants on such occasions would involve a sufficient volume of milk to cause a supply plant to lose pool status. Additionally, given other changes to the order's pooling standards adopted in this final decision (discussed below), placing a limit on diversions that can be made by any pool plant to a nonpool plant should provide the necessary safeguards that would make it even more unlikely that a supply plant would lose its pool status. As indicated in the tentative final decision, this final decision finds that adoption of a net shipment feature in the pooling standards for Mideast supply plants will aid in properly identifying the milk of those producers who actually supply milk to meet the fluid needs of the market.

As noted in the tentative final decision, a brief submitted by Suiza emphasized the need for providing a net shipment provision for a supply plant operated by a cooperative association. The brief indicated that it would provide for fair and equitable regulatory treatment of two similar types of supply plants. The tentative final decision agreed with the need to apply the same net shipment provision to supply plants operated by a cooperative association. The tentative final decision also noted that both supply plant and cooperative supply plant performance standards were, for all intents and purposes, identical. Subsequently, the tentative final decision concluded it reasonable to adopt the same standard in considering the actual, or net, shipments made to distributing plants by a plant operated by a cooperative association.

In their exceptions to the tentative final decision, DFA, MMPA, and Prairie Farms indicated opposition to net shipment provisions for supply plants operated by cooperative associations as provided for in § 1033.7(d) of the order. Opponents argued that adoption of this standard would, in effect, apply more rigorous performance standards to cooperative supply plants qualified under § 1033.7(d) than to supply plants qualified under § 1033.7(c) of the order. Opponents noted that net shipments for a cooperative supply plant qualified under § 1033.7(d) would be applicable to the total volume of milk pooled *by the entire cooperative,* while net shipments for a supply plant qualified under § 1033.7(c) would be based only on the total volume of milk pooled *at the plant.* DFA, MMPA, and Prairie Farms described the net shipments provision adopted on an interim basis as critical for supply plants qualified solely on that plant's volume of milk receipts. However, for cooperative supply plants that qualify on the basis of the cooperative's entire supply of milk receipts, the net shipments provision should not be provided for in the final decision.

The Department agrees with the exceptions to the tentative decision by DFA, MMPA, and Prairie Farms to exclude supply plants qualified under § 1033.7(d) from the net shipments provision. A supply plant operated by a cooperative association qualified under § 1033.7(d) qualifies their milk for pooling by shipping a percentage of all the milk of the entire cooperative to pool distributing plants. In contrast, supply plants qualified under § 1033.7(c) need only ship a percentage of the milk physically received at the plant to a pool distributing plant. Consequently, it is reasonable to conclude that a net shipment provision is not necessary for determining if a cooperative supply plant under § 1033.7(d) has to meet the performance standard. Accordingly, this final decision does not adopt a net shipments provision for cooperative supply plants under § 1033.7(d).

Providing a 6-month re-pooling delay whenever a supply plant opts not to meet the pooling standards for the month would not tend to provide for orderly marketing conditions in the Mideast marketing area. As noted in the tentative final decision, the record indicates that handler interests seek every assurance for a steady and reliable milk supply as the order can reasonably provide. Providing pooling standards that may cause a supply plant to consider the longer-term implications of dropping off the pool may also tend to ensure the desired outcome of assuring reliable deliveries of milk to fluid handlers. However, the need for a provision to prohibit a supply plant from rejoining the pool through proper performance after a 6-month delay is not supported by the record and is not adopted in this final decision.

Milk marketing orders are instruments for promoting stability in the marketing relationship between producers and handlers. In this regard, and considering the marketing conditions of the Mideast marketing area, promoting stability in this manner is not appropriate or needed. As noted in the tentative decision, the record indicates that fluid milk handlers have not had significant difficulties in securing milk supplies since the implementation of milk order reform. To the extent that handlers fear the potential disruption to the market that may arise from depooling, that fear to date is only speculative.

The most important evidence provided on the record that provides any justification for adopting a 6-month re-pooling delay rests on the possible occurrence of a class-price inversion. Handlers see the issue of opting off-and-on the pool as rushing to join the pool to secure the advantages of price protection and dropping from the pool when prices for Class III and IV milk are higher than the order's blend price. Further, handlers worry that during such times, their ability to obtain needed milk supplies is diminished. The DFA witness is of the opinion that penalizing supply plants, often cooperative owned, may cause financial damage to be borne by the manufacturing sectors of the market. Additionally, DFA does not endorse the notion that producers should incur any penalty because of price outcomes which, they conclude, are the result of the order program providing for the advance pricing of Class I and II milk that serves the interest of handlers.

The tentative decision and this final decision make no finding on whether advance pricing is a cause or contributor to class-price inversions. Additionally, neither the tentative decision or this final decision make any findings regarding the damage that may result to cooperatively owned manufacturers by being prevented from rejoining the pool. These are both far beyond the scope of

this proceeding. However, the tentative decision and this final decision do find that the amendments to the pooling standards adopted by this final decision, taken as a whole, strengthen the effectiveness of the order for the benefit of both producers and handlers, will provide for more orderly marketing conditions, and provide for a more consistent supply of milk to Class I handlers.

b. Standards for producer milk

Minimum Deliveries to Pool Plants—The Touch Base Standard. The proposal seeking to change certain standards and features of the *Producer milk* provision of the order, specified in the tentative final decision, is also adopted in this final decision. The following amendments include:

(1) Increasing the number of days of milk production of a producer to be delivered to a pool plant before the milk of the producer is eligible for diversion during each of the months of August through November, or "touch base" is increased to 2-days' milk production. In this regard, August is an addition to the touch base period. Additionally, the amended touch base provision establishes a 2-day touch base standard for new producers coming on the Mideast market during each of the months of December through July. The 2-days' milk production touch base standard will be applicable only if the producer has not been part of the Mideast market during each of the previous months of August through November. Adoption of a 2-day touch base standard therefore concludes that the higher standards of either 3 or 4 days, supported by handlers and Scioto, is not adopted.

(2) Establishing diversion limits for all pool handlers in each month of the year. Additionally, diversion limits will be seasonally adjusted. For each of the months of August through February, the diversion limit shall be 60 percent. For each of the months of March through July, the diversion limit shall be 70 percent.

(3) Eliminating the ability of a pool plant to increase diversions to nonpool plants by diverting milk to a second pool plant.

Proposal 7, which sought to add the months of August and March to the current diversion limit standard of 60 percent for each of the months of September through February, was not adopted in the tentative final decision and is not adopted in this final decision.

Proposals 3, 7, and 9 seek to modify the order's standards for determining the eligibility to pool the milk of a producer on the order. The standards for determining this are described in the *Producer milk* provision of the order. These three proposals are similar in the changes proposed and the specific details of each proposal are discussed in greater detail below. As explained earlier in this decision, the collective references of the proponents as the "Cooperatives" and "Handlers" continues. Proposal 3 was offered by the Cooperatives, Proposal 9 by the Handlers, and Proposal 7 by the Independent Dairy Producers of Akron (IDPA), an association of dairy farmers whose milk is pooled on the Mideast order.

A proposal, published in the hearing notice as Proposal 6, did not receive testimony at the hearing and is considered by this decision to be abandoned. This proposal called for providing year-round diversion limits as did Proposal 3, but offered slightly differing seasonal adjustments. No further reference will be made in this proceeding to Proposal 6.

Published in the hearing notice as Proposal 3, the Cooperatives seek changes in the number of days the milk of a dairy farmer must be physically received at a pool plant, and in what months the standards should apply (commonly referred to as a "touch base" provision), before being eligible for diversion to nonpool plants. Additionally, Proposal 3 would establish diversion limits for producer milk in months where no limit is currently provided by the order and would seasonally adjust these limits.

(1) *Touch base.* Proposal 3 would change the touch base feature of the *Producer milk* provision by raising the current standard from one day's milk production to two days' milk production of a producer in each of the months of August through November. Additionally, Proposal 3 also includes a proviso that, in the event a handler did not cause at least two days' milk production of a producer to touch base during each of the months of August through November, at least two days' production would need to touch base in each of the months of December through July before milk is eligible for diversion to nonpool plants. Proposal 7, proposed by the IDPA, seeks a 4-day touch base provision only for each of the months of August through March.

(2) *Diversion limits* Proposals 3 and 9 seek diversion limits that would be applicable year round but differ on the level proposed for the spring and summer months. Under Proposal 3, a 60 percent limit would be applicable in each of the months of August through February, and a 70 percent limit would be applicable in each of the months of March through July. Alternatively, Proposal 9 would specify a 60 percent limit in each of the months of August through February, but an 80 percent limit for each of the months of March through July. Proposal 7 seeks only to change the months in which a diversion limit would be provided from the current 60 percent during each of the months September through February and have the 60 percent limit be applicable during each of the months of March through August.

The witness representing the Cooperatives testified that the current provisions of the Mideast order do not adequately define the potential amount of milk that can be pooled on the order and attributed this shortcoming, in part, to the lack of adequate diversion limits. The witness also indicated that establishing a limit on the amount of producer milk that a pool plant can divert to a nonpool plant where none are now specified would correct these deficiencies of the order's pooling standards. The witness also cited the current touch base standard as contributing to the improper pooling of the milk of producers not actually serving the Class I needs of the market. The new 2-day touch base standard offered by Proposal 3, indicated the witness, would need to be met before additional milk would be eligible for diversion to nonpool plants.

Continental Dairy Products (Continental), a cooperative of dairy farmers with members whose milk is marketed and pooled on the Mideast order, indicated their support for amending the touch base standard as well as providing year-round diversion limits on producer milk. They noted that producer blend prices in the Mideast marketing area have been reduced by as much as $8 million in a single month because of inappropriate pooling standards. The pooling standards in the Mideast order do not currently require a physical and economic association with the marketing area, noted the witness, and therefore an enormous amount of milk has been pooled on the Mideast order.

A witness from Prairie Farms, representing the positions of the Cooperatives, testified in support of Proposal 3. The witness testified that increasing the touch base provision would ensure that enough milk would be available to cover the day-to-day fluid needs of the market along with providing for adequate milk reserves. At the same time, said the witness, the proposal would reduce the ability to pool milk on the order that is not serving the markets fluid needs. The witness noted that their dairy farmer

members have been financially harmed by the unwarranted additional supplies of milk being pooled on the order. The Cooperatives' witness stressed that pooling additional volumes of milk only serves to lower returns to Mideast producers and supplemental suppliers who are actually serving the fluid needs of the market every day.

A witness appearing on behalf of MEMA also testified in support of Proposal 3. The MEMA witness related that in responding to changes in customer needs, in addition to variations in production, their need to secure additional volumes of milk for the fall months actually begins in August and continues through November. This, noted the witness, is because as schools return to session the demand for milk tends to increase.

A witness appearing on behalf of MMPA testified in support of Proposal 3. The MMPA witness offered that increasing the touch base standard to 2-days' production better reflects the higher fluid needs of the market that exist during specific months of the year. The increase in demand for fluid milk attributed to school openings was also offered by the witness as an example of such increased demand beginning in August.

MMPA also indicated support for the proviso in Proposal 3 that would establish a two-day touch base standard for each of the months of December through July for producer milk which did not meet the touch base standard in the proceeding months of August through November. According to the witness, this feature of the touch base standard supports the concept that pooling standards be performance oriented and more accurately identify the milk of those producers which actually service the fluid needs of the market.

A witness from Dean also testified in general support of Proposal 3. However, Dean offered a modification to Proposal 3 by endorsing a 3-day touch base standard for producer milk. The witness provided an analysis on the effects of "non-historic" milk pooled on the Mideast order over the period of January 2001 through August 2001. This analysis concluded that the Mideast's Producer Price Differential (PPD) had been reduced by an average of 55 cents per hundredweight during this 8-month time period. The witness stressed that this loss of revenue is being borne by the producers who actually and regularly supply the fluid needs of the market. Accordingly, indicated the Dean witness, the pooling provision standards regarding producer milk need changing.

A witness appearing on behalf of Suiza expressed similar general support for Proposal 3 and endorsed the Dean modification calling for a 3-day touch base standard. Suiza was of the opinion that without a meaningful touch base standard, individual producer-suppliers do not actually have to perform by physically delivering milk to the Mideast market as a condition for pooling. Meaningful touch base provisions, noted Suiza, also provide handlers with reasonable assurance of performance while simultaneously ensuring that the milk of dairy farmers that actually serves the market is protected against lower returns caused by pooling unneeded milk. Additionally, the Suiza witness testified in support of specifying August as a month when lower diversion limits should be applicable. The witness also cited the opening of schools and the stresses on production from summer as reflections of increasing demand for Class I milk occurring during a time of generally lower milk production.

A witness representing Scioto expressed general support for Proposal 3 but offered a 4-day touch base standard for each of the months of August through November and a 2-day touch base standard for each of the months of December and January.

Testifying in support of Proposal 7, the IDPA witness stressed that increasing the touch base standard to 4 days' production should be applicable for each of the months of August through March and providing a 60 percent diversion limit for each of these same months would be beneficial to Mideast producers. The witness indicated that a physical delivery of milk to the order's pool plants is a key indicator of milk being a legitimate part of the market. The witness expressed support of the need for an emergency decision because their returns are being lowered by pooling milk that should not be considered as part of the Mideast market.

Proposal 9, offered by the Handlers, seeks to limit the amount of milk that could be diverted from a pool plant to a nonpool plant. The proposal would set a 60 percent limit during each of the months of August through February and an 80 percent limit during each of the months of March through July. This proposal was abandoned by its proponents. Instead, the proponents agreed to support Proposal 3 offered by the Cooperatives. While the Handlers indicated support for Proposal 3, they were of the opinion that adopting a 3-day touch base standard instead of a 2-day touch base standard would be best. They indicated a 3-day touch base standard would contribute to a more accurate identification of the milk of producers that actually supply the fluid milk needs of the Mideast marketing area.

The witness representing Scioto testified in support of Proposal 9. Proposal 9 limits diversions to a percentage of the milk physically received at a plant, noted the witness. The concept of allowing diversions based on milk physically received is logical, said the witness, and is preferred by most of the dairy industry. The witness was also of the opinion that August should be included as a month that provides for a lower level of diversions to nonpool plants. The combination of schools opening in the middle of August together with the typically hot days of the summer season, cited the witness, has negative impact on milk production and therefore the order should have lower limits on the amount of milk that can divert to nonpool plants. Diversion limits of 60 percent during each of the months of August through February and 80 percent during each of the months of March through July would also assure consumers and fluid milk processing plants that their needs will be met, concluded the Scioto witness.

All milk marketing orders, including the Mideast, provide some standard for identifying those producers who supply the market with milk. To qualify as a producer on most orders, including the Mideast, a producer can be associated with a market by making a delivery to a market's pool plant. Additionally, other standards need to be met before the milk of that producer is eligible to be diverted to a nonpool plant and have that diverted milk pooled and priced under the terms of the order. Currently, the Mideast order's standard is that one day's production of milk of a producer be delivered to a pool plant before that plant can divert the milk of the producer to a nonpool plant.

The touch base standard of an order establishes an initial association by the producer and the milk of the producer with the market. Markets that exhibit a higher percentage of milk in fluid use generally have touch base standards specifying more frequent physical milk deliveries to pool plants. In this way, the touch base provision serves to maintain the integrity of the order's performance standards. When a touch base standard is too low, the potential for disorderly marketing conditions arises on two fronts. First, pool plants are less assured of milk supplies. Second, and most important for the Mideast marketing area, an inadequate touch base standard provides the means

for the milk of producers, not providing a service in meeting the fluid needs of the market, to be pooled on the order. This reduces the order's blend price paid to producers who are providing service to the Class I market.

As specified in the tentative final decision, the record of this proceeding indicated various opinions about what the proper touch base standard for the Mideast order should be and when it should be applicable. These opinions ranged from 2 days' to as much as 4 days' milk production of a producer. All agree that August would be a more appropriate beginning month for its applicability. The more compelling observation is that all participants in this proceeding recognized the need for, and supported increasing, the touch base standard. The issue for the Department is reduced to deciding which standard best serves the needs of the Mideast order.

On the basis of the evidence, both the tentative final decision and this final decision support adopting a 2-day touch base standard and having this standard be applicable beginning in August. While a higher standard would tend to further maintain the integrity of the order's performance standards, adopting a higher touch base standard may result in the uneconomic movement of milk solely for the milk of producers to meet a pooling standard. Additionally, the Mideast order currently provides that the Market Administrator may adjust the touch base standard in the same way the order provides for the Market Administrator to adjust the performance standards for supply plants and the diversion limits for all pool plants. Other changes adopted in this final decision will also serve to more accurately identify the milk of producers who should be pooled on the order. Together with the Market Administrator's authority to administratively change the touch base standard, sufficient safeguards are provided to accomplish both needs.

Provisions for diverting milk are a desirable and needed feature of an order because they facilitate the orderly and efficient disposition of the market's milk not used for fluid use. When producer milk is not needed by the market for Class I use, its movement to nonpool plants for manufacturing, without loss of producer milk status, should be provided for. Preventing or minimizing the inefficient movement of milk solely for pooling purposes need also be reasonably accommodated. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

A diversion limit establishes the amount of producer milk that may be associated with the integral milk supply of a pool plant. With regard to the pooling issues of the Mideast order, it is the lack of diversion limits to nonpool plants that significantly contributes to the pooling of milk on the order that does not provide service to the Class I market. Such milk is not a legitimate part of the reserve supply of the plant.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant. While diverted milk is not physically received at the diverting plant, it is nevertheless an integral part of the milk supply of that plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not be associated with the diverting plant. Therefore, such milk should not be pooled.

Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers. Additionally, pooling milk far in excess of reasonable needs of the market due to the lack of diversion limits only provides for the association of milk with the market by what is often described as "paper-pooling" and not by actual service in meeting the Class I needs of the market. Without a diversion limit, the order's ability to provide effective performance standards and orderly marketing is weakened.

The lack of a diversion limit standard applicable to pool plants opens the door for pooling much more milk and, in theory, an infinite amount of milk on the market. While the potential size of the pool should be established by the order's pooling standards, the lack of diversion limits renders the potential size of the pool as undefined. With respect to the marketing conditions of the Mideast marketing area evidenced by the record, this decision finds that the lack of year-round diversion limits on producer milk has caused more milk to be pooled on the order than can reasonably be considered as properly associated with the market.

The lack of a diversion limit standard applicable for diversions to nonpool plants has also resulted in the pooling of milk that does not provide a service in meeting the Class I needs of the Mideast marketing area. Proposal 7 offers reasonable diversion limit standards that would be adjusted seasonally to reflect the changing supply and demand conditions of the Mideast marketing area. Therefore, a 60 percent diversion limit standard for each of the months of August through February and a 70 percent diversion limit standard for each of the months of March through July is adopted. To the extent that these diversion limit standards may warrant adjustments, the order already provides the Market Administrator with authority to adjust these diversion standards as marketing conditions may warrant.

As mentioned above, the Mideast order currently provides for the diversion of milk from a pool plant to a second pool plant. However, the order does not consider such diversions in the total diversion limit established for pool plants. It is through this shortcoming of the order's pooling standards that the intent to only pool the milk of producers who are consistently serving the Class I demands of the market are circumvented. In this regard, a pool plant is able to increase its milk diversions to a nonpool plant through diversions to a second pool plant. The amendment provided below in the *Producer milk* definition of the order provides the necessary technical correction that will include diversions to other pool plants in the manner no differently than diversions to nonpool plants.

As specified in the tentative decision, several changes to the pooling standards contained in the *Producer milk* definition of the order were needed to maintain the integrity of the other amendments made in this decision affecting the performance standards for supply plants. As indicated earlier, the record indicates that certain pooling provisions of the Mideast order are either inadequate or unnecessary. With respect to the pooling standards of the order as they are contained in the *Producer milk* provision, the tentative decision and this final decision find that certain features of the provision are inadequate. These include:

(1) The touch base standard currently requiring one-days' milk production of a producer be delivered to a pool plant is not providing a sufficient standard in identifying those producers and the milk of those producers who are serving the fluid needs of the market.

(2) The lack of year-round diversion limits for all pool plants has resulted in the ability to pool far more milk than can be reasonably part of the reserve supply of the plants pooling such milk. The lack of a diversion limit for each and every month of the year has left the potential size of the marketwide pool undefined. This inadequacy of the Mideast order has resulted, too, in pooling the milk of producers who are not providing a service to the Class I needs of the market. This inadequacy contributes to the unnecessary erosion

of the order's blend price caused by pooling additional volumes of milk used in lower priced classes which, in turn, reduces the market's Class I utilization percentage of milk.

(3) The lack of limiting the ability of a pool plant to divert milk to a second pool plant in the same manner as diverted milk to a nonpool plant contributes and magnifies the impact of pooling the milk of producers who provide no service to the Class I needs of the market. The receipt of a lower blend price to those producers who are serving the Class I needs of the market is found to be unwarranted and contributes to disorderly marketing conditions in the Mideast marketing area.

2. Rate of Partial Payment

Proposal 4, seeking to increase the rate of partial payment for milk, was not recommended for adoption in the tentative decision and is not adopted in this final decision. This proposal, offered by DFA, would increase the rate of partial payment to producers and cooperative associations for milk delivered during the first 15 days of a month to 110 percent of the previous month's lowest class price.

The intent of this proposal, according to the DFA witness, is to improve the cash flow of dairy farmers pooled on the Mideast order. According to DFA, a partial payment that more closely equals the final payment for milk would more accurately reflect the true value of the milk delivered to handlers during the first 15 days of the month. The DFA witness testified that the partial payment rate, as a share of the total payment for milk, has widened since the formation of the consolidated Mideast marketing area. The witness stressed that producers need a more consistent cash flow than they are currently experiencing and adopting a higher partial payment rate would meet this need.

The DFA witness provided data and an analysis they maintain indicates that since the implementation of order reform on January 1, 2000, the amount of the partial payment received by producers relative to the total payment for milk each month has been reduced when compared to the pre-reform orders. The analysis consisted of approximating a weighted average blend price as a proxy for a comparable order from the pre-reform orders' information. The witness indicated that data for a 36-month period, from January 1997 through December 1999, was compared to the current Mideast order data of 17 months—the number of months then available for which data existed.

Since the current Mideast order provides 4 classes of milk use, the DFA witness indicated they used the pre-reform order's Class III–A price as a proxy for the lowest class price so that a comparison could be made between the pre-reform and post-reform partial payment relationships to the total price for the month. The result of this analysis, concluded the DFA witness, clearly indicates that by using the lowest class price of the previous month as the rate of partial payment, the relationship between the partial and total payment for milk during the month has widened since the implementation of order reform.

Three other witnesses testified in support of amending the partial payment provision. These witnesses included an Ohio dairy farmer, a representative of MMPA, and Scioto. All three witnesses testified that their cash flow, or the cash flow of their members, has deteriorated since the implementation of order reform.

As specified in the tentative decision, opposition by handler interests for increasing the rate of partial payment was significant. However, handler interests did not counter the expressed need for improvement in producers' cash flow positions. Rather, handler interests focused on presenting the impact to milk processors if a higher partial payment rate was adopted.

A representative of Leprino Foods (Leprino), a national cheese-processing firm which purchases and pools milk on the Mideast order, testified that disparity between the partial and final payments is a combination of a failure to blend the pool's higher use values into the partial payment and using the lowest class price of the previous month. The witness argued that increasing the rate of partial payment would merely transfer the burden of producers' cash flow concerns to processors. The Leprino witness was also of the opinion that increasing the rate of partial payment would violate minimum pricing principles used by Federal milk orders. In this regard, the witness noted that Class III and IV products compete for sales in a national market, unlike milk used in Class I products. The witness maintained that the resulting differences in the rate of partial payment between orders would cause disparate economic positions for handlers competing for sales in areas where the rate of partial payment is lower.

A witness representing the Handlers also testified in opposition to increasing the rate of partial payment. The witness provided an analysis that evaluated the financial impact on handlers based on the economic principle of the time value of money. In the analysis, the Handlers' witness presented the financial impacts to handlers that would likely result by advancing or delaying the partial payment. Notwithstanding the desire or need of producers to improve their cash flow positions, the witness was of the opinion that the cash flow problem of producers would better be addressed through adoption of other proposals under consideration in this proceeding.

Because of initial confusion in the data presented at the hearing regarding appropriate historical prices and the months for which they were applicable, the Department reconstructed noticed data that recreated the intended analysis presented by witnesses. The Department's reconstruction relied, in part, on the partial payment provisions of the pre-reform orders. The Department used the previous month's Class III price of the pre-reform orders as the lowest class price because the Class III price was used then to set the rate of partial payment. In this regard, comparing partial payment relationship outcomes using actual historical provisions provided for comparing pre- and post-reform partial payment relationships as to the total payment for milk in a month.

Even with the limited amount of data available since the implementation of order reform, the Department's comparison of pre- and post-reform partial payment relationships to total payments does appear to support the observations made by the DFA witness. However, this initial observation alone is not sufficient basis for changing the rate of the partial payment. Some significant differences in certain key assumptions were made by the proponents of Proposal 4 from those assumptions used by the Department in comparing pre- and post-reform time periods.

Also of concern is the limitations inherent in comparing a 36-month period to one of only 17 months. Additionally, the 36-month time period shows price trends rising and falling, while the 17-month time shows a period of generally an upward trend in prices. This may suggest that there has not yet been a sufficient period of elapsed time to infer the impact of downward trends in prices and the possible effect on the relationship between the partial and final payments to producers.

With regard to Leprino's concern about uniformity of partial payment rates between orders, the current milk orders have a variety of partial payment rates. Several orders use a partial payment rate based on a percent of the previous month's blend price, and the

Florida order, for example, provides for two partial payments. Additionally, the Western and Arizona-Las Vegas orders, both of which pool significant volumes of milk used in cheese, provide for partial payment rates of 120 and 130 percent, respectively, of the previous month's lowest class price.

There may be times when the rate of partial payment exceeds the balance due for the month. In this regard, handler interests point to this outcome as requiring them to pay more for milk for part of the month than its actual value for the month. It is appropriate to note that this exact outcome occurred several times during the pre-reform 36-month period used by DFA. Thus, it is determined that the concerns of handlers in this regard are unpersuasive.

The DFA witness noted that deductions authorized by producers are normally made in the final payments for milk. There could be times when the amount deducted from the final payment exceeds the amount of the final payment. If the deductions are high enough for this to happen, it would be reasonable to conclude that producers desiring to even out their cash flow would opt to allow a portion of their deductions to be made with receipt of the partial payment, as the order allows.

The partial payment provision in Federal orders is a minimum requirement placed on handlers to pay producers for milk delivered. It is important to note that cooperatives and handlers are not restricted to paying only one partial payment at the rate specified in the order; partial payments for milk can be made more often. Additionally, cooperatives and handlers are also at liberty to negotiate agreements for more frequent billings for milk and in payments for milk above the minimum established by the order. As made evident by the record, more flexible partial payment options are available to both producers and handlers than relying solely on changing the minimum payment provision.

As the Leprino witness noted, DFA's proposal does not incorporate or blend the higher-valued uses of milk in their analysis. In response to this observation, the Department compared the relationships between the partial and total payment using 90 percent of the previous month's Mideast blend price. Interestingly, if the desired objective is to more closely approximate the partial payment rate using the 36-month period before order reform, a 90 percent rate of the previous month's blend price seems to accomplish this. Nevertheless, the same limitations and concerns mentioned above prevent a finding that the Mideast order's rate for partial payment should be increased.

Both the tentative final decision and this final decision find general agreement with the Handlers' opinion that the cash flow concerns of producers would be better served by the adoption of other proposals considered in this proceeding. Other amendments adopted in this final decision affecting the pooling of milk in the Mideast order will likely end the unnecessary erosion in the blend price received by Mideast producers. Higher expected blend prices will result from more accurately identifying those producers and the milk of those producers who actually serve the Class I needs of the market. Similarly, the relationship between the partial payment and the total price received by producers may change by the adoption of these pooling standard amendments. Accordingly, a finding that the rate of partial payment to producers by handlers should be increased is not supported by the evidence contained in the record of this proceeding.

3. Conforming Changes

One conforming change is made to the pool plant definition of the order. Words to implement the consolidated order were needed when the order first became effective on January 1, 2000. Since the order has become effective such wording is no longer needed to effectuate the implementation of the order. The removal of the wording presented below is self explanatory.

4. Emergency Marketing Conditions

Evidence presented at the hearing established that the pooling standards of the Mideast order are inadequate and result in the erosion of the blend price received by producers who are serving the Class I needs of the market and should be changed on an emergency basis. The unwarranted erosion of such producers' blend price stems from improper performance standards as they relate to pool supply plants and the lack of diversion limits for pool plant diversions to pool and nonpool plants. These shortcomings of the pooling provisions have allowed milk to be pooled on the order that does not provide a reasonable or consistent service to meeting the needs of the Class I market as a standard for enjoying the pricing benefits arising from Class I sales in the Mideast marketing area. Consequently, it was determined that emergency marketing conditions existed, and the issuance of a recommended decision was omitted.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the interim order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof is one document: A Marketing Agreement regulating the handling of milk. The order amending the order regulating the handling of milk in the Mideast marketing area was approved by producers and published in the **Federal Register** on July 26, 2002 (67 FR 48743), as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

October 2003 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule published in the **Federal Register** on July 26, 2002 (67 FR 48743), regulating the handling of milk in the Mideast marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended) who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

Dated: April 5, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Mideast Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area. The hearing was held 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 (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on July 22, 2002, and published in the **Federal Register** on July 26, 2002 (67 FR 48743), are adopted with one minor change and shall be the terms and provisions of this order. The revision to the order follows.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

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

Authority: 7 U.S.C. 601–674.

2. Section 1033.7 is amended by revising paragraph (d)(2) to read as follows:

§ 1033.7 Pool plant.

* * * * *

(d) * * *

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

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Mideast Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1033.1 to 1033.86 all inclusive, of the order regulating the handling of milk in the Mideast marketing area (7 CFR 1033 which is annexed hereto); and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of __, __, ____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 04–8071 Filed 4–9–04; 8:45 am]

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Federal Register

Monday,
April 12, 2004

Part IV

The President

Proclamation 7769—National Donate Life Month, 2004

Federal Register
Vol. 69, No. 70
Monday, April 12, 2004

Presidential Documents

Title 3—

The President

Proclamation 7769 of April 8, 2004

National Donate Life Month, 2004

By the President of the United States of America

A Proclamation

This year marks the 50th anniversary of the first successful organ transplant in the United States. Since that time, organ and tissue transplantation have significantly increased, and last year, more than 25,000 Americans received an organ transplant. National Donate Life Month provides the opportunity to raise awareness about organ and tissue donation and the importance of sharing your decision to donate with your family.

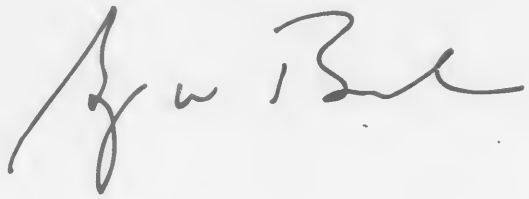
While medical advances are enabling Americans to receive lifesaving transplants, there are not enough donors to help everyone in need. Last year, close to 6,000 Americans died while waiting for organ transplants. Currently, more than 84,000 of our citizens are on the waiting list for a donation, and approximately 30,000 people will be diagnosed with diseases that a bone marrow transplant could cure.

My Administration is committed to increasing organ and tissue donation. I have included nearly $25 million in my 2005 budget proposal for organ procurement and transplantation efforts at the Department of Health and Human Services and nearly $23 million to support a bone marrow donor registry. In addition, we continue to increase donations through the "Gift of Life Donation Initiative." This campaign encourages businesses and organizations to make information on donation available to their employees, volunteers, and members, provides donor cards for individuals to carry with them, promotes the development of donor registries, and encourages States to educate teenagers on donation through their drivers' education classes. To make organ donation more viable, I recently signed into law the Organ Donation and Recovery Improvement Act. The Act authorizes the awarding of grants for travel reimbursement to potential donors and helps to increase public awareness and education about organ donation programs.

After a person decides to be a donor, one of the most important things he or she needs to do is talk with family members about this decision. Many opportunities are missed each year because families do not know what their loved ones wanted. During National Donate Life Month, we honor our Nation's organ and tissue donors and their families. Their decision to share the gift of life through America's donor programs serves as a positive example for all our citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2004 as National Donate Life Month. I call upon our citizens to sign an organ and tissue donor card and to be screened for bone marrow donation. I also urge health care professionals, volunteers, educators, government agencies, and private organizations to help raise awareness of the important need for organ and tissue donors in communities throughout our Nation.

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



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 12, 2004

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Sea turtle protection; shallow longline sets for swordfish in Pacific Ocean; prohibition; published 3-11-04

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Air quality implementation plans; approval and promulgation; various States:

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Dried prunes produced in—

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COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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H.R. 254/P.L. 108–215

To authorize the President of the United States to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes. (Apr. 5, 2004; 118 Stat. 579)

H.R. 3926/P.L. 108–216

Organ Donation and Recovery Improvement Act (Apr. 5, 2004; 118 Stat. 584)

H.R. 4062/P.L. 108–217

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through June 4, 2004, and for other purposes. (Apr. 5, 2004; 118 Stat. 591)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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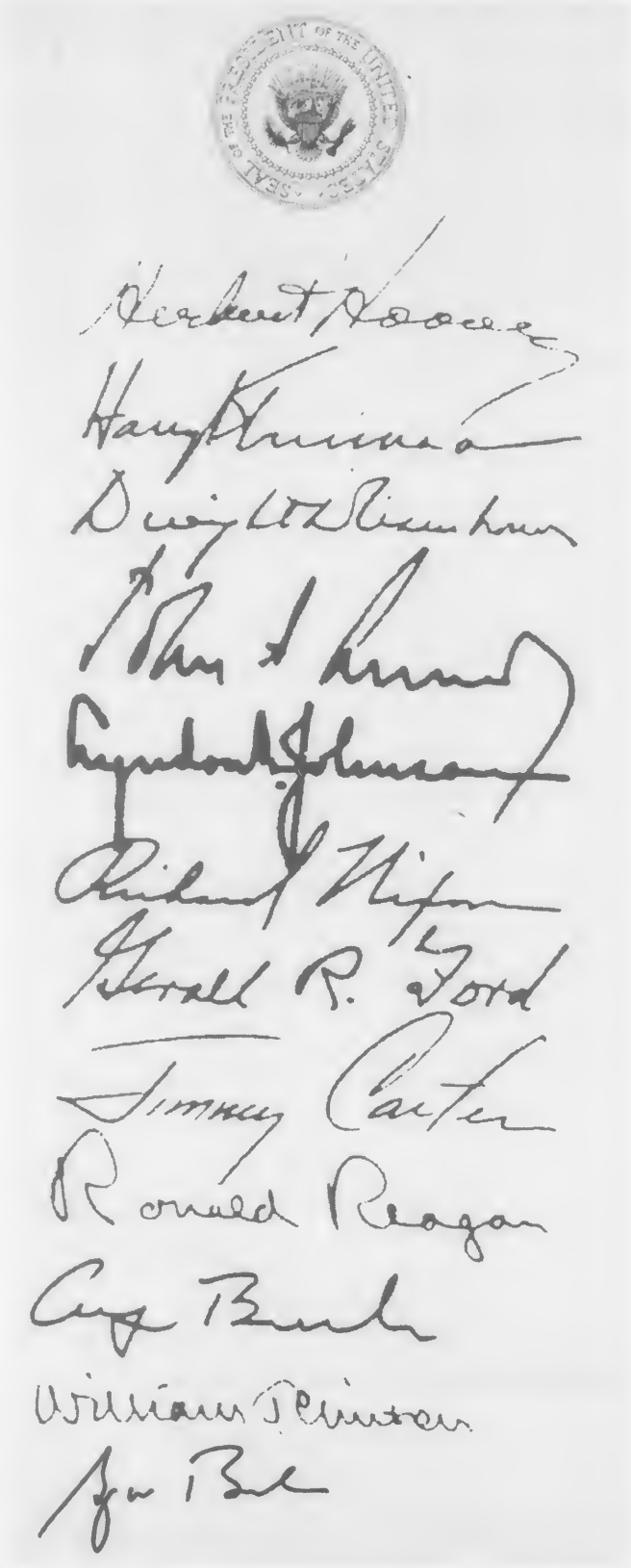

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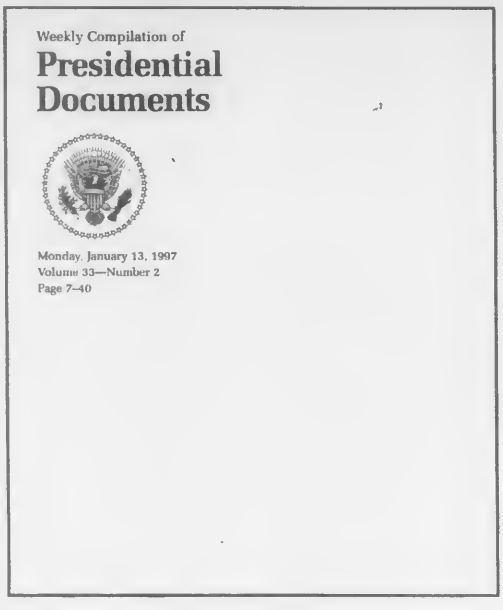

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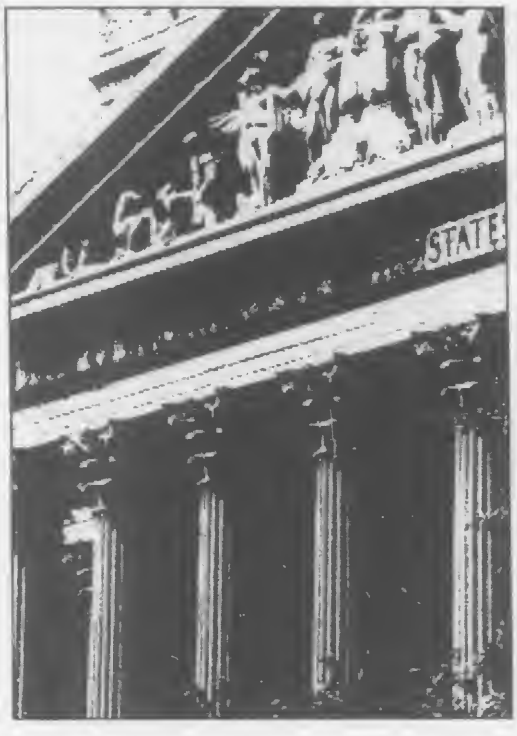

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